BOSTON MEDICAL CENTER

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April 21, 2021

Mandated Reporter Commission
C/O Office of the Child Advocate
One Ashburton Place, 5th Floor
Boston, MA 02108

Submitted via email to mandated.reporter.commission@mass.gov

Re: Comments on Mandated Reporter Commission Status Report

Dear Members of the Mandated Reporter Commission:

Thank you very much for providing the opportunity to submit comments on the Mandated Reporter Commission (MRC) Status Report. We appreciate the Commission's willingness to engage interested stakeholders as you complete your review of the Mandated Reporter Law and for the continued dialogue on these important issues. These comments are submitted jointly by the Child Protection Team, the SOFAR Clinic, and the Domestic Violence Program, all at Boston Medical Center. Boston Medical Center is a 514-bed academic medical center that serves patients both in Boston and throughout the Greater Boston Area. We are the largest safety-net hospital in New England and we take pride in providing services to an exceptionally resilient and diverse community of patients.

The Child Protection Team at Boston Medical Center is a multidisciplinary team comprised of physicians, social workers, and others with training and expertise in the area of child abuse and neglect. We understand the vulnerabilities of children and the profound and irreversible impact that trauma has on patients and families, having too often seen the often tragically preventable consequences of child maltreatment in our daily work.

The Domestic Violence Program at Boston Medical Center has worked to improve the hospital's response to victims and survivors of intimate partner violence since 2006. In addition to providing multilingual direct services, we also train and educate professionals of all disciplines on how to respond to and support survivors and their children in the safest and most effective ways.

The SOFAR (Supporting Our Families in Addiction and Recovery) Program at Boston Medical Center is a medical home within the hospital's pediatric primary care clinic for parents in recovery and their children. SOFAR's multidisciplinary team provides intensive support for families to enhance child development as well as ongoing support for parents in accessing their own services. SOFAR provides high-quality, coordinated medical and psychosocial care for families to maximize their ability to successfully navigate parenting and substance use recovery.

Overview: Longstanding Racial Injustices and Disparate Impacts in Child Welfare

Before commenting on the specifics of the Mandated Reporter Commission, we feel it is essential to acknowledge the historical injustices and structural racism that have formed the foundations of the American child welfare system since its inception. As participants in the modern-day version of this system, we recognize our own role in perpetuating these wrongs and work to hold ourselves

accountable as we advocate for justice-, diversity-, and trauma-informed change. By extension, we recognize that reducing the incidence and prevalence of child maltreatment requires multi-system change aimed at eradicating child poverty, addressing structural racism, providing trauma-informed response, and maintaining our focus on protecting infants and children at risk for serious maltreatment. In our efforts to identify and prevent child abuse and neglect, it is our priority to support efforts focused on ensuring that legislation, policies, and agency guidance reflect best practices and research-based evidence to protect children and to minimize harm.

The disproportionate impacts of the child welfare system on communities of color are well-studied nationally (Kim 2017). In Massachusetts, the most recent Annual Report released in 2019 by the Department of Children and Families (DCF) documented that Black and Latinx children had a 3x and 2.6x higher likelihood, respectively, of having an open DCF case than White children. Furthermore, the same dataset showed that these disparities persisted in removal rates of Black and Latinx children who were respectively 2.5x and 2.6x more likely to have an out-of-home placement than White children in the Commonwealth (DCF, 2019). Furthermore, a robust body of evidence supports the assertion that it is of paramount importance to address the profound impacts of racism, bias, and structural inequities that frame reporting mechanisms and individual decisions to report (Krase, 2015).

We support the Commission's goal of better identifying and responding to cases of abuse and neglect, increasing accuracy in reporting, and decreasing unnecessary reports that detract from the objective of keeping children safe and divert the finite investigatory resources of the Department away from high-risk cases. Nonetheless, we are highly concerned that specific changes proposed by the Commission will have serious and immediate negative consequences for the patients and families we serve. We are mindful of the risk of recapitulating the mistakes of the past and have made every effort to use this historical lens as we frame our comments in response to the changes proposed by the Commission.

In the interest of clarity, we have outlined these concerns topically below.

We oppose lowering the threshold to report

Lowering the threshold for reporting from a "reasonable cause" to a "suspicion" standard would have serious ramifications for children and families. The impact of racial bias in reporting and the consequences of racial disproportionality in the child welfare system cannot be overstated. In addition, increased investigation is not a benign intervention. It has a human and financial cost, and research has identified that such investigations can result in "significant disruption" of family life (Melton, 2005). We believe that the proposed change would increase spurious reports, burden area offices with unnecessary investigations, and place vulnerable families at risk for a cascade of punitive consequences.

We oppose broadening of the definition of neglect

Under consideration by the Commission is revision of the definition of child neglect. Current mandated reporting laws exclude failure to provide the basic necessities due solely to inadequate economic resources or to the existence of a handicapping condition from the definition of neglect. It would be detrimental to children's health and well-being to remove the exception that the inability of a parent to meet a child's basic needs due to poverty constitutes neglect. Families that face financial hardship and are struggling to meet basic needs should be encouraged to seek out services to meet their family's needs without fear of being met with an allegation of wrongdoing.

We support the approach that the ability of a caregiver to access and obtain services to meet the needs of a child is a protective factor and any barrier or deterrent to accessing those services, such as the fear

or threat of mandated reporting, negatively impacts children's wellbeing (Melton, 2005). Families who access social services are more likely to be reported to child welfare due to their increased visibility to mandated reporters (Krase, 2015). As more and more Accountable Care Organizations implement state-mandated screening of patients and families for social needs in order to better address so-called social determinants of health, fear of being reported to DCF could make parents hesitant to respond truthfully regarding basic needs they are screened for, in particular their housing status, ability to pay for utilities, and food insecurity. Families we serve at BMC have expressed these very fears.

We oppose over-expansion of the definition of mandated reporters

As other stakeholders have noted, the broad swath of professions that the Commission proposes to include as mandated reporters (information technologists, computer or electronics technicians, for example) will likely lead to under-informed over-reporting that could have the same disproportionate impacts outlined above. While expanding categories of those mandated to report is an important consideration, this must be done wisely and with an awareness of potential unintended consequences. This is especially important when coupled with the increased fines proposed by the Commission for failure to report and the lack of specificity with regards to training newly designated mandated reporters. Taken together, we fear these proposals could present perfect storm for reports that are spurious, unfounded, and can have harsh and lasting impacts on vulnerable families as detailed above.

We support the enhancement of mandated reporter training

We share the goal of improving the accuracy of reporting protective concerns, and to first do no harm. Training of mandated reporters should focus not only on what is reportable but also on what is not. For example, DCF has indicated in its own guidance to mandated reporters that not all child witnessing of domestic violence is reportable, and that there are important safety considerations when filing reports of child abuse in the context of DV due to the risk of retaliation against the protective parent by the abuser. Training that encourages the use of critical thinking to identify if bias may be impacting the reporter's conceptualization of what constitutes abuse or neglect, and if the situation rises to the threshold of mandated reporting.

Lack of understanding of what constitutes child maltreatment can lead to increased bias in reporting in over-reporting and underreporting (Krase, 2015). Even among those who are mandated reporters under the current statutes, we see reports filed when no report was required, unsubstantiated investigations which receive little to no service beyond the investigation itself, and reports filed in ways that put domestic violence survivors and their children at great risk. DCF has gone so far as to add a section to the 51A report allowing for information about DV and the protective parent's efforts to keep their child safe, so that they will have this information when deciding whether to screen a report in, and how to investigate without exacerbating the risk to the family. Our concern with the proposed expansion of who qualifies as a mandated reporter is that these incidents of unsafe reporting will greatly increase, as there is no mechanism for reaching all the people who might be in a position to feel obligated to report suspected abuse.

Massachusetts law already allows *anyone* to report a protective concern to DCF for any reason. We believe that the combination of expansions of what must be reported, who must report, and the increased penalties for not reporting will result in disproportionate added risks and harms without significant benefit. Those children who are truly at risk will be even more difficult to identify and protect by an already overburdened and under-resourced system.

We support ending the practice of reporting MOUD in the absence of protective concerns
Medication for Opioid Use Disorder (MOUD), along with counseling and behavioral therapies for the treatment of substance use disorder, are evidence-based best practices for treating pregnant persons and parents (SAMSHA 2018). Increasing access to effective treatment serves as a protective factor and the use of medication to treat a medical condition does not indicate a child is abused or neglected. The current language in MGL c. 119 §51A(a) specifically, *"(iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the department orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect*", does not accurately reflect current advances in treatment of substance use disorder and imposes a punitive penalty on pregnant persons who seek treatment for substance use disorder. We urge the Commission to consider adopting the changes to Section 51A that have been proposed in H.221, *An Act to support families* filed by Representative Garballey (https://malegislature.gov/Bills/192/H221). Additionally, we support the creation of a requirement for an anonymous reporting track through the Department of Public Health surveillance reporting system for MOUD and to reserve reporting to DCF for those infants for whom specific protective concerns have been identified.

In summary, we share in the goals of the Commission to improve the response to, and prevention of, child abuse and neglect. In our view, the Commission's proposed changes to lower the threshold to file, to broaden the definition of neglect, and to expand those identified as mandated reporters would likely result in more total reports but would not increase substantiated reports, nor result in a reduction in child maltreatment. In addition, these changes would come at the cost of detracting from priority investigations of high-risk cases while imposing a stiff penalty of biased and spurious reports on families who already bear the disproportionate impacts of structural racism and inequity that permeate our systems.

Hence, in summary, our public comment offers the following responses to the Commission's report as detailed above:

1. **We oppose lowering the threshold to report**
2. **We oppose broadening of the definition of neglect**
3. **We oppose over-expansion of the definition of mandated reporters**
4. **We support the enhancement of mandated reporter training**
5. **We support ending the practice of reporting MOUD in the absence of protective concerns**

We look forward to engaging in an ongoing dialogue with the Commission and other stakeholders so that we can work together for legislative change that will combat the effects of systemic racism and discrimination on families while also protecting infants and children from abuse and neglect.

Sincerely,
Elizabeth Egan LICSW, MPH
Social Work Co-Coordinator, Child Protection Team, Boston Medical Center

Genevieve Preer, MD
Assistant Professor, Boston University School of Medicine
Medical Co-Coordinator, Child Protection Team, Boston Medical Center

Joanne Timmons, MPH
Domestic Violence Program Manager, Boston Medical Center

Jill Baker, LICSW
Social Worker, SOFAR Program, Boston Medical Center

Eileen Costello, MD
Clinical Professor of Pediatrics, Boston University School of Medicine
Chief of Ambulatory Pediatrics, Boston Medical Center
Co-Director, SOFAR Program, Boston Medical Center

Kristin Reed, C-CHW
Patient Navigator, SOFAR Program, Boston Medical Center

Sara Stulac, MD, MPH
Associate Professor, Boston University School of Medicine
Associate Medical Director for Primary Care, Pediatrics
Co-Director, SOFAR Program, Boston Medical Center

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