THE STATE OF NEW HAMPSHIRE

Merrimack County Superior Court
163 N. Main Street
P. O. Box 2880
Concord, NH 03301 2880
603 225-5501

NOTICE OF DECISION

MICHAEL K BROWN ESQ
SR ASSISTANT ATTORNEY GENERAL
33 CAPITOL ST
CONCORD NH 03301-6397

04-E-0203 Thomas Holliday, et als vs Stephen Curry Acting Commsr.

Enclosed please find a copy of the Court's Order dated 5/19/2006 relative to:

Court Order

05/22/2006

William McGraw
Clerk of Court

cc: Alan Linder, Esq.
Admin of Offender Records
Karen S. Aframe, Esq.
Elliot Berry, Esq.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Thomas Holliday, Earle Fox, Robert Duff, Andrew Higgins, Joseph Poitras and Charles Radziewicz, on behalf of themselves and all others similarly situated

v.

Stephen Curry, Commissioner, New Hampshire Department of Corrections, and Bruce Cattell, Warden, New Hampshire State Prison for Men

Docket No. 04-E-203

ORDER

Plaintiffs are inmates or former inmates of the New Hampshire State Prison for men in Concord. They claim that prison officials have not complied with certain provisions of the 1990, 2001 and 2003 Settlement Agreements, the so-called Laaman decrees. The Court held a hearing on this matter on December 19, 20, 21 and 22, 2005 and January 4 and 5, 2006. The parties submitted their requests for findings and rulings on February 6, 2006. After considering all of the testimony and evidence presented in this matter, the Court finds and rules that defendants have materially breached certain provisions of the 1990, 2001 and 2003 Settlement Agreements as set forth in the Court's findings of fact and rulings of law, which are incorporated by reference herein. The Court orders the following relief.

I. Specific Performance

1. Defendants shall specifically perform, as set forth below, all of the provisions of the 1990, 2001 and 2003 Settlement Agreements which they have been found to have materially breached, as set forth in the Court's findings of fact and rulings of law, which are incorporated by reference herein.

II. Compliance Plan

1. Within 60 days of the date of this order, defendants shall file a Compliance Plan with the Court. The Compliance Plan shall set forth in detail the steps that defendants propose to take to achieve full compliance with relevant provisions of the Settlement Agreements as articulated in the subparagraphs A-G below, within one year of this order unless otherwise specified.

2. Defendant's Compliance Plan shall include the following provisions to assure that specific performance is achieved in a timely manner with respect to each of the Settlement Agreement items that defendants have materially breached:

A. Residential Treatment Unit (RTU)

1) In accordance with paragraphs 3-6 of the 2001 Settlement Agreement, defendants shall create a separate housing unit at the New Hampshire State Prison (NHSP) for a RTU for inmates with serious mental illnesses including personality disorders associated with affective instability, impulse control problems and borderline features, who currently do not require psychiatric hospitalization, but have substantial difficulty functioning adequately within the general prison population due to significant functional impairments. The RTU shall be staffed by a sufficient number of qualified clinical mental health staff, prescriber staff, nursing staff and specially trained correctional officers who are specifically assigned to the RTU. The RTU shall have sufficient and appropriate group therapies and structured activities therapies, which shall include recreational therapy provided by a qualified recreational therapist. Residents of the RTU shall have access to all other prison programs, activities, and services such as

medical care, education and vocational training, normally available to inmates in the general prison population.

2) If the RTU is located in the same building as the Secure Psychiatric Unit (SPU), the RTU and SPU shall have separate staff and living areas for residents. The RTU and SPU populations shall not be mixed for housing purposes. Admission to the RTU shall not include the requirement that the inmate be dangerous to self or others, criteria for admission to SPU, as set forth in RSA 622:44, I and Cor 304.06(e). The RTU shall be available for inmates housed at any Department of Corrections facility, including State prisoners who reside in the SPU.

B. Staffing for the Mental Health Unit

Defendants shall staff the Mental Health Unit (MHU) with at least eight (8) full time equivalent qualified, non-prescriber clinicians, as described in paragraphs 63 (a) and 63 (b) of the 1990 Settlement Agreement. The eight positions shall include the clinician position required by paragraph 19 of the 2001 Settlement Agreement.

C. Group Therapies

1) In accordance with paragraphs 55 (c), 55 (d) and 57 of the 1990 Settlement Agreement, defendants shall provide all of the group therapies that the Chief of Mental Health has already deemed clinically appropriate and necessary for inmates at NHSP, as described in his testimony at trial on December 21, 2005. Defendants shall offer the first such group therapy beginning on the first business day of September 2006. Defendants shall thereafter offer at least one new group therapy on the first business day of each succeeding month until all of the above group therapies are being provided.

2) Defendants shall continue to provide each of the above group therapies on a continuing basis until such time as the Chief of Mental Health and/or the Director of Medical and Forensic Services determines that a particular group therapy is no longer needed or appropriate.

3) Defendants shall assess on an on-going basis what new or continued group therapies are necessary and appropriate for inmates at NHSP, and shall provide such therapies in a clinically appropriate format and within a clinically appropriate timeframe.

4) The group therapies referenced in subparagraph (1) above shall include a group therapy designed for inmates in the Special Housing Unit (SHU) who have a serious mental illness as defined in paragraph (3) of the 2001 Settlement Agreement.

5) Defendants shall provide written notice to plaintiffs' counsel at least thirty (30) days prior to the addition or termination of any group therapy in subparagraphs (1) through (4) above.

D. Medication Delays

1) Defendants shall include in their Compliance Plan, draft policies to address the systemic medication delays described in the Court's findings and rulings.

2) Defendants' policies shall include a system of follow-up and tracking in accordance with paragraph 42(g) of the 1990 Settlement Agreement, which shall ensure that inmates receive their medications in a timely manner. These policies shall specifically address at least the following types of delays:

a. Refills
b. Renewals
c. Housing Unit transfers
d. Facility transfers
e. Discharge from SPU

f. SHU
g. Pharmacy
h. Delivery mechanisms

3) In preparing such policies, defendants shall give due consideration to modifying or eliminating the current policy of "inmate initiated" refills.

4) Defendants' policies shall include provision for installation of appropriate software to enable the pharmacy to generate a medication expiration report on a weekly basis. Such report shall be distributed to appropriate persons and departments, to include the pharmacy, MHU, prescribers and the Administrative Director of Medical and Forensic Services. Defendants' policies shall also include a provision for tracking the medication refill process to be able to determine the source of any delay.

E. Software for a Computerized Data Management Information System for the Mental Health Unit

In accordance with paragraph 27 of the 2001 Settlement Agreement, defendants shall present a plan to have a fully operational, multi-user data management information system for the Mental Health Unit (MHU).

F. Special Housing Unit (SHU): Clinical Appointments

In accordance with paragraph 8 of the 2001 Settlement Agreement, clinical appointments shall be scheduled at least every 14 days with each inmate in SHU who is prescribed psychotropic medications or is in the Healthy Pathways Program. These clinical visits shall take place outside of the inmate's cell in a clinically appropriate setting in SHU that ensures both privacy and safety. Such clinical appointments with a MHU clinician shall be in addition to prescriber medication management visits and

"rounds" conducted in SHU. These clinical appointments shall begin on or before the first business day in September 2006.

G. Secure Psychiatric Unit: Group Programs

1) Defendants shall provide on a continuing basis in SPU all of the group therapies that the Director of Medical and Forensic Services has already deemed clinically appropriate for inmates in SPU in accordance with paragraph 57 of the 1990 Settlement Agreement, as described in his testimony at the trial on December 21, 2005.

2) Defendants shall assess on an on-going basis what new or continued group therapies are necessary and appropriate for inmates in SPU.

3) Defendants shall provide all structured activity therapies, including recreational therapy, that the Director of Medical and Forensic Services deems clinically appropriate for inmates in SPU.

4) Defendants shall provide written notice to plaintiffs' counsel at least (30) days prior to the addition or termination of any group therapy in subparagraphs (1) through (3) above.

5) Defendants shall provide such clinical and correctional staff in SPU as is necessary to provide the above group therapies and structured activity therapies on a regular and on-going basis without undue interruption in programming.

III. Actions to Take Effect Immediately or Within 60 Days

A. SHU: Monitoring of Mentally Ill Inmates

1) The Court granted summary judgment in favor of the plaintiffs and against the defendants on this claim on November 28, 2005. Effective immediately, defendants shall continue to monitor each inmate in SHU who is prescribed psychotropic medications or

is in the Healthy Pathways Program. Such monitoring rounds shall take place at least every 30 minutes, 24 hours a day, seven days a week in accordance with paragraph 10 of the 2001 Settlement Agreement.

2) Defendants shall document such monitoring contemporaneously during these monitoring rounds.

B. SHU: Precautionary Watch

1) Effective immediately, defendants shall continue to conduct all mental health precautionary or suicide watches in the Health Services Center or in SPU in accordance with the directive of the Assistant Commissioner dated September 13, 2004 (Exhibit 42).

2) In accordance with paragraph 12 of the 2001 Settlement Agreement, inmates shall not be confined in a SHU dayroom for more than four (4) hours for observation purposes while waiting for a mental health evaluation by a MHU clinician or nurse.

3) Conditions of confinement in the dayroom shall be in accordance with defendants' PPD 6.10, effective April 15, 2003 (Exhibit 70A).

C. Formal Treatment Plans

1) The Court granted summary judgment in favor of plaintiffs and against defendants on this claim on November 28, 2005. Effective sixty (60) days from the date of this order, and in accordance with paragraph 23 of the 2001 Settlement Agreement, defendants shall begin to prepare a formal treatment plan for every inmate who is prescribed psychotropic medications. Such treatment plan shall be substantially similar in format and substance to the treatment plan document attached to defendants' PPD 6.5 (Exhibit 74).

2) Defendants shall prepare a treatment plan for each new MHU caseload patient effective 60 days from the date of this Order. Defendants shall prepare a treatment plan by December 31, 2006 for each current MHU patient who does not currently have a treatment plan.

D. Secure Psychiatric Unit : E-Ward

1) Inmates Without "Community Time" Privilege Status.

a. Effective 30 days from the date of this order, defendants shall increase the amount of time over the one to one and a half hours per day that such inmates are allowed out of their cells on E-Ward.

b. Effective 60 days from the date of this order, defendants shall provide appropriate structured and unstructured activities on E-Ward for such inmates when they are out of their cells in accordance with paragraph 24 of the 2001 Settlement Agreement.

2) Inmates With "Community Time" Privilege Status.

a. Defendants shall provide appropriate out of cell group therapies and structured activity therapies, including recreational therapy, to such inmates on an on-going basis in accordance with paragraph 24 of the 2001 Settlement Agreement.

b. Such therapies and structured activities shall be provided at least one hour per day in addition to other out of cell activities.

IV. Status Report

At the same time that defendants file their Compliance Plan with the Court, they shall also file a Status Report regarding those matters that are not subject to the Compliance Plan, that is, paragraphs III A-D. The Status Report shall describe the progress that defendants have made towards specific performance of each of the

provisions of the Settlement Agreements listed in paragraphs III A-D of this order, and the steps that defendants have taken and intend to take to achieve compliance with each of those provisions. The Court shall hold a hearing within 30 days of the filing of the Compliance Plan and Status Report to determine whether defendants are appropriately complying with the Court's order.

The Court's rulings with respect to the petitioners' proposed findings of fact and rulings of law are as follows:

I. Residential Treatment Unit:

GRANTED: 1-67, 68 (recognizing that the DOC submitted a budget request to the governor (see proposed findings 57 and 58)), 69-70

II. Group Programs at the Prison:

GRANTED: 71-90, 91 (citation should read: Metzner, Exhibit 152-A, p. 47, ll. 5-14), 92-103

III. Staffing:

GRANTED: 104-165, 166 (consistent with proposed findings 57, 58, and 68), 167-171

IV. Special Housing Unit:

GRANTED: 172-224

V. Secure Psychiatric Unit:

GRANTED: 225-238, 239 (to the extent it was recommended in the executive summary), 240-275

VI. Medication Delays:

GRANTED: 276-279, 280 (to the extent that this is the process by which inmates get another supply of medications before their current prescription order runs out), 281-282, 283 (as a practical matter), 284-296, 298-307, 312, 315-323, 325-337

NEITHER GRANTED NOR DENIED: 297, 308-311, 313-314, 324

VII. Software for a Computerized Data Management Information System for the Mental Health Unit:

GRANTED: 338-359

VIII. Standard of Compliance:

GRANTED: 360-364

IX. Attorney's Fees:

365: **DENIED** as to attorney's fees; **GRANTED** as to New Hampshire Superior Court Rule 87 costs

366: **DENIED** as to attorney's fees; **GRANTED** as to New Hampshire Superior Court Rule 87 costs

367: **DENIED** as to attorney's fees; **GRANTED** as to New Hampshire Superior Court Rule 87 costs

X. Conclusion/Relief:

GRANTED: 368-371, 373, 375 (respondents shall pay all of the petitioners' costs as allowed under Superior Court Rule 87(c)), 377

DENIED: 372

374: **DENIED** as to attorney's fees; **GRANTED** as to New Hampshire Superior Court Rule 87 costs

376: **DENIED** as to attorney's fees; **GRANTED** as to New Hampshire Superior Court Rule 87 costs

The Court's rulings with respect to the respondents' proposed findings of fact are as follows:

I. RTU/SNOP/RTP:

GRANTED: 1-4, 7-8, 10, 12, 14-17, 19-25

DENIED: 5 (all subsequent proposed findings and rulings which assume the existence of an RTU are **DENIED**), 6, 9, 11, 13, 18

II. SHU Appointments:

GRANTED: 26-29, 30 (when he was at the prison), 31-35, 36 ("about" every 3 weeks), 37-38, 39 (citation should read: TD 6, p. 375-76), 40

III. Precautionary Watch:

GRANTED: 41-44, 46-50

NEITHER GRANTED NOR DENIED: 45

IV. E-Ward in SPU:

GRANTED: 51-53

V. Renewals and Refills:

GRANTED: 54-60, 61 (substitute "could" for "would"), 62, 63 (although this difference has little relevance), 64, 65 (after receipt by the pharmacy), 66-77, 79-85

NEITHER GRANTED NOR DENIED: 78

VI. Data Management:

GRANTED: 86-109

VII. Staffing Levels:

GRANTED: 110-128, 130-134

DENIED: 129 (because prescribers' caseload patients are not limited to patients at the NHSP)

VIII. Group Treatment:

GRANTED: 135-137, 138 (because they are not part of the mental health programming), 139-141, 143-146, 148-149

DENIED: 142

NEITHER GRANTED NOR DENIED: 147

IX. Thinking for a Change:

GRANTED: 150-152

X. Comprehensive Mental Health Services:

GRANTED: 153-160, 162-164

DENIED: 161 (as contemplated by the agreements)

XI. Inmate Witnesses:

GRANTED: 165-170

The Court's rulings with respect to the respondents' proposed rulings of law are as follows:

I. RTU/SNOP/RTP:

GRANTED: 1, 2 (considering paragraph 3 in isolation), 4, 7-9

DENIED: 3, 5-6, 10

II. SHU Appointments:

GRANTED: 11, 12 (except that appointments are to be "schedule[d]")

DENIED: 13, 14

III. Precautionary Watch:

GRANTED: 15-17, 21 (consistent with the Court's accompanying order)

NEITHER GRANTED NOR DENIED: 18-20

IV. E-Ward in SPU:

GRANTED: 22, 24

DENIED: 23 (contains multiple statements), 25

V. Renewals and Refills:

GRANTED: 26, 28, 30 (substitute "could" for "would" (see proposed finding of fact 61))

DENIED: 27 (contains multiple statements), 29 (contains multiple statements), 31

VI. Data Management:

GRANTED: 32-33

DENIED: 34

VII. Staffing Levels:

GRANTED: 35-38, 42

DENIED: 39-40, 41, 43

VIII. Group Treatment:

GRANTED: 45, 47

DENIED: 44, 46, 48-51

IX. Thinking for a Change:

GRANTED: 52-53

DENIED: 54

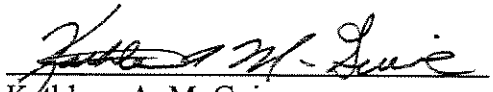
X. Comprehensive Mental Health Services:

GRANTED: 55

DENIED: 56-57

So ordered.

5/19/06
Date


Kathleen A. McGuire
Presiding Justice