

Testimony of the New York Civil Liberties Union

before

**The New York City Council Committee on Mental Health, Mental Retardation,
Alcoholism, Drug Abuse and Disability Services**

regarding

Conditions of City Run Psychiatric Facilities

September 16, 2008

My name is Donna Lieberman and I am executive director of the New York Civil Liberties Union (“NYCLU”). The NYCLU, the state affiliate of the American Civil Liberties Union, has approximately 48,000 members. The NYCLU is devoted to the protection and enhancement of those fundamental rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York.

I would like to thank the Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services for inviting the NYCLU here today to provide testimony relating to the conditions of city run psychiatric facilities.

You should be aware that on May 2, 2007, the NYCLU, in conjunction with Mental Hygiene Legal Services, Second Judicial Department and Kirkland & Ellis LLP, filed a complaint on behalf of Sidney Hirschfeld, the director of MHLS, on behalf of all of its constituents—patients who have been or will be treated at Kings County Hospital Center (“KCHC”). Among other things, the complaint alleges that the patients were subjected to unhealthy conditions, illegal staff use of restraints and injections, neglect and lack of proper services. The plaintiffs claim that the defendants’ actions violated the Due

Process Clause of the U.S. Constitution, the Americans with Disabilities Act, the Rehabilitation Act, several provisions of New York State's Mental Hygiene Law and Public Health Law, and the New York State Constitution. In our lawsuit, we alleged that the hospital's psychiatric emergency room and inpatient unit are overcrowded and often dangerously unsanitary, and that patients—including children and the physically disabled—are routinely ignored and abused.

The City Council made no comment on our lawsuit in the Spring of 2007, nor did it call for hearings into what in our view is a crisis in our public psychiatric facilities. Even after the tragic and well-publicized death of 49-year old Esmin Green on the floor of Kings County Hospital's psychiatric emergency room on June 19, the Council was silent.

We commend the Council for taking up this issue now in a public forum; and we hope that the Council can begin taking responsibility for monitoring the abuse and neglect we have been bringing to the attention of public officials, the media, and the courts for well over a year.

What has been happening in Kings County Hospital Center, and indeed, throughout the city's system of publicly-funded psychiatric care facilities, is an affront to human dignity. New Yorkers most in need of care and support have been denied their basic rights by the very institutions entrusted to protect them. Patients at Kings County's psychiatric facilities have been confined in hospital wards where the floors are covered with human waste and blood. Patients have been forced to sleep on these floors, or, if they are lucky, in plastic chairs, while they wait for scarce bed space—sometimes for many days. Patients have also been given used and soiled sheets and towels, and have

often gone for days without showers or clean clothes. Patients who are disabled and use wheelchairs have been forced to choose between using the facility's only disability-accessible bathroom, which has no lock on the door; using a portable commode which is rarely emptied; or dragging themselves across a filth-covered floor in an attempt to use a non-disability-accessible toilet in privacy. When a patient has dared to complain about these conditions, they have faced the risk of being punished with a forcible injection of psychotropic drugs.

After Ms. Green's death in June, which occurred in the midst of settlement negotiations with the defendants in our case, we asked the Eastern District Court to grant preliminary injunctive relief to the plaintiffs. The injunction, which was granted this past July, requires KCHC to undertake a number of specific remedial measures, including the following:

1. Conduct fifteen-minute individualized immediate assistance assessments to ensure that no patient in the future experiences the kind of abject neglect experienced by Esmin Green;
2. Reduce the mean and median lengths of patients' stays in the Comprehensive Psychiatric Emergency Program ("CPEP")—for both adult and child/adolescent patients, in accordance with existing provisions of the Mental Hygiene Law;
3. Create accountability procedures to ensure follow up when an individual patient remains in CPEP for more than 18 hours, or in the Extended Observation Unit ("EOU") for more than 65 hours;
4. Abide by procedures to ensure that the CPEP does not reach overcrowding levels;

5. Establish a peer advocacy program so that trained peer advocates are present in the CPEP 24/7;
6. Collect data to demonstrate compliance with the injunction; and
7. Establish and participate in a search committee for executive-level positions at the hospital.

The problems these remedies seek to address are not limited to KCHC, and the solutions we call for require a sustained and systemic response. Meaningful reform will require a sustained commitment from both hospital administrators, as well as from city officials and elected representatives like yourselves who are responsible for ensuring that our public facilities operate within the law.

In addition to the relief granted by the court in our lawsuit, we call on this committee and the entire City Council to ensure that each and every individual who receives services at a city run psychiatric facility is treated in a safe and suitable environment; is given a prompt psychiatric evaluation; and is provided with treatment under humane conditions in a facility with adequate space, including ADA-compliant places to sleep, eat meals, and attend to matters of personal hygiene and bodily functions. We also call on this committee and the Council to ensure that hospital staff end the practice of unlawfully restraining patients and administering intramuscular injections of psychotropic medication, or threatening to do so, except under conditions and circumstances provided for under New York State and federal law.

Again, we are thankful that the committee has now turned its attention to the problems that exist at Kings County Hospital Center, and indeed throughout the public

psychiatric care system—by holding this hearing. However, what the Council must do now is to maintain vigilance over this situation by ensuring enforcement of the injunction issued by the federal district court against Kings County Hospital Center, and ensuring that other city run psychiatric facilities abide by the same reform measures. The Council can do this by engaging in routine monitoring of the situation to ensure that these problems are being addressed.

Given the short notice that we received for this hearing, we want to make clear that today we present an abbreviated analysis and commentary regarding the conditions at KCHC and other city run psychiatric facilities. We have spoken out extensively on this issue over the past year, however, and we would be happy to supplement these comments with more information as your examination of this issue continues.

We would like to reiterate, however, that we firmly believe that it is the Council's responsibility to provide meaningful oversight, and we suggest that it do so by holding quarterly hearings to monitor the status of the reform efforts currently underway. There has been substantial oversight of the situation at KCHC since Esmin Green's death by our organization, the U.S. Department of Justice, the New York State Department of Health, CMS, and Health and Human Services. But without the benefit of the kind of spotlight that this committee and the Council can shine, the kinds of conditions that existed in KCHC and precipitated Ms. Green's death may never come to light in other city run psychiatric facilities.