

LAHEY HOSPITAL & MEDICAL CENTER NEW PROVIDER ORIENTATION

OFFICE OF THE GENERAL COUNSEL

Agenda

- Who's Who and What We Do
- Welcome to Beth Israel Lahey Health and Where Do We Fit In
- Legal Processes (Subpoenas)
- Privacy Issues
- Decision Making: Advanced Directives and Health Care Proxies
- Patient's Rights
- Difficult Patients
- Fraud & Abuse Laws
- Questions?

Who We Are

- Mike Abramson, Associate General Counsel
- Emily Armstrong, Assistant Vice President, Assistant Deputy General Counsel
- Mike Birch, Associate General Counsel
- Stephen Boyd, Assistant Vice President, Assistant Deputy General Counsel
- Monica Cafaro, Associate General Counsel
- Meg Cosgrove, Sr. Associate General Counsel, Director, Regulatory Policy
- Brian Donlan, Director, Contract Management, Counsel
- Deb DosSantos, Sr. Vice President, Deputy General Counsel
- Carroll Gee, Assistant General Counsel
- Kathryn Gevitz, Assistant General Counsel
- Hannah Glass, Assistant General Counsel
- Leslie Joseph, Assistant Vice President, Assistant Deputy General Counsel
- Jamie Katz, General Counsel
- Grace Kim, Assistant General Counsel
- Rashi Mangalick, Assistant General Counsel
- Will McIntire, Assistant General Counsel
- David Sontag, Sr. Associate General Counsel, Director, Ethics
- Josh Stumpeck, Assistant General Counsel
- Mikaela Taberner, Associate General Counsel
- April Timko, Associate General Counsel
- Susan Valente, Counsel
- Brian Vaz, Assistant General Counsel
- Karen Wolfson, Assistant Vice President, Taxation

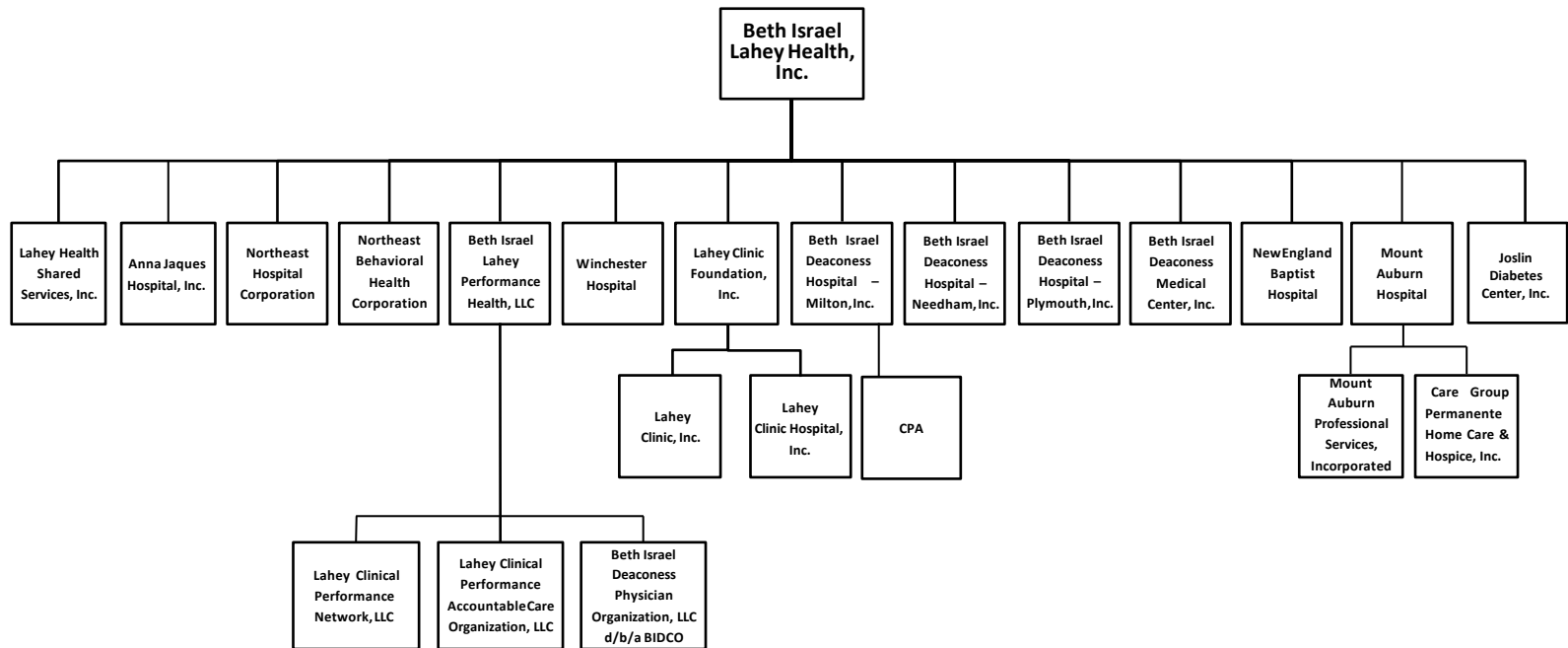
**Office of the General Counsel –
Main line (781) 744-5252 (M-F 8am – 5pm)**

**Nights/Weekends/Holidays On Call –
Use Page Operator**

Who We Serve

Beth Israel Lahey Health
Lahey Health Shared Services, Inc.
Anna Jaques Hospital, Inc.
Northeast Hospital Corporation
Northeast Behavioral Health Corporation
Beth Israel Lahey Performance Health, LLC
Lahey Clinic Performance Network, LLC
Lahey Clinical Performance Accountable Care Organization, LLC
Beth Israel Deaconess Physician Organization, LLC d/b/a a BIDCO
Winchester Hospital
Lahey Clinic Foundation, Inc.
Lahey Clinic, Inc.
Lahey Clinic Hospital, Inc. d/b/a Lahey Hospital & Medical Center
Beth Israel Deaconess Hospital – Milton, Inc.
Beth Israel Deaconess Hospital – Needham, Inc.
Beth Israel Deaconess Hospital – Plymouth, Inc.
Beth Israel Deaconess Medical Center
New England Baptist Hospital
Mount Auburn Hospital
Joslin Diabetes Center, Inc.
Various other related parties

Beth Israel Lahey Health – Org. Chart (as of 12/2022)



As of December, 2022

What if I get a subpoena or search warrant?

- Send to Office of General Counsel and we will review and advise you.

What if I get sued?

- Office of General Counsel will connect you to Claims Management
- Do not speak to anyone about the lawsuit until you speak to the Office of General Counsel or Claims.
- Do not attempt to make changes to any medical records connected with the lawsuit or do any research in related medical records (creates an audit trail that is discoverable).

What if I get a letter or call from the Board of Registration in Medicine

- Do not talk to anyone from the BORM or respond to any letters until you talk to the Office of General Counsel or Claims.
- Send the BORM letter to the Office of General Counsel and it will likely be directed to Claims.

Privacy Issues: If the patient is not present or incapacitated

You may share the patient's information with family, friends, or others, based on professional judgment, that it is in the best interest of the patient.

The health care provider may discuss only the information that the person involved needs to know about the patient's care or payment.

Examples:

A surgeon who did emergency surgery on a patient may tell the patient's spouse about the patient's condition while the patient is unconscious.

A health care provider may give information regarding a patient's drug dosage to the patient's health aide who calls the provider with questions about the particular prescription.

BUT: A nurse may not tell a patient's friend about a past medical problem that is unrelated to the patient's current condition.

Federal and State laws require hospitals to provide written information to patients at the time of their admission about their rights to formulate an advanced directive.

- Advanced Directives are written instructions relating to the provision of health care when the patient is incapacitated.
 - Health Care Proxy (Massachusetts)
 - Living Will (not valid in MA)
 - Durable Power of Attorney
- Advanced Directives must be filed in the medical record.

Decision Making: Health Care Proxy

- Patient appoints another person to act as their Health Care Agent in the event of the patient's incapacity.
- The Health Care Agent has no authority unless the patient has been determined to lack capacity by a physician. Psych evaluation is not required. Capacity can be regained at which time the Agent loses his/her authority.
- Once a physician has determined that a patient lacks capacity to make decisions, invoked the Health Care Proxy and has documented it in the record, the Health Care Agent “stands in the shoes” of the patient and can make all medical decisions.
- A HCP can be revoked by the patient at any time orally or in writing.

- To choose health care providers
- To know the names of health care providers
- To confidentiality and privacy
- To have questions answered
- To refuse treatment
- To informed consent and to participate in decision-making
- To determine who visits
- To complain (to Lahey and state and federal gov't)

As a non-profit health care provider, it is part of Lahey's mission to care for patients. Terminating a patient relationship should be done only as a last resort.

Terminating the patient relationship may be appropriate when, for example: the patient has been warned but continues to exhibit behavior that is disruptive, belligerent, and/or threatening or when a significant difference in treatment or care philosophy exists between the physician and patient.

- Providers should speak to the patient about their behavior and document the discussion in the medical record.
- Enter into a behavior contract (opioid contract) with the patient.
- If behavior persists, consult with Risk (who will bring in the Office of General Counsel if necessary).

Fraud and Abuse Laws

- Federal Laws
 - Anti-Kickback Statute (AKS)
 - Stark Law – Self-referral prohibition
 - False Claims Act
- State Laws
 - Many states, including Massachusetts have additional kickback and self-referral prohibitions

What are Fraud and Abuse laws targeting?

Aimed at preventing the following:

- Increased costs
- Overutilization of services
- Unfair competition
- Interference with patient choice
- Decreased quality of care
- Corruption of professional judgment

Federal Anti-Kickback Statute (AKS)

Prohibits the knowing and willful

- **offer, payment, solicitation, or receipt of anything of value:**
 - to induce, or in exchange for, the referral of an individual for healthcare services;
 - to induce, or in exchange, for the purchase, lease, order, or recommendation for the purchase, lease or order of any health care good, facility, service, or item; or
 - solicitation of anything of value in return for the above.
- **If only one of many purposes of the remuneration is to induce or reward referrals**, it is a violation, even if there are other purposes.
- Includes conduct that is commonly accepted and legal in businesses other than healthcare.

- If a physician (or an immediate family member) has a financial relationship with an entity, the physician may not make a referral to that entity for Medicare designated health services unless an exception applies.
- An entity may not bill Medicare for designated health services rendered pursuant to a prohibited referral.
- Designated Health Services includes inpatient and outpatient hospital services.

False Claims Act

False Claims Act violation to:

- Present, or cause to be presented, a claim for payment that you know or should know is false or fraudulent; or
- Knowingly make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim.
 - Government does not need to show intent.
 - Material means it was a factor in a decision to make a payment.
 - Example: Submitting a claim for services never provided, not medically necessary, upcoding, double billing (e.g., covered in global fee).
 - Also includes claims submitted pursuant to a referral prohibited by the Stark Law or the Anti-Kickback Statute.

Civil Monetary Penalties Act

- Prohibits a provider from giving remuneration (anything of value) to a patient that may influence the patient's selection of a particular provider, practitioner, or supplier of Medicare or Medicaid payable items or services.
- Penalties of up to \$15,000 for each wrongful act.
- **Exceptions**: Waiver of deductibles based on need, post-natal, pre-natal services, things that improve access to services.
- ***Example***: A home care company's offer of pre-surgery home assessments to determine if a patient's home would be safe for recovery post-surgery was determined to violate the statute.

Wrap-Up Question #1

How can you reach the Office of General Counsel if you have any questions?

- a.) Call the main operator and ask to be connected to the Office of General Counsel;
- b.) Call the Office of General Counsel main line at 781-744-5252;
- c.) For urgent issues after hours, on holidays and weekends, call the main operator and ask to speak with the attorney on call;
- d.) All of the above.

ANSWER: D

Wrap-Up Question #2

What can the Office of General Counsel assist colleagues in connection with?

- a.) Personal real estate matters;
- b.) Patient care issues;
- c.) Responding to legal complaints or subpoenas;
- d.) b. and c.

ANSWER: D

Wrap-Up Question #3

What should you do if you have a legal question about a matter that comes up in connection with your care for a Lahey patient:

- a.) Do nothing and let someone else report the matter;
- b.) Report the matter to your supervisor or call the Office of General Counsel;
- c.) Call your brother-in-law who is a real estate lawyer and hope that he knows the answer.

ANSWER: B

Wrap-Up Question #4

Which of the following is a law applicable to healthcare fraud and abuse?

- a.) Individuals with Disabilities Education Act;
- b.) Stark Law;
- c.) False Claims Act;
- d.) Both b. and c.

ANSWER: D

Wrap-Up Question #5

Which entities are currently part of Beth Israel Lahey Health and supported by the Office of General Counsel?

- a.) Lahey Hospital & Medical Center;
- b.) Beverly Hospital;
- c.) Winchester Hospital;
- d.) Beth Israel Deaconess Medical Center;
- e.) All of the above.

ANSWER: E