An Informational Document for Patients

The Ross Settlement Agreement and Patient Rights

What is the Ross v. Lashway Lawsuit?
In 2014, patients found to be Not Guilty by Reason of Insanity ("NGRI") and sent to the state hospitals for treatment brought a lawsuit against the Department of Social and Health Services (DSHS). The named plaintiffs are six individual NGRI patients at Western State Hospital (WSH) and Eastern State Hospital (ESH) as well as Disability Rights Washington (DRW). Together, the plaintiffs alleged that patients’ rights were being violated due to inadequate treatment and release planning.

Why was the lawsuit brought?
For decades prior to the lawsuit, patients received treatment that gradually reintegrated them into the community through supervised trips to visit family or go to the store as they recovered from their mental illnesses. According to hospital data, this careful and deliberate release planning provided the proper balance of patient recovery and public safety and resulted in streamlined releases of patients who no longer needed to stay at the hospital.

In 2010, a series of new state laws added restrictions to the release process for NGRI patients. The new laws generally required the NGRI patients to obtain a court order to leave the hospital, including for family visits or taking a walk off of hospital grounds, even if doctors recommend this for treatment and recovery. These laws also created the Public Safety Review Panel, an advisory panel composed of a psychiatrist, a psychologist, a prosecutor, a law enforcement representative, a consumer and family advocate representative, and a public defender. This panel provides an additional layer of review before NGRI patients are permitted to leave the secure areas of the state psychiatric hospitals.

Because the changes in the law delayed the treatment and recovery process, plaintiffs brought the lawsuit in an effort to ensure timely clinical decision-making while respecting the safety of patients and the public.

Why did the Plaintiffs and Defendants settle the lawsuit?
The plaintiffs and the defendants agreed that there were several steps the hospitals could take to improve the treatment and release process within the bounds of the new laws that could bring significant benefits to patients without having to involve the court. For example, it was agreed that treating clinicians are in the best position to make individualized treatment decisions. The hospitals also agreed to help patients obtain necessary court orders and begin reintegration as clinically appropriate. They also agreed that when a patient no longer meets the legal criteria for civil commitment, the petitioning process for release should promptly begin.

When does the settlement agreement go into effect?
The settlement agreement is currently in effect and work has begun in assessing current policies and procedures. Work teams are being developed. The agreement anticipates that by May 31, 2017, both state hospitals will have modified their policies and put into place all of the commitments noted above consistent with the agreement. In the next seven months, we look forward to implementing these changes in how patients are treated and released from the state hospitals.

What happens if the changes aren’t made by May 31st?
In February 2017, DRW and Andrew Biviano will begin reviewing the state hospitals for compliance with the agreement. This review will include looking at incident reports and the records of patients who authorize this review. If the necessary changes aren’t made by May 31, 2017, DRW will notify the hospitals if there are issues and concerns and the parties will work to resolve them. If we can’t, DRW can go back to court to ensure the agreement is enforced.
How does the settlement agreement impact patients?

Patients should attend all of treatment reviews and be an active participant in treatment and release planning. Patients should let their teams know their goals and how they can best work towards meeting them. Patients should let their teams know if they believe the treatment is inconsistent with this settlement agreement.

Patients who believe their treatment teams have not respected their rights or the settlement agreement, they can submit a grievance, talk to the Patient Advocate, or contact the hospital program manager (contact information below). Patients who are strip searched, denied personal possessions otherwise approved by hospital policy, retaliated against, or placed in restraints during outings without a doctor’s order, should fill out a grievance form and submit to appropriate hospital staff in addition to sending a copy to DRW at 315 5th Ave S, Suite 850, Seattle, WA 98104.

Below are some of the commitments that DSHS has made to improve patient care and release at the state hospitals.

1. **Individualized Treatment Plans**: Patients will have individualized treatment plans. Beginning at admission, the hospitals will assess the patient and then offer treatment to assist persons acquitted as NGRI in preparing for the release process to account for the safety and security of the individual and of the public.

2. **Grounds Privileges**: The grounds privileges process will be improved and streamlined. For example, readiness for both grounds privileges and release will be assessed within 30 days of admission and at least every three months afterward during quarterly treatment meetings. A court order will not be required to obtain grounds privileges in all circumstances.

3. **Release**: The release process (partial, conditional, and final) will be streamlined with deadlines for the hospitals’ Risk Review Board, the Public Safety Review Panel, and the Secretary of DSHS to respond and submit timely recommendations with the courts. The goal of the agreement is that implementation of a partial, conditional, or final release is accomplished as promptly as possible after it is deemed clinically appropriate. The hospitals will offer assistance to patients to advocate for their own release, even if the hospital is not in agreement with the request. Clinical factors, conduct, history, and public safety risk, rather than a simple categorization of offenses will determine an individual’s fitness for release.

4. **Restraints Used Only When Clinically Indicated**: Restraints will not be uniformly used on all patients when being transported off grounds of the hospital. Instead, a doctor’s order is required, documenting why restraints are needed for that individual patient.

5. **The Level System**: Both ESH and WSH will create a more uniform NGRI patient level system policy. Levels are used to increase patient privileges as they make progress in their treatment. Conversely, levels can be reduced due to negative treatment follow through and behaviors.

6. **Patients’ role in treatment and release planning**: Patients have a right to their treatment records and to participate in a review of their treatment plans every 90 days. Patients will be given opportunity for input during the development of post-discharge conditions, such as appropriate housing and inpatient or outpatient addiction or mental health treatment.

7. **Personal property**: Staff must take the safety of all patients into account when approving access to personal property, but any restrictions must be consistent with clinical judgment and hospital accreditation standards. The agreement supports allowing patients’ access to their personal belongings as part of an individualized care and treatment plan.

8. **Strip searches prohibited without a doctor’s order**: Patients will not be strip searched unless there is clear clinical documentation that the patient has expressed or implied suicidal or homicidal ideation, or there is a reasonable suspicion that the patient has potentially harmful items on his or her person.

9. **Prohibition of staff retaliation**: Any level drops or ward holds will be documented in the patient’s chart and must be consistent with clinical judgment. Patients disagreeing with a level drop can contact the Patient Advocate, who will have the power to request an independent review. Inadvertent and minor violations of hospital policies, including policies that may be ambiguous or misinterpreted, are not automatic grounds for reducing a patient’s level, placing a patient on ward hold, or revoking a partial or conditional release.

**WSH contact information:**
Patient Advocate: Laurel Lemke
Hospital Program Manager: Roberta Kresse

**ESH Contact information:**
Patient advocate: Lizanne Stolworthy
Hospital Program Manager: Karen McDonald