

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
KENNEBEC, ss.

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

PAUL BATES, et al.,

Plaintiffs

v.

COMMISSIONER,  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.,

Defendants

COURT MASTER'S PROGRESS  
REPORT PURSUANT TO  
PARAGRAPH 299

The following report covers the period from March 15, 2016 to November 30, 2016.

**Riverview Psychiatric Center**

During a spring marked by increased direct care staff vacancies and prolonged and excessive reliance on overtime and mandated shifts in order to maintain staff ratios, the hospital experienced a complete change in top management. The Clinical Director resigned effective March 16 and the Superintendent resigned effective April 4. Rodney Bouffard became Superintendent on April 19, with a former clinical director operating in an acting capacity. Since that time, the hospital has undergone significant changes in major areas of its operations, with many changes still underway and others planned for the future. Most if not all of the changes, such as a new work schedule for direct care workers, have resulted in improvement. Vacancies in the ranks of acuity specialists and mental health workers, which numbered sixteen at the beginning of 2016, have been virtually eliminated and reliance on mandated shifts and overtime has been significantly reduced for all direct care workers including nurses. There has been modest but meaningful improvement in the incidence of the use of seclusion and restraint and an increased emphasis on treatment planning, the delivery of active treatment and response to psychiatric emergencies.

Although there has been some improvement, staff vacancies in nursing positions still exist at undesirably high levels. At the beginning of 2016, there were 23 nursing vacancies out of a total of 87. Currently the hospital has nursing vacancies on average in the mid to high teens. Nurses' compensation has been increased to make it more competitive and the hospital has undertaken an extensive recruitment and advertising campaign but the fruits of those efforts have just begun to materialize. The process of restoring a full nursing staff will be slow because new

hires will replace traveling nurses who have been used to maintain staffing ratios during this past year.

With regard to psychiatric staffing, the hospital has hired a new Clinical Director who commenced employment on November 28. In addition, it has hired one psychiatrist as a permanent employee to enhance its staff made up of long term and short term contract providers. In my last report, I commented upon the discontinuity in treatment that is produced by the turnover resulting from the use of short term psychiatric providers. The results of the staffing discontinuity are particularly evident in the forensic and outpatient units. Forensic clients are dependent upon staff reports and recommendations when seeking court approval for additional privileges, community placement or discharge. The efficacy of those reports and recommendations can be and sometimes is influenced by the degree and duration of contact between the client and the psychiatric provider. To state it quite bluntly, expert opinion based on treatment over the course of one month may not be as persuasive as opinion based on months or years of observation and treatment. Reliance on short term psychiatric providers is a chronic problem and given the shortage of providers it will not be solved quickly. It is encouraging to see that the hospital has managed to make some progress in securing permanent psychiatric staffing.

For quite some time it has been evident that Riverview has insufficient capacity to deal with the number of clients requiring its services. Although there are waitlists for admission on both the civil and forensic side of the hospital, the most pressing need for additional capacity is presented by the forensic clientele. In August of 2012, I first informed the Court of the marked increase in the number of forensic clients being referred to Riverview. Since that time, the demand for forensic services has continued to rise. In the three month period of September through November, the hospital has on average had nine forensic clients waiting for admission either for sixty day evaluation or because of a finding of incompetence to stand trial. The delay in admission for such clients exceeds one month during which time they are usually kept in jail. The waitlist recently hit a high of sixteen forensic clients, eleven referred for sixty day evaluations and five having been found incompetent to stand trial. In addition on that particular day there were seven "jail transfer" clients awaiting admission as a result of referrals from county jails because of mental health issues and eleven clients awaiting admission to the civil side of the hospital. It is important to note that Riverview is rarely able to admit a "jail transfer" and that in the last several months several forensic admissions have been referred to Dorothea Dix Psychiatric Center in Bangor.

In September, the Department presented plans for a twenty one bed Secure Forensic Rehabilitation Facility to the City of Augusta Planning Board. The Department proposed to construct the facility on the former AMHI campus near Riverview and to have it operated by a private contractor. The unit was to house forensic clients from Riverview who no longer meet the requirements for a hospital level of care but who have not received court approval for placement in the community. In addition to responding to a need for capacity, the Department wishes to move these clients from Riverview because of the presumed impact that their presence has on the Department's effort to regain certification from CMS, thereby insuring Riverview's eligibility for federal funding. After securing Planning Board approval, the proposal has been delayed because approval has been withheld by the Legislative Council for construction on the

AMHI grounds. Discussions continue between the Administration and legislative leaders and it appears that approval may be forthcoming.

In any event, the need for increased capacity at Riverview remains evident and urgent. If plans for the new facility progress, it will be necessary to insure that the operator is bound by the relevant provisions of the consent decree, that the rights and protections afforded clients are honored, and that adequate access and reporting is afforded to ensure compliance.

### **Developments in Community Mental Health**

The Department has made progress in dealing with the waitlists for some mental health services that exist in the community. To give an example, the number of MaineCare and grant funded clients on a waitlist for community integrations services, the most basic form of mental health service, has been reduced from 610 at the beginning of 2015 to 135 in September of 2016. The average number of days that a client remains on a waitlist has been reduced from 48 days to 21 days and the number of clients waiting more than 60 days has been reduced from more than 150 to less than 10 during that same period. Although further improvement is still required if services are to be provided with no more than a 7 day delay, it is reasonable to expect that the goal can be achieved. The office of Substance Abuse and Mental Health Services has recently devoted additional staff to managing and supervising the waitlists of the providers of mental health services. In addition, contract management will, in coming days, continue to receive increased attention as evidenced by the Department's efforts to enforce Paragraph 277 as mentioned in my report dated February 8, 2016.

In July, the Department and its counsel, clients' counsel and I began a joint review of the performance reports of the Department and the provisions of the Consent Decree for the purpose of identifying the most significant trouble spots standing in the way of the Department achieving reasonable compliance with respect to community mental health. The broad categories identified are (1) housing (2) timely access to services (3) improving client employment opportunities, and (4) contract management for contracted mental health services. Since that time, the parties and I have considered a draft comprehensive plan for addressing those issues and the Department produced a proposed Contract Management & Enforcement Plan on November 29.

We have also undertaken a review of the reporting standards that have grown out of the Consent Decree with a view towards a sharper focus on the trouble spots as well as simplification and reduction of administrative burden. At this point, I have signed an order that deletes approximately two thirds of the data collection and reports required by performance standards. The order will not compromise the ability to obtain useful and necessary information regarding compliance but will eliminate the collection of information that is no longer useful or in dispute.

By way of summary, I would observe that Maine's mental health system remains challenged but the last several months have produced encouraging signs of improvement. The

parties and I are focusing on the steps necessary to achieve compliance both at Riverview and in the community mental health system.

Dated: December 13, 2016



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Daniel E. Wathen, Court Master