U.S. Department of Justice

Civil Rights Division

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

November 7, 2008

Via Electronic and US Mail

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The City of New York
Law Department
100 Church St.
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Re: DOJ Investigation of Kings County Hospital Center

Dear Counsel:

We write to memorialize our concerns raised by recent serious incidents in the inpatient mental health units at Kings County Hospital Center ("KCHC").[1] As you know, we have been investigating conditions in KCHC's inpatient mental health units pursuant to our authority under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA").[2]

As we noted during the two post-tour briefings we conducted with you and your clients, the City of New York ("City") and the New York City Health and Hospitals Corporation ("HHC"), we have not yet reached a conclusion as to whether KCHC is engaging in a pattern or practice of violating the constitutional and federal statutory rights of mental health patients at KCHC. However, the incidents described below evidence conditions at KCHC which pose imminent risk of serious harm to patients and therefore require immediate attention.

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[1] We note that this is our third letter detailing conditions at KCHC that pose imminent risk of serious harm to patients.

[2] As you also know, we have a concurrent investigation of KCHC pursuant to the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("14141").

1. The Recent Incidents

Two recent incidents have precipitated our concerns. The first involves inappropriate sexual activity on the boys' adolescent unit. As you have reported to us, on the evening of September 25, 2008, two 14-year-old youths, A.Z. and B.Y., engaged in "consensual"[3] anal and oral sex in the room of a third patient, C.X., even though both B.Y. and A.Z. were supposed to be on constant fifteen minute observation.[4] On the morning of September 26, 2008, a 16-year-old youth, E.V., also assigned to one-to-one supervision by KCHC staff, is alleged to have forced A.Z. to engage in oral sex with him.[5] In addition, according to his chart, A.Z. also attempted suicide on two occasions, on September 22, 2008, and September 27, 2008.

The second incident occurred on October 15, 2008. Five patients on Unit G-41 reportedly engaged in a brawl. One of the patients, D.W., sustained a compound fracture of his thumb which required surgery, as well as injury to his forehead.

2. KCHC Does Not Adequately Protect Patients from Harm

Patients at KCHC have a right to live in reasonable safety. See Youngberg v. Romeo, 457 U.S. 307, 315, 322 (1982). Our review of documentation from the recent incidents at KCHC suggests that KCHC is not adequately protecting patients' safety. The incidents reveal inadequate, ineffective, and counterproductive treatment resulting in serious harm, including frequent patient assaults and unchecked self-injurious behavior. The harm KCHC patients experience is multi-faceted and includes physical and psychological injury. The facility's ability to address this harm is hampered by inadequate incident, risk, and quality management, including deficient investigative practices.

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[3] The medical records describe the incident as "consensual." This classification is questionable especially in view of the ages of the boys and their mental status.

[4] To protect the patients' identities, we use fictitious initials throughout this letter. We will separately transmit to counsel a schedule cross-referencing the fictitious initials with the patients' names.

[5] Most notably, it appears that KCHC staff did not become aware of these incidents until September 27, 2008, almost two days after the first incident and more than 24 hours after the second.

These problems are serious and recurring and need to be addressed immediately.

We highlight two areas where the problems are particularly acute: failure to identify and control patient aggression and to address suicidal ideation and attempts.

a. Patient Aggression and Assaultive Behaviors Are Not Controlled

Patient aggression is not adequately controlled on many of the units at KCHC. In both of the sexual misconduct incidents described above, staff failed to properly monitor patients and failed to proactively address potentially aggressive behavior. With respect to the incident on the boys' adolescent unit, B.Y. and A.Z. were supposed to be observed every fifteen minutes; E.V., the apparent aggressor in the second sexual incident, was supposedly on one-to-one constant observation. If such observations were conducted properly, the incidents should have been prevented. KCHC's failure to properly monitor and supervise these youths is both disturbing and unacceptable.

Moreover, the incident reports and medical records we reviewed are inconsistent. Critical information is omitted from some or all of the records. For example, it appears that B.Y. is HIV positive -- no notations of this are contained anywhere in the records of either A.Z. or E.V.. Similarly, it appears that E.V., the 16-year-old youth, was a gang member known to intimidate younger patients. This information, while contained in B.Y.'s medical record, is missing from E.V.'s own medical record. Accordingly, KCHC fails to provide treatment teams with readily available critical information necessary to provide appropriate care.

The October 15, 2008, five-patient brawl also demonstrates KCHC's failure to control and ensure patient safety. Apparently, staff was unable to de-escalate the conflict before it ignited. Moreover, the conflict escalated into a fight without any intervention by staff.

Staff, as well as patients, are often the victims of assaultive behavior. In addition to the October 15, 2008, incident, our review of the critical incidents recently provided to us revealed several serious incidents of patient aggression against staff. For example, on unit G-31, on October 5, 2008, a patient assaulted staff members, striking one nurse in the face. The patient also struck another nurse with a chair. Again, there was no staff or security intervention at all.

b. Suicidal Ideation and Attempts Are Not Addressed Appropriately

A significant number of patients are admitted to KCHC for stabilization and protection because of suicidal ideation or attempts. Our preliminary review of recent incidents reveals a troubling number of patients who obtained the means to attempt suicide and/or who inflicted serious self-harm despite being admitted because of suicidal ideation or after declaring an intent to harm themselves.

The medical record of one of the youths involved in the sexual incident is illustrative of the problem. A.Z., a 14-year-old youth, was assessed on admittance as being "suicidal." He had a history of six past psychiatric admissions at KCHC, most recently from March to May 2008. A.Z.'s medical record details a history of A.Z. threatening to hurt himself, including threats to end his life. His most recent admission, on August 21, 2008, lists "aggressive and impulsive behaviors" and "danger to himself and others" as the reason for his admission to KCHC.

On September 21, 2008, A.Z. was involved in a physical altercation with E.V., the 16-year-old patient who would later sexually assault him. No actions or changes were made to his treatment plan except that the next day, A.Z. was placed on one-to-one observation. Later that day, September 22, 2008, A.Z. attempted suicide by wrapping a video game controller wire around his neck.

On September 25, 2008, A.Z. was taken off constant one-to-one observation and placed on 15-minute observation. There is no explanation in the chart for the change in status. That same day, September 25, 2008, A.Z. was involved in the "consensual" sexual incident described above. The following day, September 26, 2008, E.V. forced A.Z. to engage in sexual conduct with him.

On September 27, 2008, after KCHC officials learned of the sexual incidents, A.Z. was again placed on one-to-one constant observation. Later that same day, A.Z. again attempted to kill himself by wrapping a video game controller wire around his neck. The incident reports state merely that the patient was upset due to "previous incident earlier that day" but fails to describe or analyze the assault incidents, note the fact that patient was on constant observation, or that the patient had previously attempted suicide.

Our review of the recent reports provided to the New York State Office of Mental Health revealed several other incidents of attempted suicide, some of which occurred while patients were on constant Level I one-on-one observation.[6]

Generally, we have observed no adjustments in patients' treatment plans as a result of patients' assaultive and self-injurious behavior. The repeated and significant level of aggression and self-injurious behavior on the units suggests a fundamental failure to address the root causes of patients' inappropriate behavior and demonstrates a failure to intervene adequately to prevent future incidents. Additionally, incident investigation is inadequate. The investigations are cursory, incomplete, and lack critical information necessary to address clinical deficiencies. Accordingly, we urge the City to take immediate measures to ensure that:

1) KCHC mental health patients are adequately supervised and monitored at all times;

2) KCHC patients identified as being vulnerable to physical or sexual attack are adequately protected and that patients who are attacked receive appropriate treatment and care;

3) KCHC create or revise, as appropriate, and implement comprehensive, consistent incident management policies and procedures regarding patient aggression and suicide ideation or attempts;

4) KCHC provide clear guidance regarding reporting requirements and the categorization of incidents, including requiring all staff to complete competency-based training in the revised reporting requirements;

5) KCHC develop and implement policies and procedures that address the root causes of patients' aggression and suicide ideation or attempts including appropriate interventions to prevent future incidents;

6) KCHC develop and implement appropriate policies and

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[6] KCHC does not have appropriate policies and procedures that comport with generally accepted professional standards regarding one-to-one observation and 15-minute checks. Nor are such observations and monitoring conducted properly.

procedures in accordance with generally accepted professional standards regarding patient monitoring, including one-to-one observation and 15-minute patient checks;

7) KCHC develop and implement appropriate policies and procedures regarding the investigation of incidents.

We request an update on KCHC's efforts to address the concerns expressed above, as soon as possible, but no later than November 17, 2008. If you have any questions, please contact either of us using the information provided below, or through Special Litigation Section attorneys Cathy Trainor at (202) 616-9009, or Laura M. Welp at (202) 353-3759.

Sincerely,

/s/ David Deutsch

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