



U.S. Department of Justice

Civil Rights Division

*Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

May 2, 2006

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Re: Patton State Hospital, Patton, California

Dear Governor Schwarzenegger:

I am writing to report the findings of the Civil Rights Division's investigation of conditions and practices at Patton State Hospital ("Patton"), in Patton, California. On April 9, 2004, we notified you that we were investigating conditions at Patton pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. CRIPA gives the Department of Justice authority to seek remedies for any pattern and practice of conduct that violates the constitutional or federal statutory rights of persons with mental illness who are served in public institutions.

In December 2005,¹ we conducted an on-site inspection of Patton. We reviewed a wide variety of relevant State and facility documents, including policies, procedures, and medical and other records relating to the care and treatment of patients. During our visit, we also interviewed Patton administrators, professionals, and staff, and talked to and observed patients in their living units, at activity areas, and during treatment meetings. We were assisted in this exercise by expert consultants in the fields of psychiatry, psychology, medical care, and quality assurance and risk management. In keeping with our pledge of transparency and to provide technical assistance

¹ The tour was delayed until the parties resolved the manner in which they would establish the applicability at Patton of any remedial measures developed in connection with the Department's separate investigation of Metropolitan State Hospital.

where appropriate regarding our investigatory findings, we conveyed our preliminary findings to State counsel and to certain State and facility administrators and staff during verbal exit presentations at the close of our on-site visit.

As a threshold matter, we commend the administrators and staff of Patton for their helpful and professional conduct during the investigation; we received their full cooperation with our investigation. In particular, facility personnel cooperated fully and expeditiously with our document requests, and worked with us openly and collaboratively. We hope to continue to work with the State of California and officials at Patton in a cooperative manner.

At the time of our December 2005 visit, Patton had a census of over 1,500 patients. Patton primarily provides forensic psychiatric services to patients admitted under a variety of State statutes.

Residents of state-operated facilities have a right to live in reasonable safety and to receive adequate health care, along with habilitation to ensure their safety and freedom from unreasonable restraint, prevent regression and facilitate their ability to exercise their liberty interests. See generally Youngberg v. Romeo, 457 U.S. 307 (1982). Determining whether treatment is adequate focuses on whether institutional conditions substantially depart from generally accepted professional judgment, practices, or standards. Youngberg, 457 U.S. at 323; Sharp v. Weston, 233 F.3d 1166, 1171-72 (9th Cir. 2000). The State also must provide services in the most integrated setting appropriate to individual residents' needs. Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 et seq.; 28 C.F.R. § 35.130 (d) ("A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."); see generally Olmstead v. L.C., 527 U.S. 581 (1999). Additionally, the State must provide persons committed to psychiatric hospitals for an indefinite term with mental health treatment that gives them a realistic opportunity to be cured and released. Oregon Advocacy Center v. Mink, 322 F.3d 1101, 1121 (9th Cir. 2003) (citing Sharp, 233 F.3d at 1172).

It is apparent that many Patton staff are highly dedicated individuals who are genuinely concerned for the well-being of the persons in their care. Nevertheless, there are significant and wide-ranging deficiencies in patient care provided at Patton. Indeed, conditions of care and treatment at Patton in psychiatry, including pharmaceutical services; psychology; medical care,

including general medical services, infection control, physical and occupational therapy, dietary, and dental care; nursing services; placement in the most integrated setting; and protection from harm and quality assurance, are materially similar to those outlined in the findings letters of 2003 and 2004 regarding Metropolitan State Hospital. Consistent with the statutory requirements of CRIPA, we now write to advise you of the findings of our investigation, the facts supporting them, and the minimum remedial steps that are necessary to address the deficiencies we have identified.

I. PROTECTION FROM HARM

Patton fails to provide a reasonably safe environment for its patients. Patient-on-patient violence is commonplace at Patton. For example, Patton reported over 500 patient-on-patient assaults in the six months preceding our visit. In fact, two patient homicides have occurred at Patton since September 2005, allegedly committed by other patients. Not surprisingly, many patients we spoke with report feeling unsafe at Patton.

Patton also fails to keep patients reasonably safe from self-harm. A substantial number of incidents reported at Patton involve self-harm. Of great concern is the high number of suicide attempts by hanging. In a recent one-month review of all reported suicide attempts, the vast majority of incidents involved attempts at suicide by hanging. Sadly, we understand that shortly after our visit, a patient successfully committed suicide at Patton by hanging himself from his bedroom closet.

Patton also fails to maintain an effective incident management system and a related quality improvement ("QI") system to prevent harmful incidents, and identify and correct deficiencies in care and treatment. While Patton properly tracks incidents and identifies trends, it fails to respond effectively to identified trends and, therefore, fails to prevent future incidents of harm. This is contrary to the very purpose of an effective incident management and QI system, as required by generally accepted professional standards of care. This failure is illustrated by the recent suicide by hanging, which appears to be part of a trend of suicide attempts by hanging at Patton.

The quality of the investigations Patton completes is inadequate. Although special investigators appear to complete timely reports of their investigations, most incidents are only subject to a review of documentation regarding the incident, such as the incident report, not an actual investigation in which witnesses are interviewed and efforts are undertaken to determine

factors such as what precipitated the incident, was supervision adequate, and what steps might be taken to avoid a reoccurrence. Significantly, most reviews summarily conclude that the staff members involved acted properly in connection with the incident. The notion that, in every instance, staff members unerringly choose the proper course of action strains credulity and suggests that such reviews are not reliable.

Patton patients also are subject to adverse environmental conditions such as potential suicide hazards and the prevalence of illicit drugs. These problems are long-standing and serious. Yet, incident reports and other evidence make clear that the facility has not corrected them. Similarly, Patton fails to adequately address inappropriate sexual contact among individuals served at the facility, including sexual contact between staff and patients. This issue, too, is long-standing.

Consequently, Patton fails to protect its patients from avoidable harm. The harm that Patton patients experience as a result of these deficiencies is multifaceted, including physical and psychological abuse; physical injury; excessive and inappropriate use of physical and chemical restraints; inadequate, ineffective and counterproductive treatment; and excessively long hospitalizations.

II. PSYCHIATRY

Patton's psychiatric supports and services substantially depart from generally accepted professional standards of care and expose patients to a significant risk of harm and to actual harm. Generally, our investigation uncovered problems in three main areas of psychiatry: assessments and diagnoses, medication management, and treatment planning.

Generally accepted professional standards of care require that initial psychiatric diagnoses be based on complete psychiatric assessments in which relevant historical, environmental, biological, social, psychosocial, medical, and neurological factors and influences are evaluated. Once an initial diagnosis is made, ongoing assessments should be conducted to ensure that timely re-evaluation of the resident's condition is made and treatment adjusted accordingly.

Psychiatric assessments and diagnoses at Patton substantially depart from generally accepted professional standards of care. Psychiatrists routinely diagnose their patients as having psychiatric disorders without conducting an adequate psychiatric assessment.

Initial assessments at Patton are not individualized and fail to provide a basis for a diagnostic process that has sufficient reliability and validity. Moreover, initial assessments are routinely completed within 24 hours of admission to Patton, before the treating psychiatrist would be able to obtain input from other disciplines. The practice of finalizing assessments within 24 hours deprives the psychiatrist of potentially critical diagnostic information.

Annual update assessments are likewise inadequate. Many are based on outdated information and, therefore, do not provide an accurate guide for the patient's treatment. In fact, we found that Patton's overall approach to ongoing psychiatric assessment reflects a lack of critical thinking and clinical inquiry. In many cases we reviewed, the psychiatrist failed to evaluate important developments in a patient's condition that would suggest that the diagnosis assigned to the patient is not accurate. Without a proper understanding of a patient's condition, Patton's psychiatrists cannot make appropriate treatment decisions. Additionally, Patton fails to adequately assess the presence and impact of seizure disorders when formulating psychiatric diagnoses and assessments.

As a result of the deficiencies in psychiatric assessments and diagnoses at Patton, patients' actual illnesses are not being properly treated and are permitted to progress. Additionally, patients are exposed to potentially toxic treatments for conditions from which they do not suffer, patients are not provided appropriate psychiatric rehabilitation, and patients' options for discharge are seriously limited.

We understand that Patton is in the process of adopting a new model for integrated assessments. This model, if implemented properly, will facilitate individualized assessments and provide the basis for a recovery model of treatment.

It is a basic tenet of generally accepted professional standards of care that the use of psychiatric medication always should be justified by the clinical needs of a patient. Patton fails to ensure that its patients are afforded appropriate psychopharmacological treatment. Vulnerable patients are routinely prescribed inappropriate or unsafe medications without clinical justification. In fact, we found examples of patients on dangerously high doses of psychiatric medications without a diagnosis that would justify such use, nor any evidence that the prescribed dose provides any benefit to the patient.

Patton's monitoring of side effects of medications, particularly its monitoring of the side effect tardive dyskinesia ("TD"), substantially departs from generally accepted standards of care. TD is a serious and potentially irreversible and disabling movement disorder that is associated with prolonged treatment with conventional antipsychotic medications. Patton's psychiatrists are not accurately tracking patients' signs and symptoms of TD. For example, we found significant discrepancies between the documentation of TD assessments and the patients' observable condition. Moreover, Patton fails to modify medications in a timely manner, even when the medications appear to cause harm, and alternative treatments exist. For example, we found patients at Patton with symptoms of TD resulting from longstanding use of one particular psychotropic, haloperidol. Patton failed to detect these symptoms and even consider prescribing other medications with less harmful side effects.

Treatment planning at Patton also represents a substantial departure from generally accepted professional standards of care. Generally accepted professional standards of care instruct that treatment plans should dictate appropriate clinical interventions by integrating the individual assessments, evaluations, and diagnoses of the patient performed by all disciplines involved in the patient's treatment. Treatment plans should be individualized and should identify and build on the patient's strengths, interests, preferences, and goals, to optimize the patient's recovery and ability to sustain himself in the most integrated, appropriate setting.

At Patton, current treatment plans are cursory, not individualized, and not integrated. Additionally, as discussed further in the next section, although the facility has adopted a new treatment planning format that offers an individualized, integrated approach to developing treatment plans, psychiatrists as well as other mental health professionals fail to properly utilize the format.

The preventable, serious harm resulting from these deficiencies takes many forms, among them, inadequate, ineffective and counterproductive treatment; exposure to inappropriate and unnecessary medications posing serious physiological and other side effects; excessively long

hospitalizations, which compound psychiatric distress; increased risk of relapse after discharge; and an overall lower quality of life.

III. PSYCHOLOGY

Patton's psychological services and behavioral interventions substantially depart from generally accepted professional standards of care and expose the patients to significant risk of harm and to actual harm. Generally, our investigation uncovered deficiencies in psychosocial assessments, treatment planning, treatment programming, and behavioral interventions.

Psychosocial assessments do not comport with generally accepted professional standards. As stated above, although Patton's treatment planning format provides an effective template for development of an integrated treatment approach, mental health clinicians fail to properly utilize the format, possibly because it is new. We reviewed many treatment plans in which clinicians failed to identify the patients' current condition and the life skills needed for the patients' condition to improve. Treatment objectives likewise are not constructive and do not reflect a patient's actual needs. These deficiencies contribute to misdirected and ineffective interventions and are a substantial departure from generally accepted professional standards.

A fundamental problem at Patton is that the treatment it offers does not address the patients' actual treatment needs. Patton has adopted a "Treatment Mall" model for treatment delivery. Under this model, patients can choose from classes on topics such as daily life skills, vocational training, education, and social skills to develop the skills necessary for recovery and return to the community.

The Treatment Mall model, when implemented properly, can be an effective method of treatment delivery. Unfortunately, we found serious deficiencies in Patton's current execution of the Treatment Mall model. Most significantly, the classes made available to individual patients do not address the patients' specific needs and, therefore, do not provide patients with meaningful or effective treatment. Many patients are assigned to courses they have not chosen and which do not satisfy the patients' treatment plans. Moreover, most of the Treatment Mall classes do not have an established curriculum, and the class leaders lack the training necessary for the courses to be therapeutic.

Additionally, Patton's approach to patients who refuse to attend Treatment Mall fails to comport with generally accepted professional standards. Currently, patients who refuse to attend are sent to the "Enhancement Room." The Enhancement Room consists of a crowded enclosure in which patients are required to sit in chairs without any activity for the duration of the Mall session. This is not therapeutic and may aggravate the condition of patients already in distress. Patton needs to develop a system for identifying why a patient is not attending his scheduled class, and developing interventions to address identified obstacles.

Patton's behavior management system does not comport with generally accepted professional standards. To develop an effective behavior program, generally accepted professional practice requires that psychology staff identify the underlying factors that precipitate or cause the patient's maladaptive behavior (i.e., the "function" of the behavior) through an individualized, formal functional assessment. The functional assessments developed at Patton are seriously deficient and do not accurately identify the function of patients' maladaptive behaviors. Without a thorough assessment of the function of the resident's maladaptive behavior, including clearly identified alternative behaviors to supplant the function of the maladaptive behavior, behavior programs will not be successful in modifying the targeted behavior.

Patton also fails to accurately track behavior outcomes for patients on behavior programs. Generally accepted professional standards of care require that facilities collect and record accurate, reliable data regarding patients on behavior programs. These data should be used to evaluate a patient's progress toward behavior-related goals and to make decisions regarding future treatment. Patton's failure to adequately track behavior outcomes exposes patients to ineffective, inadequate, and/or unnecessarily restrictive treatment; avoidable injuries related to untreated behaviors and the use of unnecessary restrictive interventions; and potentially dangerous and unnecessary side effects of medications.

Patton's creation of a "Positive Behavior Support" ("PBS") team to address patients with challenging behaviors shows great promise. Currently, however, the PBS team is not integrated with the treatment teams, nor are PBS plans integrated with patients' treatment plans. Lack of integration causes the development of interventions based on incomplete information and possibly in conflict with other treatments and interventions. Lack of integration also causes inconsistent and inadequate

implementation of interventions, which often must be implemented uniformly throughout the day to be effective. Moreover, with a population of over 1,500 patients, it is likely that the actual need for behavior programs at Patton is significantly higher than the handful of patients who currently have PBS plans.

The harm that the deficiencies identified above present to patients takes many forms, among them, diagnoses that perpetuate their behavioral difficulties; unnecessarily extending their stay in a highly restrictive setting; subjecting them to excessive and unnecessary use of sedating medications and restrictive practices; fostering despair and hopelessness; and, in some cases, depriving them of physical safety.

IV. RESTRAINTS, SECLUSION, AND PRN MEDICATIONS

Patton's practices with respect to use of restraints and seclusion substantially depart from generally accepted professional standards of care. Patton's efforts to reduce its use of restraints and seclusion are commendable. Nevertheless, Patton staff frequently use restraints and seclusion in lieu of treatment and as a first course of action with patients exhibiting problematic behaviors, without adequate consideration of whether less restrictive measures would suffice. Moreover, Patton staff are not adequately trained in crisis diversion and de-escalation techniques. For example, incident reports describe unnecessary power struggles between staff and patients which tend to escalate incidents, and fail to include a description of less restrictive interventions that were attempted prior to use of restraints or seclusion.

Patton's system for use of psychiatric medications on a *pro re nata* ("PRN"), or as-needed, basis is seriously deficient. The frequency of administration of PRN's at Patton is strikingly high and inadequately monitored. PRN medications should be used for psychiatric purposes only as a short-term measure to relieve a patient in acute distress. However, Patton staff repeatedly employ PRN medications as a substitute for treatment of the patient's underlying condition, and/or as a form of chemical restraint but without the documentation and monitoring that use of chemical restraint requires. Moreover, physicians and other treatment professionals are not routinely notified of PRN uses, despite the fact that some patients are receiving PRN medications every four hours. Thus, there is inadequate clinical oversight of the frequency of PRN usage as well as of the implications that such frequency may have for a patient's treatment goals and interventions.

V. PHARMACY

Patton fails to provide adequate pharmacy services. Pharmacists fail to adequately review individual patients' medication regimens, and fail to adequately evaluate drug use at the facility. In fact, pharmacists appear to be wholly disconnected from medication management at Patton.

Additionally, Patton's system for tracking adverse drug reactions ("ADR's") fails to meet generally accepted professional standards of care. Established standards require that facilities identify and track incidents in which patients experience negative reactions to medications (ADR's) in order to identify problematic trends and their remedies. Patton's system for tracking ADR's is seriously deficient. For example, one ADR was reported in the month prior to our tour. In a facility of over 1,500 patients, only one ADR within an entire month is highly suspect and strongly suggests that the system is not reliable. Patton's system for reporting medication errors is likewise inadequate.

By not providing adequate pharmacy services, Patton places its patients at risk for the misuse of medication, unnecessary side effects from medication, potential drug interactions, general health problems, and excessively long hospitalizations.

VI. GENERAL MEDICAL CARE

Medical care at Patton, including preventative, routine, specialized, and emergency services, substantially departs from generally accepted professional standards of care. In general, medical care at Patton is reactive, and little attention is paid to identifying and responding to significant changes in patients' physical status, establishing target outcomes, and measuring success of interventions.

Patton's documentation and medical record keeping practices exacerbate the inadequacy of the care provided. Medical documentation is abundant but fragmented, and it is difficult to determine what course of action, if any, has been taken in a case. In many records, medical diagnoses are not current, and treatment objectives are not identified. Numerous notes in medical records contain directives to "monitor" a patient, without a target outcome identified or any evidence of follow-up to this directive. Dental records are not kept in patients' charts and do not contain a comprehensive dental assessment.

In contrast to generally accepted professional standards of care, Patton fails to provide adequate physical, occupational, and speech therapy assessments and services that permit persons evaluated for such services to regain, maintain, or improve functioning. A number of patients at Patton have significant needs, but have not been referred for physical, occupational, and speech therapy. Moreover, the physical, occupational, and speech therapy clinicians are not integrated into the treatment teams. Therefore, therapy interventions are not consistently implemented and reinforced by other staff throughout a patient's day. In this way, the lack of integration results in poor outcomes, even when patients are referred for such services. Dietary and nutritional services are likewise not adequately integrated and fail to meet the patients' needs.

By not providing adequate medical services, Patton exposes its patients to a significant risk of harm and actual harm due to the lack of timely, routine and preventative care, causing patient health care to deteriorate.

VII. NURSING

Patton's nursing services substantially depart from generally accepted professional standards of care and treatment and expose patients to a significant risk of harm and actual harm. As with the medical staff, the nursing staff are not adequately integrated with treatment teams, leading to a fragmented and inadequate delivery of services. Nursing documentation is also voluminous. However, nursing notes do not provide useful information regarding the patient's current status or plan of care. Treatment objectives and interventions are not adequately identified, measured, or recorded.

VIII. PLACEMENT IN THE MOST INTEGRATED SETTING

Generally accepted professional standards of care and, as set forth above, federal law require that treatment teams, with the leadership of psychiatrists and the support of the hospital administration, actively pursue the timely discharge to the most integrated, appropriate setting that is consistent with patients' needs and the terms of any court-ordered confinement. In this regard, factors that contributed to previous unsuccessful placements should be identified and addressed. Life skills necessary for successful discharge should be identified soon after admission, and interventions for skill acquisition should be developed and implemented. Patton's discharge planning process significantly fails to meet these standards of care. Patton fails to identify and address factors that contributed to

previous unsuccessful placements. Consequently, the process results in unnecessarily extended hospitalizations, poor transitions, and a high likelihood of readmission, all of which result in harm to Patton's patients.

IX. MINIMUM REMEDIAL MEASURES

The minimum remedial measures required to protect the constitutional and federal statutory rights of the patients at Patton are set forth below and more extensively detailed in the "Enhancement Plan" negotiated between the State and the Department:

- A. Integrated Treatment Planning Patton should provide its patients with integrated treatment planning consistent with generally accepted professional standards of care.
- B. Assessments Patton should ensure that its patients receive accurate, complete, and timely assessments, consistent with generally accepted professional standards of care, and that these assessments drive treatment interventions.
- C. Psychiatry Services Patton should provide adequate psychiatric supports and services for the treatment of the severely and persistently mentally ill population it serves in accordance with generally accepted professional standards of care.
- D. Psychology Services Patton should provide psychological supports and services adequate to treat the functional and behavioral needs of its patients according to generally accepted professional standards of care.
- E. Restraints, Seclusion, and PRN Medications Patton should ensure that restraints, seclusion, and PRN medications are used in accordance with generally accepted professional standards of care.
- F. Pharmacy Patton's patients should receive pharmacy services consistent with generally accepted professional standards of care.
- G. General Medical Care Patton should provide adequate preventative, routine, specialized, and emergency medical services, occupational, physical, and speech therapy, and dental and dietary services, on a timely basis, in accordance with generally accepted professional standards of care.

- H. Nursing Care Patton should provide nursing services to its patients consistent with generally accepted professional standards of care. Such services should result in Patton's patients receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans.
- I. Documentation of Patient Progress Patton should ensure that patient records accurately reflect patient progress, consistent with generally accepted professional standards of care.
- J. Discharge Planning and Placement in the Most Integrated Setting Within the limitations of court-imposed confinement, the State should pursue actively the appropriate discharge of patients and ensure that they are provided services in the most integrated, appropriate setting that is consistent with the patients' needs.
- K. Protection From Harm Patton should provide its patients with a safe and humane environment and protect them from harm.

We hope to continue working with the State in an amicable and cooperative fashion to resolve our outstanding concerns with regard to Patton. Provided that our cooperative relationship continues, we will forward our expert consultants' reports under separate cover. Although their reports are their work - and do not necessarily represent the official conclusions of the Department of Justice - their observations, analyses and recommendations provide further elaboration of the relevant concerns, and offer practical assistance in addressing them. We hope that you will give this information careful consideration and that it will assist in your efforts at prompt remediation.

We are obligated to advise you that, in the unexpected event that we are unable to reach a resolution regarding our concerns, within 49 days after your receipt of this letter, the Attorney General is authorized to initiate a lawsuit pursuant to CRIPA, to correct deficiencies of the kind identified in this letter. See 42 U.S.C. § 1997b(a)(1). We would very much prefer, however, to resolve this matter by working cooperatively with

you. Accordingly, we will soon contact State officials to discuss this matter in further detail.

If you have any questions regarding this letter, please call Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

/s/ Wan J. Kim

Wan J. Kim
Assistant Attorney General

cc: The Honorable Bill Lockyer
Attorney General
State of California

Stephen W. Mayberg, Ph.D.
Director
California Department of Mental Health

Octavio C. Luna
Executive Director
Patton State Hospital

Debra W. Yang, Esq.
United States Attorney
Central District of California