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VIA EMAIL

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Metro Boston Mental Health Units
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Re: Health, Safety, and Rights of Patients at Lemuel Shattuck Hospital During the COVID-19 Pandemic

Dear Commissioners, Counsel, and Mr. Skolnick, Ms. LaChapelle:

The Disability Law Center ("DLC") and Mental Health Legal Advisors Committee ("MHLAC") are writing out of concern for patients and staff at Lemuel Shattuck Hospital ("LSH"). DLC is the Protection and Advocacy agency ("P&A") for the Commonwealth of Massachusetts. In this role, DLC is statutorily mandated under federal law to protect and advocate for the human and legal rights of individuals with disabilities. MHLAC is an independent, state-funded agency established by the Massachusetts Legislature that works to advance the rights and opportunities of persons who are or may be regarded as having mental disabilities through legal advocacy and education.

DLC and MHLAC have received information indicating that the health, safety, and rights of patients at LSH are at great risk. Those reports include information regarding the rapid spread of COVID-19 infection through the Metro Boston Mental Health Units (MBMHUs) and indefinite suspension on access to fresh air and privileges for the patients in those units beginning two weeks ago.

In light of our organizations' respective missions and duties to protect persons with disabilities, we believe it is incumbent upon us to investigate the sufficiency of efforts to prevent and address COVID-19 in facilities where our clients are confined, reside, or receive services. With respect to LSH, please provide us with any written policies and protocols adopted and utilized by LSH – in the MBMHUs and other inpatient units – related to the following:

(1) Prevention of both COVID-19 introduction into LSH and spread to patients and staff;

(2) Screening and testing for patients and staff presenting symptoms that may be indicative of COVID-19 infection and for individuals exposed to other who have presented symptoms or tested positive;

(3) Quarantine of individuals who have tested positive or present symptoms that may be indicative of COVID-19 infection;

(4) Increased cleaning and sterilization of living quarters, communal bathrooms, communal eating areas, areas for the provision of medical and mental health services, medical equipment, phones, assistive technology, etc.

(5) Provision of personal protective equipment, soap, disinfectant, cleaning supplies, hand sanitizer with at least a 60% alcohol content, tissues, and laundry services to patients, as well as any interim plans in place if/when such supplies and services are not readily available to patients;

(6) Access to mental health treatment and programming in the MBMHUs during the COVID-19 pandemic, and any supplemental resources and supports made available to patients during suspensions of regular treatment and programming;

(7) Access to fresh air and privileges during the COVID-19 pandemic; and

(8) Any recent steps taken to mitigate the current spread of COVID-19 among LSH patients and staff – including measures adopted specific to the MBMHUs.

To the extent that the above is not captured in formal, written policies and protocols, we request summaries of current practices encompassing the above topics. Moreover, to the extent that LSH is relying on Department of Public Health guidance available online at https://www.mass.gov/info-details/covid-19-guidance-and-directives#health-care-professionals-&-organizations-, please identify that guidance by the specific name by which it is labeled on the website.

In addition, until the current public health emergency subsides, DLC and MHLAC request at least weekly updates regarding both the number of positive COVID-19 cases in LSH patients and staff, per LSH inpatient unit and any changes to LSH policy, protocols, or practices addressing (1) through (8) above.

We are interested, more generally, in learning what steps you may be taking to responsibly reduce the population of DMH-run congregate care settings. As evidenced by the situation in the LSH MBMHUs, "social distancing" in mental hospitals is difficult if not impossible. In the recent case of *Committee for Public Counsel Services v. Chief Justice of the Trial Court* (SJC-12926), the SJC found that the current "urgent and unprecedented" situation made reductions in the imprisoned population "necessary." *Slip op.*at 445. It ordered judges considering or reconsidering pretrial confinement to alter the typical balancing of factors determinative of detention pending trial, including in the calculus the risk to the health of the person charged, and, implicitly, to the public at large. Likewise, in *Christie v. Commonwealth* (SJC-12927), the SJC analogously altered the analysis pertaining to stay of execution of sentences "in these extraordinary times" to include consideration of "the health risk to the defendant if the defendant were to remain in custody." Slip op. at 8-9. In "evaluating this risk, a judge should consider both the general risk associated with preventing COVID-19 transmission and minimizing its spread in correctional institutions to inmates and prison staff and the specific risk to the defendant, in view of his or her age and existing medical conditions, that would heighten the chance of death or serious illness if the defendant were to contract the virus." *Id.* at 9. While there are certainly differences between criminal detainees and a person confined civilly due to perceived danger to the person or others, this additional risk analysis is still pertinent. A patient may be better off getting out of the hospital earlier than expected, even if treatment is incomplete, rather than risking potentially deadly infection with COVID-19. We urge that reviews to determine which patients can safely be released or transferred to lesser restrictive environments should be ongoing. This process is no less urgent in congregate DMH settings than it is in correctional facilities.

Given the urgency of the situation at LSH, where we understand that the number of MBMHU patients with COVID-19 is climbing daily, we request documentation or information responsive to paragraphs (1) through (8) above by close of business on April 20, 2020. In addition, we request that the initial report on the positive patient and staff cases in LSH inpatients units be provided by the same date.

Thank you very much for your time and your continuing efforts during this unprecedented crisis. We look forward to learning more about your current efforts and plans to protect this vulnerable population.

Sincerely,

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Phillip Kassel
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