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**STATE OF MAINE
KENNEBEC, ss.**

**SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: CV-89-088**

PAUL BATES, et al.,

Plaintiffs

v.

**BRENDA HARVEY, COMMISSIONER,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,**

Defendants

**COURT MASTER'S
PROGRESS REPORT**

NOVEMBER 21, 2006

STATE OF MAINE

SUPERIOR COURT

KENNEBEC, ss.

CIVIL ACTION

DOCKET NO. CV-89-088

PAUL BATES, et al.,

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PROGRESS REPORT
PURSUANT TO PARAGRAPH 299

BRENDA HARVEY, COMMISSIONER,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al,

Defendants

The following Report covers the period from May 1, 2006 to October 31, 2006:

Managed Care:

The Department continues to work on a managed care plan for mental health services but the outcome of the effort and the timeline for completion remains uncertain. I continue to attend and monitor all meetings of the managed care stakeholders' group. Preliminary service reviews have been conducted with a number of providers and there is some indication that there is an appreciable deviation from a *pro forma* level of care criteria. The actuarial study needed to demonstrate that the system redesign would be cost neutral, may be completed by the end of December. No date has yet been established for requesting proposals from prospective managed care organizations and no decision has been made as to the degree of risk that will be imposed on the selected contractor. At this point, it is not possible to reliably predict the outcome of this initiative. From my perspective, managed care is merely one possible means of supplying the enhanced level of management that is required for the mental health system.

Completion of Comprehensive Mental Health Plan:

Pursuant to Paragraph 293, I entered an order on October 13, 2006 approving the Adult Mental Health Services Plan submitted by the Department. The approved version of the plan was the product of the joint effort of officials of the Department, their counsel and counsel for the plaintiffs. With the plan now in place, the next task is to craft standards pursuant to Paragraph 291 to evaluate and measure the Department's compliance with the terms and principles of the Settlement Agreement and the approved plan. Using a football metaphor, these standards have often been referred to as the goal posts. The three major areas of focus for the compliance standards are: the performance measures specified in the agreement and the plan; the demonstrated ability of the Department to identify unmet needs of class members and address those needs in a timely manner; and, the reasonableness of the State's commitment of resources to the provision of mental health services.

Progress relating to compliance:

The Department's report for the quarter ending September 30, 2006 is attached hereto and documents the progress made by the Department in implementing those portions of the plan which had been approved previously. The next quarterly report should be more complete and a better measure of progress since it will reflect the final plan. The plan calls for the Department to generate unmet needs reports by March, 2007. These unmet needs reports are to aggregate the information obtained from individual service plans, and integrate that information with unmet needs data obtained from other sources, such as discharge planning activities at Riverview and Dorothea Dix, and clients who do not have an individual service plan. The ability to collect and assemble reliable information as to unmet needs is central to compliance. The Department is to use such information in planning, resource development, program design and

implementation. In short, the goal is to systematically convert unmet needs into the process for designing new programs and services, as well as the redesign of existing services.

Operation of Riverview Psychiatric Center:

Discharge planning. I have continued to review all discharges from Riverview that have been delayed beyond the time specified in the performance measures in the plan. I have continued to attend most weekly discharge meetings. The discharge process has been a longstanding problem at the hospital. The ease with which a client can move from the hospital back into the community mental health system is a prime indicator of the strength and quality of the entire mental health system. Lack of hospital capacity often reflects a lack of community capacity. The performance measures establish as targets that 75% of all civil clients will be discharged within 7 days of achieving clinical readiness, that 90% will be discharged within 30 days and 100% within 45 days. Progress has been made—the overall number of people “stuck” in the hospital has been reduced from a high of more than twenty to the present number of eight. Three of those are clients who, either refuse or are reluctant to participate in discharge planning. Four of the remaining clients present complex medical needs along with mental health needs and behavioral issues that complicate community placement. In such challenging cases, it is not easy to determine whether the task is merely finding a suitable vacancy or whether the client presents an unmet need because there is no suitable placement available. The result of such a quandary is often delay. The final client of the eight, has complex medical needs and a profound need for residential substance abuse treatment that is clearly unmet at the moment. Staffs of the hospital and the Office of Adult Mental Health Services deserve credit for the effort they make to insure that discharges from the hospital are timely. The hospital is a precious resource and should be maximally used for the purpose for which it was intended—a tertiary psychiatric facility. The

key to further progress is continued effective management of community providers and resources, together with an improved capacity for systematically identifying and responding to unmet needs in discharge planning.

Smoking Policy. On July 6, 2006, I recommended the approval of a no smoking policy for the hospital. A decision on that recommendation is now pending before this Court.

Security and Staffing Review. In response to incidents involving staff injuries and expressions of concern from members of the Legislature, I engaged Joseph Bevilacqua, Ph.D. to review issues of security and staffing at the hospital. Dr. Bevilacqua is an eminent mental health authority, having served as Commissioner of Mental Health in three different States. His review involved ten full days of on-site staff interviews. I expect to receive his report shortly and will review it with the Department and the appropriate legislative committees.

Hospital Visits. I continue to attend the monthly client forum along with the Superintendent of the hospital. These meetings offer insight into the perspective of the client and provide an opportunity to exchange information directly concerning subjects of interest such as the proposed revisions to the smoking policy. Clients offer constructive criticism but they also express appreciation for the efforts of the staff and the peer support workers. At the suggestion of the clients, I have begun to visit the wards on a routine basis to gain greater familiarity with the daily operation of the hospital. Thus far, I have timed my meetings to coincide with the weekly community meeting of the clients and staff on a particular ward.

CONCLUSION

Progress is being made but much work remains. I appreciate the cooperation I receive from the Office of Adult Mental Health Services and Riverview. I am impressed with the

commitment of the staffs at both locations. With the plan now in place, the next important steps from my vantage point are the completion of compliance standards and the systematic generation of aggregate unmet needs reports to guide resource and program development.

Dated: November 21, 2006

Daniel E. Wathen, Court Master