



CORONAVIRUS AT ST. ELIZABETHS HOSPITAL:

Deadly Delays and the Tragic Loss

March 2021

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DISABILITY RIGHTS DC

Since 1996, Disability Rights DC at University Legal Services, Inc., a private, non-profit legal service agency, has been the federally mandated protection and advocacy (P&A) program for individuals with disabilities in the District of Columbia. In addition, Disability Rights DC provides legal advocacy to protect the civil rights of District residents with disabilities.

Disability Rights DC staff directly serves hundreds of individual clients annually, with thousands more benefiting from the results of investigations, institutional reform litigation, outreach, education and group advocacy efforts. Disability Rights DC staff address client issues relating to, among other things, abuse and neglect, community integration, accessible housing, financial exploitation, access to health care services, discharge planning, special education, and the improper use of seclusion, restraint and medication.

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I. EXECUTIVE SUMMARY

The COVID-19 virus continues to spread throughout the country with devastating effects, and families continue to mourn. With over 28 million infections and 500,000 deaths nationwide,¹ the virus has taken an inconceivably heavy toll on families everywhere. The disparate effects on individuals in black and brown communities nationwide are profoundly troubling.² District residents of color have been hit especially hard. Although nonwhite residents account for 57% of Washington D.C.'s population,³ they have been disproportionately affected by the pandemic and account for over 75% of all COVID-19 infections in the District and *almost 90% of all District COVID-19 deaths*.⁴ Additionally, high rates of infections and deaths among individuals with disabilities in institutional, congregate settings have been widely reported since the beginning of the pandemic.⁵

In the spring of 2020, COVID-19 ravaged the District's only public psychiatric institution. Located in a southeast neighborhood of D.C., St. Elizabeths patients are individuals with mental health disabilities, and most are people of color. It is a locked facility. The patients are not free to leave. By May 9, 2020, just over one month after the first staff person at the Hospital tested positive for COVID-19, fourteen patients were dead,⁶ and seventy-eight patients had been infected.⁷ Another patient died in October 2020 from COVID-19 related symptoms.⁸ Recently, in February 2021, two more patients lost their lives to COVID-19, for a total of seventeen deaths. To date, more than half of the patients have been infected.⁹

Even before the first case of COVID-19 at St. Elizabeths, Disability Rights DC raised concerns relayed by patients and stakeholders regarding the Hospital's plans to keep patients

¹ https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days.

² Nationwide, black and brown individuals have been hospitalized at four times the rate and died at nearly three times the rate of white people. <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

³ See D.C. Health Matters 2021 Demographics Data. <https://www.dchealthmatters.org/demographicdata>.

⁴ See D.C. Government COVID-19 Surveillance Data. <https://coronavirus.dc.gov/data>.

⁵ See note 12 *infra*; Jonel Aleccia, *Corona Cluster Near Seattle Highlights Vulnerability of Nursing Homes*, <https://www.npr.org/sections/health-shots/2020/03/02/811276257/coronavirus-cluster-near-seattle-highlights-vulnerability-of-nursing-homes>, NPR WAMU, (March 2, 2020); Carly Sitrin & Katherine Landergan, *New Jersey Nursing Homes on Lockdown After 3 Coronavirus Deaths Reported*, POLITICO (Mar. 19, 2020), <https://www.politico.com/states/new-jersey/story/2020/03/19/new-jersey-nursing-homes-on-lockdown-after-3-coronavirus-deaths-reported-1268121>; WBRZ Staff, *Fifth Person Dead at New Orleans Retirement Home; 24 Cases Reported at Facility*, WBRZ ABC News (Mar. 19, 2020), <https://www.wbrz.com/news/three-of-louisiana-s-13-coronavirus-patients-are-residents-of-same-new-orleans-nursing-home/>.

⁶ <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>; Email from Deputy General Counsel, DBH to Disability Rights DC (May 11, 2020); St. Elizabeths Unusual Incident Report for fourteenth patient (May 9, 2020).

⁷ <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>. As of mid-January, 2021, 96 patients and 226 staff had tested positive. Though there have been additional patient deaths, they have not been attributed to COVID-19. *Id.*

⁸ Email from DBH Deputy General Counsel to Disability Rights DC (Oct. 10, 2019); St. Elizabeths Unusual Incident Report for Patient (Oct. 14, 2020).

⁹ <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>. The data indicates that as of February 23, 2021, 100 St. Elizabeths patients have been infected with the virus. According to the latest data published by the Hospital, in December 2020, the average daily census was 195. <https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/Dec%20PRISM.pdf>.

safe.¹⁰ Less than two weeks later, and after the first patient tested positive, Disability Rights DC pleaded with the Hospital and the Department of Behavior Health (“DBH”) to obtain additional expert assistance, in part because, unlike medical hospitals, St. Elizabeths does not have a robust infectious disease department or other medical resources found at medical hospitals. Disability Rights DC stressed that due to the ability of the virus to spread rapidly and the deadly nature of the virus, it was essential that the Hospital immediately obtain **on-site direct support** to provide guidance and training to nursing and medical staff regarding implementation of all relevant CDC guidelines, the use of personal protective equipment (“PPE”), and adequate assessment and monitoring of patients who had symptoms from the virus.¹¹

Just days later, as the virus continued to quickly spread and dire concerns rose, Disability Rights DC again expressed to DBH its concerns about the Hospital’s “lack of leadership implementing proactive lifesaving practices” to curtail the spread of the virus, as well as concerns that the “staff is not equipped to effectively deal with a crisis of this magnitude.”¹² Disability Rights DC again emphasized that it was essential that staff receive outside, on-site assistance to contain the spread of the virus.¹³ Tragically, DBH and Hospital administration failed to do so.

By mid-April, 2020, the situation became so grave that attorneys representing the patients amended an on-going lawsuit¹⁴ alleging that the Hospital’s response to COVID-19 was inadequate.¹⁵ The U.S. District Court granted relief and, in an opinion noted that, “roughly one out of every twenty patients has died and more than one out of every three patients have been infected. Against this tragic backdrop, Defendants at least bear the burden of coming forward with some identified reason based in professional judgment for failing to comply with CDC COVID-19 guidance.”¹⁶

The St. Elizabeths patients who became ill and died are not merely statistics. They had families and friends who loved them and who continue to grieve their loss. Though St. Elizabeths does not report on how many patients became seriously ill, required extensive hospital stays or continue to experience lingering effects from the virus, many surely have and do. St. Elizabeths leadership and administration were obligated to take aggressive and effective measures to protect the patients from the deadly virus quickly. They did not. They failed to

¹⁰ Email from Disability Rights DC to DBH General Counsel (March 17, 2020). Disability Rights DC relayed concerns from stakeholders and patients including: (1) the treatment mall remained open where large numbers of patients from different units were cohorting; (2) only the geriatric units were being quarantined; (3) the Hospital was not adequately screening new admissions; and (4) all staff were not being provided with N95 masks.

¹¹ Email from Disability Rights DC to DBH Director and DBH General Counsel (April 1, 2020).

¹² Email from Disability Rights DC to DBH Director (April 6, 2020). Disability Rights DC emphasized that “*staff need a team of strong, ‘hands on’ administrative, nursing and medical leaders to support them in facing the myriad of issues that lay ahead in the weeks to come.*” Disability Rights DC sent a second email on April 6, 2020 which recommended that DBH promptly hire a “St. Elizabeths Covid-19 Tsar,” with “expertise and specific knowledge to take control of the situation at St. Elizabeths immediately and ensure that the protocols, safeguards, and best practices are being followed.” Email from Disability Rights DC to DBH Director (April 6, 2020).

¹³ *Id.*

¹⁴ The lawsuit involved the Hospital’s inadequate response to a water crisis, discussed in Section IV of this report.

¹⁵ See generally, *Costa v. Bazron*, 456 F. Supp. 3d 126, 131 (D. D.C. 2020).

¹⁶ *Costa v. Bazron*, 464 F. Supp. 3d 132, 142 (D. D.C. 2020).

adequately prepare and failed to adequately implement and follow CDC guidelines, and this allowed the virus to rapidly spread through the Hospital with deadly consequences.

Unfortunately, this is not the first time the Hospital has neglected its patients. In October 2018, Disability Rights DC released a report that detailed neglect surrounding the tragic and possibly preventable loss of a young female patient who died from a brain bleed -- a condition that is treatable if medical care is provided in a timely manner.¹⁷ In September 2019, the water system at St. Elizabeths became contaminated with dangerous, possibly life-threatening bacteria. The Hospital's inadequate response limited the patients' access to safe running water for almost a month.¹⁸ Moreover, during the past two years, Disability Rights DC released three reports outlining the illegal use of solitary confinement type cells, the alarmingly high number of restraints and seclusions employed by Hospital staff, as well as many disturbing incidents of staff violating D.C. law and Hospital policy during abusive restraints and seclusions.¹⁹

This systemic abuse and neglect adversely affects patients' lives, causes untold patient suffering, and, as described herein, even results in death. The Hospital must do better. DBH and Hospital leadership and staff must be held accountable and must institute meaningful change.

II. ST. ELIZABETHS HOSPITAL FAILED TO PROTECT PATIENTS FROM COVID-19.

A. The CDC Issued COVID-19 Recommendations for Health Care Facilities.

The United States reported its first confirmed case of COVID-19 on January 22, 2020.²⁰ By February of 2020, reports of the virus' rapid and deadly spread in congregate, institutional settings, such as St. Elizabeths Hospital, were being reported.²¹ In February 2020, weeks before Washington D.C. identified its first case of the novel coronavirus,²² the CDC released recommendations for health care workers to prepare for COVID-19, including the CDC's Healthcare Professional Preparedness Checklist to care for patients with confirmed or suspected

¹⁷ Disability Rights DC, *A Patient's Suffering and Death at St. Elizabeths Hospital*, (Oct. 1, 2018), <http://www.uls-dc.org/media/1166/investigationfinalpublic.pdf>.

¹⁸ Justin Moyer and Dana Hedgpeth, *St. Elizabeths Declared Free of Legionella Bacteria, But Faces Federal Lawsuit*, Wash. Post (Oct. 24, 2019).

¹⁹ Disability Rights DC, *Solitary Confinement at St. Elizabeths Hospital*, (Jan. 28, 2019), <http://www.uls-dc.org/media/1173/reportfinal12819.pdf>; Disability Rights DC, *Dangerous Restraints: Mistreatment and Harm at St. Elizabeths Hospital*, (July 31, 2019), <http://www.uls-dc.org/media/1183/srreportfinal73119.pdf>; Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020), <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

²⁰ Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019, Case Surveillance – United States, January 22- May 30, 2020*, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm>.

²¹ Eric Boodman, *First Covid-19 outbreak in a U.S. nursing home raises concerns*, STAT (Feb. 29, 2020), <https://www.statnews.com/2020/02/29/new-covid-19-death-raises-concerns-about-virus-spread-in-nursing-homes/>; Madeline Holcombe, Kay Jones, Stephanie Elam, and Jason Kravarik, *This nursing home has become the US epicenter of the coronavirus outbreak, but patients' family members say they're left in the dark*, CNN (Mar. 9, 2020), <https://www.cnn.com/2020/03/04/health/washington-state-nursing-facility-coronavirus-family/index.html>.

²² The first presumptive case of COVID-19 in the District was reported on March 7, 2020. Gov't of D.C., *DC Department of Health Confirms First Coronavirus Case*, (Mar. 7, 2020) <https://coronavirus.dc.gov/release/dc-department-health-confirms-first-coronavirus-case>.

cases of COVID-19.²³ By mid-March 2020, Washington State, the “epicenter” of the virus, experienced rapid spread and death in skilled nursing facilities.²⁴ The virus then spread to other states, which also experienced high volumes of positive cases and death rates in institutional settings.²⁵

Meanwhile, in early March 2020, the first case of COVID-19 was confirmed in the District.²⁶ One week later, on March 13, 2020, the D.C. Department of Health (“DOH”) issued its own COVID-19 guidelines.²⁷ Similar to the CDC guidelines for healthcare settings, they included concrete steps that facilities should undertake to protect the individuals and staff in their care. These guidelines warned of the virus’ developing nature and recommended that facilities “take aggressive steps” to address and prevent COVID-19 outbreaks and spreading.²⁸ The CDC guidelines were updated on March 23, 2020, to address how healthcare facilities should isolate patients who had exhibited COVID-19 symptoms and had received a positive test result, as well as those patients who were suspected of having the virus.²⁹

²³Healthcare Professional Preparedness Checklist for Transport and Arrival of Patients with Confirmed or Possible COVID-19, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hcp-personnel-checklist.html> (last updated Feb. 21, 2020).

²⁴ Madeline Holcombe, Kay Jones, Stephanie Elam, and Jason Kravarik, *This Nursing Home has Become the US Epicenter of the Coronavirus Outbreak, but Patients’ Family Members Say They’re Left in the Dark*, CNN (Mar. 9, 2020), <https://www.cnn.com/2020/03/04/health/washington-state-nursing-facility-coronavirus-family/index.html>.

²⁵ Carly Sitrin & Katherine Landergan, *New Jersey Nursing Homes on Lockdown After 3 Coronavirus Deaths Reported*, POLITICO (Mar. 19, 2020), <https://www.politico.com/states/new-jersey/story/2020/03/19/new-jersey-nursing-homes-on-lockdown-after-3-coronavirus-deaths-reported-1268121>; WBRZ Staff, *Fifth Person Dead at New Orleans Retirement Home; 24 Cases Reported at Facility*, (Mar. 19, 2020), <https://www.wbrz.com/news/three-of-louisiana-s-13-coronavirus-patients-are-residents-of-same-new-orleans-nursing-home/>.

²⁶ Gov’t of D.C., *DC Department of Health Confirms First Coronavirus Case* (Mar. 7, 2020), <https://coronavirus.dc.gov/release/dc-department-health-confirms-first-coronavirus-case>.

²⁷ D.C. Health, *DC Health Infection Control Recommendations for Preparedness and Management of Coronavirus 2019 in Skilled Nursing Facilities*, (Mar. 13, 2020). These guidelines have since been updated and are no longer available online. To read the guidelines in their original form, see *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (Dkt. 54-4).

²⁸ *Id.* at 1. The guidelines recommended that facilities (1) restrict all visitors and non-essential resident activities; (2) regularly assess patients “for signs and symptoms of COVID-19;” and (3) “immediately place a mask on any patient who shows signs and symptoms of COVID-19, isolate them in their room, and follow infection control guidance” *Id.* at 3.

²⁹ These guidelines also updated polices for discontinuing transmission-based precautions using both test-based and non-test-based strategies. The test-based strategy for discontinuance of transmission-based precautions included: 1) resolving a patient’s fever without fever-reducing medications, 2) improved respiratory symptoms, and 3) two negative COVID-19 tests conducted more than 24 hours apart. The non-test based strategy included: 1) resolving a patient’s fever without fever-reducing medications and improved respiratory symptoms and 2) “at least 7 days have passed *since symptoms first appeared*.” For patients suspected of having COVID-19 but without a positive test, healthcare facilities can discontinue empiric transmission-based precautions after the patients have received at least one negative COVID-19 test. However, “if a higher level of clinical suspicion for COVID-19 exists,” a second negative COVID-19 test should be considered. Ctrs. for Disease Control and Prevention, *Discontinuation of Transmission-Based Precautions and Disposition of Patients with COVID-19 in Healthcare Settings (Interim Guidance)* (Mar. 23, 2020). These guidelines have since been updated. To view them in their original form, see *Costa v. Bazron*, 456 F. Supp. 3d 126 (D. D.C. 2020) (Dkt. 54-2).

On April 2, 2020, the Center for Medicaid and Medicare Services (“CMS”) released another set of recommendations.³⁰ In addition to referencing the corresponding CDC guidelines for long-term care facilities, CMS also recommended separating staff who work with COVID-19 positive patients “to the best of their ability” by consistently assigning staff to the same patients.³¹ Additionally, they recommended that long-term healthcare facilities should designate “separate facilities or units within a facility to separate COVID-19 negative residents from COVID-19 positive residents and individuals with unknown COVID-19 status.”³²

On April 13, 2020, the CDC again updated its guidelines for facilities which directed facilities to: “isolate symptomatic patients as soon as possible,” create separate, well-ventilated spaces for “patients with suspected or confirmed COVID-19 in private rooms with the door closed and with private bathrooms (as possible),” and reiterated that all healthcare personnel should wear a facemask while in facilities.³³ On April 15, 2020, the CDC provided “key strategies” for the facilities to use when preparing for COVID-19, noting that “given the high risk of spread once COVID-19 enters . . . facilities must take immediate action to protect residents, families and health care personnel . . . from severe infections, hospitalizations, and death.”³⁴

B. The Hospital Failed to Adequately Implement CDC Guidelines

On March 17, 2020, prior to the first patient or staff testing positive for the virus at St. Elizabeths, Disability Rights DC raised concerns relayed by patients and stakeholders regarding the Hospital’s COVID-19 preparedness plans to keep patients safe.³⁵ On March 26, 2020, the

³⁰ Ctr. for Medicare & Medicaid Servs., *COVID-19 Long-Term Care Facility Guidance*, (Apr. 2, 2020), <https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>.

³¹ *Id.*

³² *Id.*

³³ Ctrs. for Disease Control and Prevention, *Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings* (Apr. 13, 2020). These guidelines have since been updated. To view them in their original form, see *Costa v. Bazron*, 456 F. Supp. 3d 126 (D. D.C. 2020) (Dkt. 54-1). The CDC guidelines recommended creating separate spaces within long-term care facilities for patients with COVID-19 or suspected of having COVID-19, stating: “[a]s a measure to limit HCP exposure and conserve PPE, facilities could consider designating entire units within the facility, with designated HCP, to care for patients with known or suspected COVID-19. Dedicated means that HCP are assigned to care only for these patients during their shift.” *Costa v. Bazron*, 456 F. Supp. 3d 126 (D. D.C. 2020) (Dkt. 54-1) (Exhibit A at 9).

³⁴ These guidelines stated that facilities should 1) aggressively restrict visitors; 2) enforce social distancing amongst residents; and 3) require staff to wear universal PPE. *Preparing for COVID-19; Long-term Care Facilities, Nursing Homes*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Apr. 15, 2020). These guidelines have since been updated. To view them in their original form, see *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (Dkt. 54-3). It is important to note that these guidelines “supplement the CDC’s *Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings* and are specific for nursing homes, including skilled nursing facilities.” *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (Dkt. 54-3). Therefore, as confirmed by the Court (discussed in section III C of this report), St. Elizabeths should have continued to abide by the CDC guidelines regarding transmission-based precautions published on March 23, 2020, in addition to the new guidelines.

³⁵ Email from Disability Rights DC to DBH General Counsel (March 17, 2020). Disability Rights DC relayed concerns from stakeholders and patients including: (1) the treatment mall remained open where large numbers of patients from different units were cohorting; (2) only the geriatric units were being quarantined; (3) the Hospital was not adequately screening new admissions; and (4) all staff were not being provided with N95 masks.

first St. Elizabeths Hospital staff person tested positive.³⁶ Just days later, on March 31, 2020, the Hospital confirmed its first COVID-19 positive patient.³⁷ The next day, the Washington Post reported that (1) five employees had contracted the virus and twenty-two staff persons were in self quarantine -- all from the same unit, and (2) that the Director of the D.C. Nurses Association reported the hospital was “not really equipped to handle patients with this type of virus.”³⁸ That same day, Disability Rights DC raised specific concerns to St. Elizabeths Hospital administration and DBH, which were, in part, based on Disability Rights DC’s past investigations revealing patterns of nursing and medical neglect, as well as the fact that, unlike medical hospitals, St. Elizabeths did not have an extensive infectious disease department, isolation rooms, or adequate supplies of PPE.³⁹ Disability Rights DC stressed that due to the ability of the virus to spread quickly and the deadly nature of this virus, it was essential that the Hospital immediately obtain **on-site direct support**, to provide guidance and training to nursing and medical staff regarding:

- (1) adequate implementation all relevant CDC guidelines, including implementation of proper infection protocols, isolation and quarantine protocols, and the use of PPE;
- (2) adequate assessment and monitoring of patients and adequate knowledge of signs and symptoms of the virus; and
- (3) guidance on when a patient displaying symptoms of the virus needed to be sent to an outside medical facility.⁴⁰

Disability Rights DC met with DBH and Hospital administration on April 2, 2020, and reiterated its concerns and recommendations.⁴¹ DBH reported that the Hospital was receiving guidance from DOH; however, they failed to implement Disability Rights DC’s recommendations and did not act to obtain the needed additional on-site expert assistance.

On April 6, 2020, as the virus continued to quickly spread and dire concerns rose, Disability Rights DC again expressed to DBH concerns about the Hospital’s “lack of leadership implementing proactive lifesaving practices” to curtail the spread of the virus, as well as concerns that the “staff is not equipped to effectively deal with a crisis of this magnitude.”⁴² Disability Rights DC pleaded with DBH to obtain outside, on-site assistance at St. Elizabeths to assist in containing the spread of the virus, noting that **“staff need a team of strong, ‘hands on’ administrative, nursing and medical leaders to support them in facing the myriad of issues that lay ahead in the weeks to come.”**⁴³ In another email that day, Disability Rights DC recommended that DBH promptly hire a “St. Elizabeths Covid-19 Tsar,” with “expertise and

³⁶ Justin Moyer, Fenit Nirappil, & Alyssa Fowers, *Most St. Elizabeths patients under quarantine after four coronavirus deaths*, Wash. Post (Apr. 15, 2020), https://www.washingtonpost.com/local/most-st-elizabeths-patients-under-quarantine-after-four-coronavirus-deaths/2020/04/15/37aec03e-7e6a-11ea-8de7-9fdff6d5d83e_story.html.

³⁷<https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>

³⁸ Justin Moyer, *Coronavirus Cases Reported at D.C.’s St. Elizabeth Hospital, Homeless Shelters*, WASH. POST. (Apr. 1, 2020) https://www.washingtonpost.com/local/coronavirus-cases-reported-at-dcs-st-elizabeths-hospital-homeless-shelters/2020/04/01/05532c98-7423-11ea-ae50-7148009252e3_story.html.

³⁹ Email from Disability Rights DC to DBH Director and DBH General Counsel (April 1, 2020).

⁴⁰ *Id.*

⁴¹ Disability Rights DC virtual meeting with St. Elizabeths administration and DBH administration (Apr. 2, 2020).

⁴² Email #1 from Disability Rights DC to DBH Director (April 6, 2020).

⁴³ *Id.*

specific knowledge to take control of the situation at St. Elizabeths immediately and ensure that the protocols, safeguards, and best practices are being followed.”⁴⁴ Tragically, again the Hospital failed to act to obtain the needed assistance.

On April 9, 2020, the first St. Elizabeths patient died from COVID-19 related symptoms.⁴⁵ By April 13, 2020, less than two weeks after the first patient tested positive, 28 patients and 43 staff members had contracted the disease, 105 patients were in isolation or quarantine, and four patients had died.⁴⁶ As the virus quickly spread and deaths mounted, Disability Rights DC received multiple complaints from Hospital patients and stakeholders alleging that the Hospital was not adequately protecting the patients or following CDC guidelines. One caller alleged that the treatment malls, which provided day treatment for patients, remained open despite the large number of patients from each unit who co-mingled there, that proper PPE was not being provided to staff, and new admissions were not being screened.⁴⁷ A patient alleged that another patient who tested positive for the virus was sent back to his unit and was not quarantined in his room.⁴⁸ Another caller indicated that the Hospital did not implement temperature checks for employees entering the building until well after the CDC guidelines recommended that this step be instituted, and also described some staff wearing N95 masks and some not.⁴⁹ A patient reported that his unit was under quarantine, but patients were walking around freely and eating together in the communal dining room.⁵⁰ Another patient reported being fearful because staff were not providing much information about the spread of the virus or what steps the administration was taking to protect the patients and staff.⁵¹ Yet another patient reported that his unit was short staffed, and staff were fearful of contracting the virus, so much so that he felt as though the patients were “on their own” because staff were not readily responding to patients’ anxieties or escalations in behaviors.⁵²

More fears and allegations that the Hospital was not adequately protecting patients and staff continued to surface. On April 15, 2020, a St. Elizabeths nurse who tested positive for the

⁴⁴ Email #2 from Disability Rights DC to DBH Director (April 6, 2020). After the first patient death was reported, Disability Rights DC sent another email to DBH stating, “The reporting in the newspaper indicates that the [St. Elizabeth] patient who died collapsed and was ‘found unresponsive.’ This is very disturbing given that, according to the newspaper, the patient had tested positive [for the virus], had just been released from the hospital, and was at high risk of serious illness or death due to his age. It raises the question as to whether he was being adequately monitored. As [we] have stressed to you in phone calls and emails, due to the nature of this virus and how individuals with the virus can deteriorate suddenly, it is essential that the nursing staff be provided with more support and education regarding the symptoms of the illness, as well as guidance on treatment intervention when a patient is symptomatic... .” Email from Disability Rights DC to DBH Director (April 9, 2020).

⁴⁵ Justin Moyer, Fenit Nirappil, & Alyssa Fowers, *Most St. Elizabeths Patients Under Quarantine After Four Coronavirus Deaths*, WASH. POST. (Apr. 15, 2020), https://www.washingtonpost.com/local/most-st-elizabeths-patients-under-quarantine-after-four-coronavirus-deaths/2020/04/15/37aec03e-7e6a-11ea-8de7-9fdff6d5d83e_story.html. Pursuant to a settlement agreement with the District, St. Elizabeths notifies Disability Rights DC of all deaths within 24 hours of the death. The almost daily death notices we received were not only alarming, they were heart-breaking.

⁴⁶ *Costa v. Bazron*, 464 F. Supp. 3d at 138 (citing Dkt. 36 at 3).

⁴⁷ Telephone call from Stakeholder to Disability Rights DC (March 25, 2020).

⁴⁸ Telephone call from St. Elizabeths patient to Disability Rights DC (April 7, 2020).

⁴⁹ Anonymous telephone call to Disability Rights DC (April 6, 2020).

⁵⁰ Telephone call from St. Elizabeths patient to Disability Rights DC (April 7, 2020).

⁵¹ Telephone call from St. Elizabeths patient to Disability Rights DC (April 6, 2020).

⁵² Telephone call from St. Elizabeths patient to Disability Rights DC (April 3, 2020).

virus told the Washington Post that the Hospital failed to quarantine a patient suspected of having COVID-19 in March.⁵³ She also reported that the Hospital failed to adequately supply Personal Protective Equipment, that mask usage had been “inconsistent,” and that the Hospital distributed some high grade N95 masks to the Hospital’s administrators, who were not directly working with COVID-19 patients, instead of to employees in direct contact with the virus.⁵⁴ The Chief of the Mental Health Division of the Public Defender Service (“PDS”) said PDS was “devasted” after learning about the deaths, and expressed her concerns regarding the Hospital’s inability to implement and abide by the CDC’s social distancing guidelines and to provide care for patients who exhibit COVID-19 symptoms.⁵⁵ She also was disturbed about the lack of accurate information, noting “[t]he hospital’s lack of transparency both with the public and us leaves us terrified for our clients, many of whom are elderly, are medically vulnerable, or both.”⁵⁶

On April 16, 2020, the Washington City Paper reported that thirty nurses were quarantining, other nurses were working 12-hour shifts, giving up their time off, and staff felt ill equipped to handle the virus.⁵⁷ “With 60 percent of patients under quarantine, nurses are worried they’ve been exposed to COVID-19 and that their personal protective equipment is ineffective because they are having to reuse N95 masks.”⁵⁸ A St. Elizabeths nurse reported that the Hospital was not prepared for the virus and that its response was “more reactive than proactive.”⁵⁹ A mental health technician said staff members were not adequately trained on PPE use and that she “was just shown photos of health care workers in gloves, gowns, masks, and N95 respirators.”⁶⁰

C. The Patients Ask the Court to Order the Hospital to Follow the Guidelines

With patient deaths and positive cases increasing at alarming rates, on April 16, 2020, attorneys representing patients at St. Elizabeths (“the Plaintiffs”) amended an ongoing lawsuit⁶¹ alleging that the Hospital’s response to COVID-19 was inadequate.⁶² The Plaintiffs asserted that the failures had led to tragic and deadly consequences, noting that, “the hospital’s mortality rate is magnitudes higher than the mortality rate for the District as a whole.”⁶³ The Plaintiffs’ complaint alleged that the Hospital had “failed to protect the health and safety of its patients

⁵³ Justin Wm. Moyer, Fenit Nirappil, & Alyssa Fowers, *Most St. Elizabeths Patients Under Quarantine After Four Coronavirus Deaths*, WASH. POST. (Apr. 15, 2020), https://www.washingtonpost.com/local/most-st-elizabeths-patients-under-quarantine-after-four-coronavirus-deaths/2020/04/15/37acc03e-7e6a-11ea-8de7-9fdff6d5d83e_story.html.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Amanda Michelle Gomez, *With 4 Deaths and Dozens of COVID-19 Cases at D.C.’s Public Psychiatric Hospital, Patient Advocates Fear it was Not Prepared*, WASH. CITY PAPER (Apr. 16, 2020), <https://washingtoncitypaper.com/article/175382/with-4-deaths-and-dozens-of-covid19-cases-at-dcs-psychiatric-hospital-patient-advocates-fear-it-was-not-prepared/>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ The lawsuit involved the Hospital’s inadequate response to a water crisis, discussed in Section IV of this report.

⁶² See generally, *Costa v. Bazron*, 456 F. Supp. 3d 126, 131 (D. D.C. 2020).

⁶³ *Costa v. Bazron*, 456 F. Supp. 3d at 131 (D. D.C. 2020).

from the virus by departing from applicable CDC guidelines”⁶⁴ Among other things, they specifically alleged that the Hospital (1) failed to test all symptomatic patients; (2) was not segregating residents who had been exposed or potentially exposed to the virus from other residents, but was “cohorting” patients who had tested positive or were suspected of having the virus in groups rather than medically isolating them in private rooms;” and (3) failed to adequately screen and isolate newly admitted patients.⁶⁵ Moreover, the Plaintiffs asserted that the Hospital failed to take steps to ensure that patients received the mental health treatment that they required and failed to update treatment plans for pandemic-related stress.⁶⁶

The patients also provided evidence to the Court that the Hospital was not adequately following the guidelines. In a sworn affidavit, a patient indicated that his unit was comprised of COVID-19 positive, asymptomatic, and potentially unexposed patients, all of whom interacted with one another in common areas.⁶⁷ Another patient reported that although a patient exhibiting COVID-19 symptoms was quarantined in his room, he remained within the same unit as non-symptomatic patients,⁶⁸ that it was “impossible to maintain social distancing of six feet”⁶⁹ from other patients, and that he had not been receiving his normal individual or group therapy.⁷⁰

The Judge ruled in favor of the Plaintiffs and concluded that due to “the gravity of [the patients’] imminent risk of injury, and the pressing need to act to prevent that risk, the Court finds that Plaintiffs have satisfied the irreparable harm requirement for issuance of a temporary restraining order.”⁷¹ The Judge stated that the Hospital “offered no explanation why patients who have been exposed to the virus are not more closely monitored to ensure that they are isolated to the extent consistent with patient health and well-being,” and that it was not “robustly implementing” professionally accepted isolation standards.⁷² The Judge also noted that the Hospital’s practice of releasing patients from quarantine after one negative COVID-19 test was contrary to professional standards.⁷³ The Court held that St. Elizabeths failed to explain why “all symptomatic patients at the Hospital do not meet the higher-level-of-clinical-suspicion benchmark [requiring quarantine], given the large percentage of infected patients and staff at Saint Elizabeths.”⁷⁴ The Court ordered the Hospital to take measures to protect the patients and staff from the spread of the virus, requiring the Hospital to, among other things: 1) isolate patients who had been exposed to COVID-19; 2) “conduct clinical evaluations prior to releasing patients suspected of having COVID-19 . . . from isolation;” and 3) when cases involved “heightened clinical suspicion,” ensure that patients receive two negative tests, at least 24 hours apart, before they are released from isolation.⁷⁵

⁶⁴ *Id.*

⁶⁵ *Costa v. Bazron*, 456 F. Supp. 3d 126, 131 (D.D.C. 2020).

⁶⁶ *Id.*

⁶⁷ Dunbar Decl. ¶ 5, *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (No. 39-7).

⁶⁸ *Costa* Decl. ¶ 6, *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (No. 39-6).

⁶⁹ *Costa* Decl. ¶ 4, *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (No. 39-6).

⁷⁰ *Costa* Decl. ¶ 10, *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (No. 39-6).

⁷¹ *Costa v. Bazron*, 456 F. Supp. 3d at 137.

⁷² *Id.* at 136.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Order, *Costa v. Bazron*, 456 F. Supp. 3d 126 (D.D.C. 2020) (No. 60).

It was not until April 17, 2020, one day after the Plaintiffs' filed their first motion in Court to compel the St. Elizabeths to adequately follow CDC guidelines,⁷⁶ that the Hospital finally obtained on-site, outside assistance from the CDC and DOH.⁷⁷ Tragically, this was too little, too late. The virus had been spreading through St. Elizabeths for at least three weeks. Already four patients had died, and thirty-six patients had been infected.⁷⁸

Even after the on-site assistance and the Court orders, COVID-19 continued to spread, more patients tested positive daily, and more patients died. As of April 29, 2020, ten patients had died and thirty-seven patients were positive.⁷⁹ According to St. Elizabeths' data, more than half of the patients at the Hospital were housed in units "that ha[d] been exposed to a COVID-positive patient or staff member within the last 14 days."⁸⁰ By April 30, 2020, Hospital data revealed that forty-nine patients were positive --"almost a quarter of the patients."⁸¹ In referencing the Hospital's data, the Plaintiffs noted that seventeen patients were exposed to a case on a single unit "where proper social distancing, PPE, and mask-wearing were not being practiced."⁸² They alleged that those patients were all transferred to a makeshift space, not in quarantine, and the next day twelve of the seventeen patients who were transferred tested positive for the virus.⁸³

On May 9, 2020, just one month after the first St. Elizabeths patient died from the coronavirus, the fourteenth patient died.⁸⁴ Over one third of all the patients at the time had been infected.⁸⁵ With cases still on the rise and a clear need for continued Court oversight, the Plaintiffs requested that the Court issue a preliminary injunction on May 14, 2020.⁸⁶ Plaintiffs alleged the St. Elizabeths did not adequately protect its patients, noting that the measures taken by the Hospital "since the beginning of the crisis have failed."⁸⁷ The Plaintiffs alleged that the "extent of illness and death at the Hospital was not inevitable. It was the direct result of policies and decisions by Defendants that delayed implementation of, or misapplied, CDC guidance on infection control, testing, quarantine, and reduction in census."⁸⁸ The Court granted the Plaintiffs' motion in-part, noting the "cognizable danger of recurrent violation," and because the

⁷⁶ See *Costa v. Bazron*, 464 F. Supp. 3d 132, 138 n. 1 (D. D.C. 2020)

⁷⁷ Email from DBH General Counsel to Disability Rights DC (April 17, 2020). DBH indicated that the CDC and D.C. Department of Health, including an epidemiologist, were at St. Elizabeths that morning looking at their operations and the individual units.

⁷⁸ <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>.

⁷⁹ Notice of Saint Elizabeths Hosp. Patient Data Related to COVID-19 at 1; Ex. 1 at 1, *Costa v. Bazron*, 464 F. Supp. 3d 132 (D.D.C. 2020) (No. 66-1).

⁸⁰ Notice of Saint Elizabeths Hosp. Patient Data Related to COVID-19 at 1; See Ex. 1 at 1, *Costa v. Bazron*, 456 F. Supp. 3d 132 (D.D.C. 2020) (No. 66; 66-1).

⁸¹ Notice of Saint Elizabeths Hosp. Patient Data Related to COVID-19 at 1.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Email from DBH Deputy General Counsel to Disability Rights DC (May 11, 2020); St. Elizabeths Unusual Incident Report for patient (May 9, 2020).

⁸⁵ See <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>. The data indicates that 78 patients had tested positive as of May 9, 2020. According to Hospital's own data, the average daily census at the Hospital in May 2020 was 187 patients.

<https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/May%20PRISM.pdf>.

⁸⁶ See Pl. Mot. Prelim. Inj. *Costa v. Bazron*, 456 F. Supp. 3d 132 (D.D.C. 2020) (No. 87).

⁸⁷ Pl. Reply Mot. Prelim. Inj. *Costa v. Bazron*, 456 F. Supp. 3d 132 (D.D.C. 2020) (No. 92) at 1.

⁸⁸ *Id.*

Hospital's proactivity was "at least in part, a product of this litigation."⁸⁹ The Court emphasized the devastating toll the virus had taken on the patients at the Hospital, noting that "roughly one out of every twenty patients has died and more than one out of every three patients have been infected. Against this tragic backdrop, Defendants at least bear the burden of coming forward with some identified reason based in professional judgment for failing to comply with CDC COVID-19 guidance."⁹⁰

To explain its decision to issue injunctive relief, the Court, among other things, described: (1) plaintiffs' assertion that St. Elizabeths did not take "steps to ensure that those suspected cases that were positive did not spread the virus to those suspected cases that were negative;"⁹¹ (2) the Hospital's failure to explain what "professional judgment" would support "housing individuals exposed to the virus in the same space, without isolating patients from one another *within that space* to prevent those who were positive from infecting those who were not;"⁹² (3) the fact that the Hospital "offered no evidence that cross-staffing under these dire circumstances is a product of considered professional judgment;"⁹³ and (4) the fact that, when the Hospital did begin testing its staff, twenty one employees tested positive, seventeen of whom were asymptomatic."⁹⁴ The Court found that the Hospital's "delay in testing all staff and their lack of a plan to continue testing all patients and staff" substantially departed from professional judgement.⁹⁵

Since the fourteenth reported death in May 2020, Disability Rights DC received notice of three additional deaths due to COVID-19 complications. One in October 2020, and two more recently, in February 2021, for a total of seventeen deaths to date. Over 100 patients have been infected, and there continue to be infections at St. Elizabeths.⁹⁶ Although the Hospital has acted quickly to provide vaccinations to patients and staff who will accept them,⁹⁷ friends and families of the patients who lost their lives, current patients who have not stopped worrying about possible infection, and patients with lingering serious symptoms from the virus continue to suffer from the Hospital's deadly delays. St. Elizabeths administration and DBH were well warned that they were not adequately prepared to address the deadly and devastating COVID-19 virus. They were well aware of their limited infectious disease experience and resources. They should have requested additional expert assistance as Disability Rights DC urged and done so immediately. Tragically, they failed to do so.

⁸⁹ *Costa v. Bazron*, 464 F. Supp. 3d at 148.

⁹⁰ *Id.* at 142. The Court found that the plaintiffs were likely to succeed on their claims of the following: 1) the isolation of exposed patients; 2) PPS testing; and 3) restrictions on cross-unit staffing.

⁹¹ *Id.* at 144 (citing Tu Decl. ¶ 7-8).

⁹² *Id.* at 145 (citing Dkt. 55-1 at 6 (CDC LTCF Guidance) (instructing that "[i]f there are [COVID-19 positive] cases in the facility, [the facility should] restrict residents (to the extent possible) to their rooms except for medically necessary purposes."))

⁹³ *Id.* at 147.

⁹⁴ *Id.* at 150 (citing Dkt. 88 at 3). The Court opinion states this fact, but the court document states that 17 employees tested positive (rather than 21) and that they were all asymptomatic.

⁹⁵ *Id.* at 151.

⁹⁶ <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>.

⁹⁷ See <https://coronavirus.dc.gov/vaccine>.

III. THE PATIENTS WHO SUFFERED AND DIED

The St. Elizabeths patients who lost their lives to the COVID-19 virus are terribly missed. They lived full lives and had families and friends who loved them. They died without their loved ones being able to comfort them or hold their hands. Below are just a few of their stories.

Samuel Rojas⁹⁸

Samuel Rojas succumbed to COVID-19 on April 8, 2020.⁹⁹ Although he had no known family, he touched those around him. His court appointed guardian, Gilma Lasso, has especially fond memories of him.¹⁰⁰ She remembers him as “a very special man” who was “filled with joy” and had a “great spirit.” She says he loved music and dancing.¹⁰¹ Ms. Lasso reported that Mr. Rojas was a Cuban immigrant who was employed at various jobs, including working at a restaurant before he developed dementia and became homeless.¹⁰² She also reports that he lived with a community of nuns for a time.¹⁰³ In 2015, he was committed to St. Elizabeths after his dementia progressed too far for them to care for him.¹⁰⁴ He was loved and will be missed.

Edward Hill¹⁰⁵

Mr. Hill died on April 10, 2020, from complications of the coronavirus.¹⁰⁶ Mr. Hill was born in Bluefield, West Virginia in 1942 and moved to Washington D.C. as a teenager.¹⁰⁷ His family describes him as a loving son, brother, and uncle with a big heart; he was someone who would give to anyone in need. His family remembers that he was always proud of his work -- at a car wash, where he was known as hard worker and a “favorite employee, “and then as a groundskeeper at St. Elizabeths.”¹⁰⁸ Mr. Hill’s family said his death was made even more difficult because the family was not aware that he had contracted the virus and become very ill, and they did not know that he had passed away until they receive a notification via the regular mail.¹⁰⁹ The family said that it was especially painful for them to think that no family was with him, virtually or otherwise, when he passed.¹¹⁰ He was loved and will be missed.

⁹⁸ Pseudonym used to protect privacy.

⁹⁹ Email from DBH Deputy General Counsel to Disability Rights DC (April 10, 2020); St. Elizabeths Unusual Incident Report for Samuel Rojas (Apr. 8, 2020).

¹⁰⁰ Email from Gilma Lasso to Disability Rights DC (Dec. 3, 2020).

¹⁰¹ *Id.*

¹⁰² Justin Wm. Moyer, Fenit Nirappil, & Alyssa Fowers, *Most St. Elizabeths Patients Under Quarantine After Four Coronavirus Deaths*, WASH. POST. (Apr. 15, 2020, 6:17 PM), https://www.washingtonpost.com/local/most-st-elizabeths-patients-under-quarantine-after-four-coronavirus-deaths/2020/04/15/37aec03e-7e6a-11ea-8de7-9fdff6d5d83e_story.html.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Pseudonym used to protect privacy.

¹⁰⁶ Email from DBH Deputy General Counsel to Disability Rights DC (Apr. 10, 2020); St. Elizabeths Unusual Incident Report for Edward Hill (Apr. 10, 2020).

¹⁰⁷ Email from Edward Hill’s niece to Disability Rights DC (Nov. 24, 2020).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Catie Tucker¹¹¹

On April 18, 2020, Catie Tucker became the fifth St. Elizabeths patient to die from the virus.¹¹² As reported in the Washington Post, she was originally from Philadelphia and lived in California before making her way to Baltimore and the District.¹¹³ A voluntary patient, she loved art -- making cards, pictures, and hats. A program developer from the public defender service mental health division working with Ms. Tucker called her “a gem” and noted that in her last message that “[Catie] was chuckling about this silly fever she had that wouldn’t go away and saying she was again in the medical hospital. She sounded fine, like herself. No shortness of breath, no sign of serious illness. She was optimistic that she was going to be fine. She was on a ventilator less than 48 hours later.”¹¹⁴ Her public attorney had fond memories of her. “Anyone who took the time to know [Catie] and see beyond some vestiges of mental illness saw that she was a very compassionate person who genuinely cared about others,” she noted, adding, “I adored her, and my heart hurts that I was not able to say goodbye and tell her how lucky I feel to have known her and represented her.”¹¹⁵ She was loved and will be missed.

Lawrence Smith¹¹⁶

Mr. Smith died on April 25, 2020, at the age of seventy from complications of the virus.¹¹⁷ He lived at St. Elizabeths for thirty years prior to his death.¹¹⁸ His daughter reports that he was born in North Carolina. He often told her stories about growing up in the south under Jim Crow laws. She describes him as “incredibly smart” and said that he was the first person in his family to go to college, that he attended Dillard University, and then attended graduate school pursuing a degree in psychology. His daughter describes him as a “peace maker” who was “caring about the black community and wanted to help people and use his degree to make an impact.”¹¹⁹ His daughter reports that although her father struggled with mental illness and that they were estranged for part of his life, she had reconnected with him. She reports he was overjoyed to meet one of his grandsons, but she is sad that he will never be able to meet his second grandson, who was recently born. His daughter also reports that she had recently reached out to her father’s college fraternity brothers, who would “have loved to reconnect with him.”¹²⁰

¹¹¹Pseudonym used to protect privacy.

¹¹² Email from DBH Deputy General Counsel to Disability Rights DC (Apr. 20, 2020); St. Elizabeths Unusual Incident Report for Catie Tucker (Apr. 18, 2020).

¹¹³ Justin Wm. Moyer, *St. Elizabeths patient who died of coronavirus was receiving leukemia treatment, recalled as a ‘gem,’* WASH. POST. (Apr. 30, 2020), https://www.washingtonpost.com/local/st-elizabeths-patient-with-no-known-family-was-receiving-leukemia-treatment-recalled-as-a-gem/2020/04/30/c0ef9c9c-8b0d-11ea-9759-6d20ba0f2c0e_story.html.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Pseudonym used to protect privacy.

¹¹⁷ Email from DBH Deputy General Counsel to Disability Rights DC (April 29, 2020); St. Elizabeths Unusual Incident Report for Lawrence Smith (Apr. 25, 2020).

¹¹⁸ Disability Rights DC telephone interview with Lawrence Smith’s daughter (Jan. 8, 2021).

¹¹⁹ *Id.*

¹²⁰ *Id.*

Mr. Smith's daughter reports being distressed and concerned that "Hospital leadership did not take the virus more seriously" and do more to prevent the spread of the virus. In addition, although the medical hospital called her and updated her about her father's condition, no one from St. Elizabeths reached out to her after he became ill from the virus or even after his death. She found it very distressing when St. Elizabeths did not assist her in obtaining her father's personal belongings and is upset that she still does not have them. "I know he had cards, photographs, other memorabilia and other possessions that I would like to have. At a minimum they could ship them to me." She also feels that St. Elizabeths did a "poor job overall on educating the family regarding his care."¹²¹ He was loved and will be missed.

Martha Greene¹²²

Ms. Greene died on May 2, 2020, from complications of the COVID-19 virus.¹²³ Her daughter told Disability Rights DC that she was "heartbroken" and that it was hard for her to express how difficult her mother's death has been. She remembers her mother as a "vibrant, beautiful woman" with a "beautiful smile and warm eyes" who was "very special and a big part of my life."¹²⁴ Her daughter reported that she had concerns about whether the Hospital was taking the necessary steps to prevent the virus from spreading to the patients from the staff. She was distressed because her mother was showing symptoms of the virus for several days, however, St. Elizabeths delayed sending her to the hospital for treatment.¹²⁵ She also had multiple concerns about the quality of care that her mother received prior to COVID 19, including bed sores, missing toenails, overmedication, and dehydration requiring hospitalization. She is greatly missed by her family and her daughter still struggles with her mother's death. "What am I going to do without her? Why didn't someone care enough?"¹²⁶ She was loved and will be missed.

IV. ABUSE AND NEGLECT AT ST. ELIZABETHS HOSPITAL

Examples of St. Elizabeths' failures to protect the patients entrusted to its care is nothing new. In addition to the Hospital's failure to take action immediately to protect the patients from COVID-19, patients have suffered, and even died at St. Elizabeths following neglectful conduct. In the past years, Disability Rights DC has highlighted multiple serious incidents of staff abuse and neglect in several reports.¹²⁷ In October 2018, Disability Rights DC released a public report, which detailed the tragic death of a thirty-nine-year-old patient who died from a brain bleed -- a condition that can be treatable if medical care is provided in a timely manner.¹²⁸

¹²¹ *Id.*

¹²² Pseudonym used to protect privacy.

¹²³ Email from DBH Deputy General Counsel to Disability Rights DC (April 29, 2020); St. Elizabeths Unusual Incident Report for Martha Greene (April 25, 2020).

¹²⁴ Email from Martha Greene's daughter to Disability Rights DC (Jan. 8, 2021).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See the Disability Rights DC website "Resources" section for past reports: <http://www.uls-dc.org/resources/>.

¹²⁸ Disability Rights DC, *A Patient's Suffering and Death at St. Elizabeths Hospital*, (Oct. 1, 2018), <http://www.uls-dc.org/media/1166/investigationfinalpublic.pdf>.

In 2019 and 2020, Disability Rights DC released three reports describing incidents of abuse and neglect. One detailed St. Elizabeths' illegal seclusion of multiple patients in seclusion type rooms that resembled prison solitary confinement cells.¹²⁹ The most recent reports described the alarmingly high use of restraint and seclusion, as well as many incidents of staff using abusive and illegal restraints and seclusion tactics.¹³⁰ The reports noted that the Hospital's own public reporting statistics showed that in 2018, staff employed 782 restraints and 291 seclusions -- a shocking increase from only six years earlier, when staff used restraints only five times and seclusions only 30 times for the entire year.¹³¹ The reports also detailed the problems with multiple disturbing incidents of restraint and seclusion. In each investigated incident, St. Elizabeths staff violated numerous D.C. laws, D.C. regulations and Hospital policies.¹³² In one incident staff conducted a dangerous and unauthorized restraint causing a patient to suffer a broken leg and arm.¹³³ Two incidents were caught on videotape which showed as many as thirteen staff persons converging on the patients in an unreasonable show of force and placing the patients in an illegal and unjustified four-point restraint.¹³⁴ Moreover, staff placed one suicidal patient in seclusion multiple times even though Hospital policy states that seclusion is contradicted for suicidal patients.¹³⁵ Disturbingly, staff restrained and/or secluded another patient with a trauma history and an intellectual disability more than sixty-five times in a six-month period without following planned behavioral interventions meant to prevent restraint and seclusion.¹³⁶ Additionally, staff restrained and secluded another patient with a trauma history multiple times without attempting less restrictive alternative strategies, which is required by D.C. law and Hospital policy.¹³⁷

In addition to staffing issues, St. Elizabeths has faced structural issues that have impacted the safety of the patients and staff. In September 2019, the water system at St. Elizabeths became contaminated with a dangerous, possibly life-threatening bacteria, preventing patients'

¹²⁹ Disability Rights DC, *Solitary Confinement at St. Elizabeths Hospital*, (Jan. 28, 2019), <http://www.uls-dc.org/media/1173/reportfinal12819.pdf>.

¹³⁰ Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020), <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

¹³¹ *Id.* at 10. PRISM Report December 2018, PRISM Data Tables at #4; PRISM Report December 2012, PRISM Data Tables at #4. Alarmingly, these numbers do not include the use of drugs as a restraint.

¹³² See Disability Rights DC, *Dangerous Restraints: Mistreatment and Harm at St. Elizabeths Hospital*, (July 31, 2019), <http://www.uls-dc.org/media/1183/srreportfinal73119.pdf>; Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020), <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

¹³³ Disability Rights DC, *Dangerous Restraints: Mistreatment and Harm at St. Elizabeths Hospital*, (July 31, 2019), <http://www.uls-dc.org/media/1183/srreportfinal73119.pdf>. Staff failed to document or implement meaningful, less restrictive alternatives to restraint. D.C. Mun. Regs. tit. 22A § 501.2(b). Staff did not employ safe techniques prior to and during the restraint. D.C. Code § 7-1231.09(d)(2); See Safety Care - Behavioral Safety Training Manual. And staff did not provide adequate or timely medical care to a patient after he sustained serious injuries. D.C. Code § 7-1231.09(f); SEH Policy 103.00(III)(A)(20).

¹³⁴ Disability Rights DC, *Dangerous Restraints: Mistreatment and Harm at St. Elizabeths Hospital*, (July 31, 2019), <http://www.uls-dc.org/media/1183/srreportfinal73119.pdf>; Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020), <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

¹³⁵ Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020) at 18, <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

¹³⁶ Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020) at 21, <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

¹³⁷ Disability Rights DC, *Abuse Unabated: Restraint and Seclusion at St. Elizabeths Hospital*, (Sept. 2020) at 13, <http://www.uls-dc.org/media/1209/abuseunabatedfinal.pdf>.

access to safe running water.¹³⁸ Approximately one month later, when the Hospital failed to adequately remedy the situation in a timely manner, the patients filed a class action suit against the Hospital alleging that the situation was “inhumane, unsafe” and that patients were enduring “medically dangerous conditions that risk [their] health, mental health, and safety.”¹³⁹

V. CONCLUSION

St. Elizabeths asserts that its vision is to provide “a healing environment with dedicated and committed people who provide high quality care that supports recovery and treatment,” and that the Hospital “prides itself on providing the best possible care available.”¹⁴⁰ The administration has failed to fulfill this promise. As of February 23, 2021, 100 patients have become infected with COVID-19, and seventeen patients have died from the virus.¹⁴¹ St. Elizabeths does not report on how many patients have suffered serious debilitating illness, have required extended hospital stays and/or ventilator support, or are experiencing long lasting effects from the virus -- though many surely have.

The patients at St. Elizabeths were not free to leave. They had no choice but to remain at the Hospital while the virus silently spread and the leadership responsible for their care and treatment failed to take the steps necessary to protect them. Staff reported that they were not provided with the equipment and resources they needed to adequately protect the patients.¹⁴²

The necessity of Court involvement to compel St. Elizabeths to comply with CDC guidelines is of tremendous concern. Disability Rights DC had urged the Hospital to take that action in March of 2020, a month before the lawsuit was filed, and on April 2, 2020, even met via teleconference with DBH and Hospital leadership to implore the Hospital to take precautions. Sadly, deaths began five days later. Repeated, urgent pleas from Disability Rights DC for the Hospital to obtain additional on-site, expert assistance were not implemented. This deadly delay, the prior investigations and reports by Disability Rights DC describing abuse and neglect related to medical care and restraint and seclusion, and the issues with lack of clean running water

¹³⁸ Justin Wm. Moyer, *St. Elizabeths Hospital without drinking water after legionella bacteria found*, WASH. POST. (Oct. 3, 2019), https://www.washingtonpost.com/local/st-elizabeths-hospital-without-drinking-water-after-legionella-bacteria-found/2019/10/03/0a5f5508-e5f4-11e9-9509-1c2de25796d8_story.html.

¹³⁹ Pls. Compl. 5, *Costa v. Bazron*, 456 F. Supp 3d 126 (D.D.C. Oct. 23, 2019) (No. 1). Plaintiff’s alleged that the patients were without potable water for almost a month, and that the patients could not “shower, wash their hands, or use the toilets regularly.” They also noted that “fecal matter, urine, and menstrual blood are accumulating in the bathrooms” and that the patients were “only allowed to shower on a limited schedule and must shower outside in dirty and portable showers which are inaccessible to the many patients with mobility disabilities.

¹⁴⁰ <https://dbh.dc.gov/page/saint-elizabeths-hospital>.

¹⁴¹ <https://coronavirus.dc.gov/page/human-services-agency-covid-19-case-data>. In addition, 233 personnel at the Hospital had tested positive.

¹⁴² See Justin Moyer, *Coronavirus Cases Reported at D.C.’s St. Elizabeth Hospital, Homeless Shelters*, WASH. POST. (Apr. 1, 2020) https://www.washingtonpost.com/local/coronavirus-cases-reported-at-dcs-st-elizabeths-hospital-homeless-shelters/2020/04/01/05532c98-7423-11ea-ae50-7148009252e3_story.html; Justin Wm. Moyer, Fenit Nirappil, & Alyssa Fowers, *Most St. Elizabeths Patients Under Quarantine After Four Coronavirus Deaths*, WASH. POST. (Apr. 15, 2020), https://www.washingtonpost.com/local/most-st-elizabeths-patients-under-quarantine-after-four-coronavirus-deaths/2020/04/15/37aec03e-7e6a-11ea-8de7-9fdff6d5d83e_story.html; Amanda Michelle Gomez, *With 4 Deaths and Dozens of COVID-19 Cases at D.C.’s Public Psychiatric Hospital, Patient Advocates Fear it was Not Prepared*, WASH. CITY PAPER (Apr. 16, 2020), <https://washingtoncitypaper.com/article/175382/with-4-deaths-and-dozens-of-covid19-cases-at-dcs-psychiatric-hospital-patient-advocates-fear-it-was-not-prepared/>.

compound fears that the St. Elizabeths will continue to fail the patients entrusted to its care. Without a full commitment to meaningful, long lasting reforms and accountability of Hospital leadership, patients will surely continue to suffer.

VI. RECOMMENDATIONS

1. DBH must require Hospital leadership to respond to the failures outlined in this report and provide corrective action to address them.
2. The Hospital must protect the patients at St. Elizabeths and leadership must ensure staff adequately implement CDC guidelines and other professional standards throughout the remainder of the pandemic. Leadership must carry out specific, regular, and documented oversight and report the results to the public so that the District can have confidence that the Hospital is providing the care its citizens deserve.
3. The Hospital must continue to implement Disability Rights DC's prior recommendations. DBH must provide additional resources to the expert restraint and seclusion consultant so that her reforms are effectively implemented by all staff. DBH and the Hospital administration must set and meet clear goals, including the number of restraints and seclusions to be reduced each month, with the goal of eliminating the use of any restraints and seclusions.