



# New York State Psychiatric Association, Inc.

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September 25, 2015

Jeff Wise  
Executive Director  
Justice Center  
161 Delaware Avenue  
Delmar, New York 12054

Dear Mr. Wise:

We are writing on behalf of the New York State Psychiatric Association, Inc., representing over 4,500 psychiatrists practicing in this state. Our members provides psychiatric care and treatment to individuals with serious mental illness in facilities licensed by the NYS Office of Mental Health and thus, under the jurisdiction of the Justice Center. These facilities include inpatient psychiatric units in general hospitals, CPEPs and outpatient mental health clinics. Recently, we have received numerous reports from our members regarding the conduct of the Justice Center investigators in connection with incident reports filed with Justice Center.

1. Legal Representation. We have been informed from multiple sources that Justice Center investigators routinely advise individuals who they seek to question that such individuals may not have the assistance of legal counsel when they are interviewed.

We cannot identify any provision in the Justice Center statute that precludes individuals who are being questioned by Justice Center investigators from having an attorney present during the interrogation. Furthermore, there is nothing in the statute that authorizes the Justice Center to object to an individual bringing an attorney with them when they are being questioned by Justice Center investigators.

What is even more disturbing when individuals have insisted on being represented by legal counsel, Justice Center investigators have threatened them that if they refuse to be interviewed without legal counsel and insist on their attorney being present, the Justice Center will consider such conduct to constitute the obstruction of a Justice Center investigation and thus, misconduct subjecting the individual to Justice Center statutory sanctions.

The persistent efforts by Justice Center investigators to prevent individuals being questioned from having the assistance of legal counsel and threatening those who refuse to comply with having obstruction charges filed against them is unworthy of an agency charged with upholding the rights and dignity of the persons with special needs. The rights and dignity of persons

with special needs cannot be advanced by denying the rights and dignity of others including those being questioned by Justice Center investigators.

We call upon the Justice Center to forthrightly confirm that all individuals being questioned by Justice Center investigators may choose to have legal counsel present when they are interrogated and also that individuals who insist on having legal counsel present when being questioned are not engaged in the obstruction of a Justice Center investigation.

2. Clinical Decisions. The jurisdiction of the Justice Center includes facilities licensed by NYS OMH that provide psychiatric care and treatment to individuals with serious mental illness. Psychiatric inpatient facilities treat many patients who have been involuntarily hospitalized under provisions of the NY Mental Hygiene Law. In certain instances, such patients may be given medication over objection pursuant to court order or in emergency situations when there is an imminent threat to the safety of the patient or others.

In such cases, patients may be physically restrained and given medication intended to control violent and dangerous behavior. It is hardly surprising that patients with serious mental illnesses may strongly object to the care and treatment that they receive even when such treatment is entirely consistent with generally accepted psychiatric practice. In fact, we have been advised that many patients have become aware that they can file multiple complaints with the Justice Center regarding their medical care and treatment and that these complaints will each receive the full focus of the Justice Center and demand a significant diversion of resources by the treating facility.

When the Justice Center receives a complaint about the care and treatment of a patient in an OMH licensed facility, the Justice Center should first determine whether the care and treatment was consistent with generally accepted psychiatric practice. Justice Center investigators are not licensed physicians qualified to make determinations regarding generally accepted psychiatric practice. If the complaint involves medical care and treatment provided to the patient that is consistent with generally accepted psychiatric practice, then there can be no patient abuse or neglect.

The Justice Center statute mandates the formation of a "Justice Center Medical Review Board" composed of physicians in various medical specialties including psychiatry. While the primary focus of the Medical Review Board is the review of deaths in facilities under the jurisdiction of the Justice Center, the Justice Center statute (Section 556(f)) authorizes the Medical Review Board to "advise the executive director on medical issues relevant to the functions, powers, and duties of the justice center including allegations of abuse or neglect or a patient or resident referred to it."

We recommend that when a complaint is made involving whether treatment was consistent with generally accepted psychiatric practice, Justice Center investigators as a preliminary matter should consult with the Medical Review Board to determine whether the treatment that is the subject of the complaint was consistent with generally accepted psychiatric practice. The investigation of the complaint should proceed further only if the Medical Review Board determines that the treatment was not consistent with generally accepted psychiatric practice. If the Medical Review Board concludes that the treatment was consistent with generally accepted psychiatric practice, the investigation should be concluded immediately with a determination that the complaint was unsubstantiated.

3. Multiple Baseless Complaints. Recently, we have received reports that patients with serious mental illness have learned that they can make baseless complaints to the Justice Center to gain attention, secure a forum to voice their baseless complaints and merely harass their treatment provider. In this regard, the Justice Center should consider implementation of a protocol to address the problem of patients filing multiple baseless complaints. Currently, there is no way to address the problem of patients who continually file baseless complaints. We suggest the Justice Center review guidelines adopted on June 2, 2014, by NYS Office for Persons with Developmental Disabilities that address “Frequent False Reporting of Abuse, Neglect or Mistreatment. This protocol may be downloaded from the OPWDD website at [http://www.opwdd.ny.gov/opwdd\\_resources/incident\\_management/Memo-FrequentFalseReporting](http://www.opwdd.ny.gov/opwdd_resources/incident_management/Memo-FrequentFalseReporting). The protocol includes a detailed procedure for facilities to respond to individuals “who have a documented pattern of making false reports of abuse, neglect or mistreatment.” It serves neither the Justice Center nor the facilities charged with treating patients with serious mental illness to respond to baseless complaints by patients seeking to manipulate the system and waste scarce treatment resources.

4. Firearms. We have received a report from a hospital regarding Justice Center investigators who have brought firearms into an inpatient psychiatric unit. The Justice Center investigators refused to place their firearms in a locked container for the duration of their stay on the unit. Firearms on a psychiatric inpatient unit raise an unacceptable risk that patients could overwhelm the bearer of the firearm and wreak havoc on the unit. For that reason, police, sheriffs and other members of law enforcement routinely and without objection will lock their firearms away if there is need to visit a inpatient psychiatric unit. We strongly urge the Justice Center to direct all its investigators who carry firearms to comply with all facility rules regarding the possession of firearms.

We are ready to work with the Justice Center to address these issues to enhance the ability of the Justice Center to fulfill its statutory mission.

Sincerely,



Seeth Vivek, M.D.  
President



Seth P. Stein, Esq.  
Executive Director and General Counsel

cc: Ann Sullivan, M.D., Commissioner NYS OMH  
Paul Francis, Deputy Secretary for Health & Human Services