

January 9, 2018

Testimony of
Ruth Lowenkron, Disability Justice Director¹
on behalf of
New York Lawyers for the Public Interest
before
the New York City Board of Correction
regarding
the New York City Health & Hospitals Correctional Health Services’
Variance Renewal Requests for the Board of Corrections
Minimum Standards §§ 2-05(b)(2)(i-ii), 3-04(b)(2)(v)(a), and 3-08(c)(3)

Good morning. My name is Ruth Lowenkron and I am the Director of the Disability Justice Program at New York Lawyers for the Public Interest (NYLPI). Thank you for the opportunity to present testimony today regarding the New York City Health & Hospitals Correctional Health Services (“CHS”) variance requests on critical health standards affecting people with disabilities in the general prison population.

I. New York Lawyers for the Public Interest

For over 40 years, New York Lawyers for the Public Interest (NYLPI) has been a leading civil rights and legal services advocate for New Yorkers marginalized by

¹ With gratitude for the extensive assistance of Inhwon Chi, City University of New York School of Law, Class of 2018.

disability, race, poverty, and immigration status. Through our community lawyering model, we bridge the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. Our work integrates the power of litigation and comprehensive organizing and policy campaigns. Guided by the priorities of our communities, we strive to achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, strengthen local nonprofits, and secure environmental justice for low-income communities of color.

II. NYLPI's Disability Justice Program

NYLPI's Disability Justice Program works to advance civil rights and ensure equality of opportunity, self-determination, and independence of New Yorkers with disabilities. In the past five years alone, NYLPI disability advocates have represented thousands of individuals and won campaigns improving the lives of hundreds of thousands of New Yorkers. Our landmark victories include integration into the community for people with mental illness, access to medical care and government services, and increased accessibility of New York City's public hospitals.

III. NYLPI's Concerns with the CHS Variance Requests

A. Variance Request Regarding the 14-day Psychotropic Medication Prescription Schedule (BOC Minimum Standard § 2-05(b)(2)(i-ii))

This variance request, which would authorize psychiatrists to evaluate adult patients in the general population who are prescribed psychotropic medication every 28 days, rather than every 14 days, will likely negatively impact those patients. Patients who experience negative side effects from their psychotropic medication, or who have concerns with their medication, are subject to twice as long of a waiting period under this variance. This is particularly problematic as patients who are prescribed psychotropic drugs, especially those who are subject to a regime of polypharmacy, may develop Neuroleptic Malignant Syndrome ("NMS"), a life-threatening idiosyncratic reaction to psychotropic drugs characterized by altered mental status, muscle rigidity, autonomic dysfunction, and death.² Although 90% of cases of NMS occur within ten days of the start of treatment with neuroleptic medication, NMS may still occur years

² <https://www.oasas.ny.gov/admed/fyi/neuromag.cfm>.

after the start of therapy.³ Once the syndrome starts, it usually evolves over 24-72 hours.⁴ A patient may thus suffer a sudden onset of NMS, and the longer interval between psychiatrist visits increases the risk that a patient may suffer from NMS without proper treatment.

In addition, patients in prison are often subject to higher doses of psychotropic medication than those in the general population,⁵ which increases the risk of negative side effects and the need for frequent monitoring.

Furthermore, as apparent in *In re Radcliffe M.*, 155 A.D.3d 956 (App. Div., 2d Dept. 2017), patients may be subject to forced medication while in the general prison population. To medicate these patients over their objection, but fail to provide them with the 14-day assessment regimen to which those patients in “mental observation units” are provided, deprives them of standard medical care, as well as their right to substantive due process.⁶

This variance has been granted repeatedly since November 10, 2005, without the benefit of proper rulemaking. At the very least, this variance request should be subject to Administrative Procedure Act rulemaking.

B. Variance Request Regarding the Tuberculosis Screening Process (BOC Minimum Standard § 3-04(b)(2)(v)(a))

This variance request, which authorizes CHS to exempt from tuberculosis screening those individuals in custody who have a documented negative test in the six months prior to their admission to a New York City Department of Correction (“DOC”) facility, does not take into account the simple fact that an individual can contract tuberculosis any time after receiving the negative test result. Since it appears that only a small percentage of those admitted into prison (5.3%) have received a negative test result within the six months prior to admission, it would appear to be the better policy to screen such individuals upon admission, and avoid any possibility of a tuberculosis outbreak. At the very least, the soundness of exempting people from screening ought to be fully debated in the context of a proper rulemaking procedure, rather than merely granting a variance.

³ *Id.*

⁴ *Id.*

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2770990/>.

⁶ See, e.g., *Rivers v. Katz*, 67 NY2D 485 (1986).

C. Variance Request Regarding Privacy and Confidentiality of Diagnoses (BOC Minimum Standard § 3-08(c)(3))

This variance request, which would allow health care staff to provide DOC with specific diagnoses “related only to injuries sustained by prisoners while in correctional custody,” is unnecessarily, and no doubt unintentionally, overbroad. As written, this variance would allow the disclosure of mental health diagnoses only tangentially related to injuries sustained, health information that should remain confidential to avoid labeling patients with such diagnoses. For example, this variance may allow disclosure of the mental health diagnoses of alleged perpetrators of injuries, as the diagnoses of the perpetrator may be considered to be “related only to the injuries sustained by prisoners.” We advise that this language be modified to dispel any ambiguities and ensure the privacy rights of all individuals in custody.

IV. Conclusion

Thank you for your time. I can be reached at (212) 244-4664 or at RLowenkron@NYLPI.org, and I look forward to the opportunity further to discuss how best to ensure the health of New Yorkers with disabilities in prison, and any other aspect of disability justice for New Yorkers.