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Medical Association
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HEALTH &
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SERVICES

March 31, 2020

Washington State Supreme Court
415 12th Ave SW
Olympia, WA, 98501-2314

Re: Proposed Courts Orders on Involuntary Treatment Act (Hearings) during COVID-19 Emergency

Dear Chief Justice Stephens and Members of the Washington State Supreme Court,

On behalf of the designated crisis responders, law enforcement, physicians and community behavioral health providers of Washington, we write in support of the Washington State Hospital Association's position on the proposed order requested by the Washington Association of Criminal Defense Lawyers and the Washington Defense Association on March 27, 2020 ("The Defense Order"), which would require hospitals and freestanding Evaluation and Treatment facilities (E&Ts) to provide defense attorneys wishing to visit their clients with personal protective equipment and specific types of videoconference technology or, if not provided, would result in dismissal of cases. We respectfully request that the Court deny their request.

Patients experiencing a psychiatric or substance use disorder crisis and who have met detention standards under the Involuntary Treatment Act need their cases decided on the merits and facts of the individual's illness and behavior not dismissal of cases based on technicalities. The safety and due process rights of individuals are critically important, yet we believe a balance can be struck to ensure due process without further burdening the system of care on the front lines of the coronavirus (COVID-19) crisis or denying care to patients experiencing psychiatric or substance use disorder crises.

We agree with the hospitals and E&Ts that they will not always be able to comply with the terms of the Defense Order and it will result in ITA cases being dismissed. We have strong concerns about this, both for what it means for the individual patients and for public health and our overall response to the emergency.

Washington state is in the middle of battling a pandemic with COVID-19. The Defense Order is out of touch with what is happening right now in hospitals, E&Ts, and communities. Under its terms:

- **Hospitals and E&Ts would be required to provide attorneys personal protective equipment (PPE) regardless of whether their clients were exposed or contracted the virus**—contrary to CDC guidance and despite the fact that hospitals in Washington state at the direction of federal and state official have deployed severe conservation strategies for PPE as a result of a worldwide shortage. In fact, on March 19, 2020, the Governor issued a proclamation to halt

elective and non-urgent surgeries (including for slow-growing cancers) and dental services in order to conserve these desperately needed resources.

- **At a time when hospital and E&T beds are in short supply, more staff will be required to facilitate and supervise the use of video technology**—despite the fact that there is a significant staff shortage as a result of school closures and increased demand on services, together with a growing infection rate. In fact, on March 26, 2020, the Governor issued a proclamation waiving various licensing and credential requirements for health care providers in order to increase our health care workforce.
- **Video access would be required for attorneys to meet with their clients triggering a significant demand for hardware and software**—at a time when demand is soaring due to the urgent need to shift to providing virtual health care to divert people away from hospitals and exposure to the virus. As well, it is our understanding that defense counsel regularly (apart from the present public health emergency) use telephone to consult with clients. For some facilities, video access has been implemented and is working quite well; for others, it can be unduly burdensome, requiring more staff supervision and posing an additional safety hazard. It is imperative during this public health crisis, that hospitals and E&Ts are allowed the flexibility to determine what type of communication, whether in-person, video conferencing, or telephonic, would work best for their facility.

If ITA cases are not decided on their merits, or at the very least, the process viewed on a case-by-case basis and in light of the unprecedented circumstances we find ourselves in, these patients will be discharged still meeting criteria for involuntary detention. This presents a challenge for those patients needing immediate psychiatric or substance use disorder care and to law enforcement and hospital emergency departments, where the patient may likely seek care again or be brought for another evaluation. The emergency department is precisely where no one should be unless absolutely necessary as a result of the virus. The risk is two-fold: exposing the patient to the virus and increasing pressure on hospital and E&T bed capacity and staff resources, therefore limiting our collective ability to respond to the public health crisis at hand. The Defense Order will have ripple effects on other resources as well, such as increasing demand for designated crisis responder evaluations and other first responders such as fire departments and medics.

None of this is to suggest that a person's due process rights should be suspended or otherwise ignored, or their access to vital psychiatric or substance use disorder care denied. Hospitals and E&Ts should continue to make best efforts to facilitate attorneys' remote access to their clients. However, right now it is imperative that these facilities have flexibility in their operations. We all need that in order to respond to the crisis before us.

Thank you for your consideration.

Sincerely,
The Washington Council for Behavioral Health
The Washington Association of Designated Crisis Responders
The Washington Association of Sheriffs and Police Chiefs
Olympia Health & Recovery Services
Snohomish County Crisis Services
Washington State Medical Association