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March 5, 2020

Michael Barber, General Counsel
Green Mountain Care Board

Via Email to: Michael.Barber@vermont.gov

Re: Northwestern Medical Center Emergency Department Renovation CON Process, Docket No. GMCB-003-19

Dear Attorney Barber,

Pursuant to GMBC's January 23, 2020 Order allowing DRVT to participate as Amicus in the above CON review, and in response to NWMC's February 27, 2020 supplement submission in response to GMCB questions, DRVT provides the Board and the parties with the following information relevant to its consideration.

The two main questions of concern identified by the GMCB and stakeholders regarding the NWMC ED CON were: 1) how would the rights of voluntary patients to be free from illegal restraint and seclusion be maintained given the plan to have some ED exam rooms be locked and 2) how would the needs of patients possibly boarding in the ED for days be met in terms of adequate space to meet with advocates, family members and support services?

The recent NWMC response to these concerns should be considered questionable and inadequate. In terms of adequate space to allow patients boarding in the ED to effectively benefit from visits and consultation in an appropriate space, other than their small examination room, NWMC continues to be silent on any effort to create such a space. DRVT agrees with other stakeholders that it is very important to have a sufficient out of examination room capacity for patients that may be boarding for days. The lack of such space in the current NWMC ED design bodes poorly for the patient care and wellbeing of patients who will undoubtedly be found boarding in the ED.

In terms of the legal rights of ED patients with mental health conditions, NWMC's recent submission erroneously asserts that patients can be locked in the exam room if they are found to be a risk of "serious disruption of the therapeutic environment." DRVT asserts that this is not the applicable standard and instead force should not be used against a voluntary patient unless there is imminent risk of serious harm to self or others. See 42 C.F.R. § 482.13; DMH

DRVT is the protection and advocacy system for the State of Vermont.

On the web: www.disabilityrightsvt.org

Regulation Establishing Statewide Standards for Emergency Procedures.

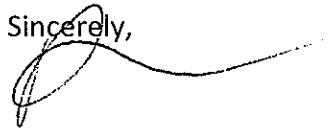
https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Manuals/EIP_Rule_FINAL_2016.pdf

Unfortunately, NWMC's response to questions about the plans to use the locked examination rooms for voluntary patients seeking mental health treatment fails to resolve the important question of how the locked rooms will be used. NWMC's response continues to raise significant healthcare and legal problems related to the illegal practice of locking people in a room without a medical determination that such action is necessary to prevent serious harm to the person or others.

NWMC's recent submission did highlight the crucial fact relevant to the instant CON: that the vast majority of patients seeking mental health care at the ED are voluntary and do not even require the additional review of a crisis screener to consider the option of involuntary treatment. Requiring that NWMC clarify how the new ED as proposed will effectively respond to the treatment needs and legal rights of this vast majority of patients, who will not require locked exam rooms but may require space to move around if they continue to be boarded in the ED for several days, remains crucial in order for the GMCB to effectively review and rule on this CON.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'A.J. Ruben', with a long horizontal flourish extending to the right.

A.J. Ruben
Supervising Attorney