REPORT TO THE COURT MASTER:

OBSERVATIONS/FINDINGS REGARDING THE RIVERVIEW PSYCHIATRIC CENTER

Respectfully Submitted:

Elizabeth Jones, Consultant
November 3, 2014

INTRODUCTORY COMMENTS

This Report was prepared at the request of Court Master Daniel E. Wathen in order to help assess the status of compliance with certain longstanding Court Orders at the Riverview Psychiatric Center (Riverview). On October 25, 2013, Riverview was returned to active Court supervision following two highly publicized incidents of client abuse and decertification by the Centers for Medicare and Medicaid Services (CMS) on September 2, 2013. Currently, decertification is still in place pending further review by federal officials. The loss of certification has jeopardized approximately twenty million dollars in annual federal funding. Equally as important, there has been a significant erosion of public trust in Riverview's ability to provide humane and appropriately individualized treatment to men and women with serious mental illness.

Preparation for this Report consisted of the review of relevant documentation; interviews with individuals presently admitted to Riverview; discussions with clinical staff assigned to the Lower Saco, Lower Kennebec, and Upper Kennebec Units; discussion with other Riverview staff in non-management positions; conversations with peer specialists; and observations on all three shifts on October 8 and 9, 2014.

- The documentation reviewed included treatment plans; individual records maintained on the treatment units; incident reports; administrative documents regarding staffing; selected Riverview policies; and administrative summaries of the use of seclusion and restraint for specified timeframes.
- Client interviews were held on a voluntary basis and were informal conversations about any specific concerns, conditions on the units, and interactions with staff and other clients. A Client Forum was conducted and was attended by men and women from the Lower and Upper Kennebec Units. Each of the participants commented on their experiences at Riverview; these statements included positive reports as well as specific complaints.
- A separate meeting was held with the peer specialists. The meeting focused on perspectives of treatment; the psychological environment at Riverview; the protection of rights; and recommendations for fostering a Recovery-oriented model.
- In light of the time afforded by the three-day site visit, it was a deliberate decision to conduct interviews primarily with staff assigned to duties within the treatment units. Discussions were held on the units and were open-ended in order to best capture any concerns or suggestions from staff. Without exception, staff were responsive and straightforward in discussing their work responsibilities, their needs for support, and the overall work environment at Riverview. Several of the staff who were interviewed for this

Report had worked at the old Augusta Mental Health Institute and drew comparisons between the two work settings.

- In addition to the above approaches to fact-finding, two treatment team meetings were attended on one specific Unit. Following one of these meetings, the psychiatrist was interviewed to solicit his perspective on various clinical issues.

Information gathered from all of the above sources form the basis for this Report. It is clearly recognized that there are limitations inherent in the time available on site. It is also understood that this Report is being prepared while decisions continue to be made by the State about the structure and responsibilities of Riverview.

SUMMARY OF FINDINGS

The findings discussed in this Report are summarized under certain provisions of the Consent Decree in Bates v. Glover. These provisions are especially germane to the issues under review by the Court Master. Also, it is important to emphasize that the terms of the Consent Decree apply to all individuals admitted to Riverview, including those who become class members by reason of an admission to either Lower or Upper Saco, the Forensic Treatment Units. (see Paragraph **250**.) The State's decision, on August 15, 2013, to remove the Lower Saco unit from federal funding under the Medicaid program did not eliminate its continuing obligation to comply with the provisions of the Consent Decree.

Treatment:

- **151.** Treatment... shall focus upon a patient's strengths, rather than solely addressing symptoms. Patients are at all times entitled to respect for their individuality and to recognition that their personalities, needs and aspirations are not determinable on the basis of a psychiatric label. They shall be treated with dignity; they shall be encouraged and permitted to preserve the basic rhythm of their lives to the maximum extent possible.

- **159.** All patients are entitled to receive individualized treatment, to have access to activities necessary to the achievement of their individualized treatment goals, to receive visitors, to communicate by telephone and by mail, to exercise daily, to recreate outdoors, and to exercise their religion. At no time shall these entitlements or basic human rights be treated as privileges which the patient must earn by meeting certain standards of behavior.

Based on the information obtained from site visits to the units, interviews, and document review, the following observations are offered about treatment and treatment planning at Riverview:

Both treatment team meetings attended on October 9, 2014 afforded evidence that there were clearly established practices in place on this particular Unit to review and evaluate the treatment provided to class members while admitted to Riverview. The two teams were well prepared for the discussion; offered encouragement to the class members and family who participated in the meetings; focused on the next steps leading to discharge; and outlined problems or barriers to be resolved in the immediate future. In both instances, the class members were treated with respect and their preferences were sought by the professional staff assigned to their teams. A peer specialist attended both meetings and was considered an integral part of the treatment team.

However, areas for improvement were noted. First, although the clinical staff and peer specialist met together to prepare for the discussion, the class members were not given the same opportunity. Second, in one meeting, the class member clearly described her preferred residential placement after discharge from Riverview. She desired a small home-like setting with little noise and little disruption or change. Nonetheless, in its preliminary meeting, the treatment team discussed its plan to discharge her to a "geri-psych" nursing home, a large congregate setting that, by its very nature, would not comply with her expressed wishes or interests. In the next meeting convened by the team, the class member had denied any interest in employment at the time of admission but, despite his need for continuing support towards recovery, the idea of work or referral to a Supported Employment program was not raised with him.

Other indications that treatment strategies were not sufficiently individualized were found in the failure to provide adequate and sustained attention to teaching alternatives to aggression. During observations on two shifts in both Lower Saco and Lower Kennebec, it was noted that there were two highly visible class members with extensively documented incidents of aggression towards peers and staff at Riverview. In both Units, Mental Health Workers and nursing staff expressed serious concern that the incidents of aggression continued without effective interventions. In both examples, progress notes illustrated that aggressive acts did not result immediately in counseling, anger management instruction, or a discussion of the consequences of such unacceptable behavior in civil society. The failures to provide prompt and clinically informed interventions not only jeopardized the peers and staff but neglected to assist the individual with aggressive responses to learn more reasonable, less harmful and more socially acceptable behavior. The risks to peers and staff were not alleviated; the individual perpetrating the aggression was not provided the treatment interventions required by the Consent Decree.

The failure to effectively intervene in the two cases just cited may be attributed, in part, to a serious misunderstanding of the Recovery model. Although Mental Health

Workers and nursing staff were not challenging Riverview's implementation of a recovery-based approach, it was clear from numerous discussions that there had not been adequate preparation for implementation of this approach through staff training, mentoring and supervision. For example, the principles of the Recovery model not only include the instillation of hope and the opportunity for self-determination but focus on the individual's full membership and inclusion in the community where he/she lives and works. The teaching of alternatives to unacceptable behavior assists the class member with the development of social networks and valued opportunities for community participation. The failure to teach such alternatives contributes to continued isolation and involvement in the criminal justice system.

The failure to provide class members with the support and interventions necessary to replace unacceptable social behavior with appropriate actions violates the Consent Decree's mandate that individualized treatment be provided at Riverview.

During a lengthy discussion (over one hour) with four class members on the Lower Saco Unit, the lack of access to the fenced-in outdoor area adjacent to the Unit was cited by them as a significant concern. Reportedly, four fifteen-minute periods of outdoor access were permitted throughout the day. The lack of outdoor exercise was exacerbated by the lack of treatment options on this Unit. The class members reported long periods of boredom and idleness. They reported that scheduled activities did not occur as planned. In distinct contrast, the value of ensuring inclusive activities of expressed interest was evident during a session of music/songs on the October 9th evening shift. The engagement of the men was striking; the interactions between class members and staff were cordial and responsive; the social interactions between class members were both appropriate and supportive. This scheduled activity was described as being the "highlight" of the week and greatly anticipated by both the class members and staff. It was an excellent example of the feasibility of engagement and participation when the individualized interests of class members, whether social or therapeutic, are recognized and supported.

The State's voluntary exclusion of Lower Saco from federal funding because of the inability to meet standards of participation has had negative consequences for these class members and for the staff responsible for their treatment. Treatment options have been arbitrarily limited and, therefore, the provisions of the Consent Decree have been violated.

Seclusion and Restraint:

The Consent Decree places strict constraints on the use of seclusion and restraint. As stated:

- **182.** Seclusion may be used only after less restrictive measures have proven to be inappropriate or ineffective.

- **184.** Restraint may be employed only when absolutely necessary to protect the patient from serious physical injury to himself or others and shall impose the least possible restriction consistent with its purpose. Restraint may be used only after less restrictive measures have proven to be inappropriate or ineffective.

- **188.** The restraint and protective devices used at (Riverview) and the techniques used for placing individuals into restraint or seclusion shall be examined at least semi-annually by an independent consultant knowledgeable and experienced in the use of seclusion and restraint. No new type of device or technique may be introduced for use without such an examination. The consultant shall examine the devices and techniques to assure that they are safe and humane. Should the consultant find that any device or technique used at (Riverview) is unsafe or unnecessarily compromises a patient's comfort or dignity, (Riverview) shall immediately discontinue its use.

- **189.** Defendants shall prepare monthly reports on the use of seclusion, restraint and protective devices and shall submit copies to the master and counsel for the plaintiffs. These reports shall state the patient's name, age and sex; the reason for the order; the patient's unit; the name of the physician entering the order; the patient's principal diagnosis; whether seclusion, restraint or a protective device was ordered; the type of apparatus or device used, if applicable; and the time and duration of its use. The defendants shall analyze the data in terms of trends relating to rates of admission; census; units of use; physicians entering the orders; patients' diagnoses, age and sex; and other relevant variables.

There was documentation in policy and administrative reporting to support Riverview's intent to reduce the use of seclusion and restraint. Staff acknowledged that this is considered to be a priority.

However, based on the available facts, these provisions of the Consent Decree require continued attention and independent review.

First, statements made during the Client Forum, conducted on October 10, 2014, raised concern about the potential humiliation and disrespect experienced during seclusion and restraint episodes. The lack of privacy and lack of appropriate clothing was reported by one individual, a woman, who was restrained, in the presence of male staff, without any provision for preventing the exposure of her body. (By policy, "All patients remain in their own clothing unless the clothing worn increases the risk of danger to self or others.") Eventually, she was provided with a blanket.

Second, at this time, it appeared that the requisite pro-active alternatives to seclusion and restraint have not been explored or provided consistently to the extent needed. The lack of individualized treatment interventions and the lack of sufficient training and personnel support place both staff and class members at the risk of harm.

For example, Riverview policy (PC.12.10) requires that a "Safety Meeting" be held within 72 hours of any coercive event. The purpose of the Meeting is " to review the current safety plan, involve the patient in developing interventions to assist him/her to maintain safe behavior and identify 'triggers' as well as individualized coping techniques that may assist him/her in the hospital as well as the community."

On October 8, 2014 at 7:25 am., a client on Lower Saco's Special Care Unit was administered chemical restraint during a period designated as a psychiatric emergency. In contradiction of Riverview policy, staff confirmed, upon inquiry, that his Safety Meeting was scheduled for October 14, 2014, a timeframe far exceeding the requisite 72 hours.

On September 23, 2014, an individual placed on the Lower Kennebec Unit assaulted a peer. Although the required Safety Meeting was held in a timely manner, there were no changes made to his treatment plan and his privileges remained intact. (On September 17, 2014, a Safety Meeting had been held regarding this same individual after he threw water at staff. No changes were made in his treatment plan at that time.) On October 8, 2014, the same individual assaulted staff. Although he was seen by the psychiatrist and determined to be calm, there was no immediate discussion with the class member as to his actions and no discussion with nursing staff regarding "individualized coping techniques" to be taught to reduce the possibility of similar incidents in the future.

Riverview's administration should ensure that the consultation and reports required by Paragraphs **188** and **189** of the Consent Decree are completed in a thorough and timely manner. The mandated review of the use of seclusion and restraint should be beneficial to the evaluation of individualized treatment and the possible alternatives to restrictive measures.

<u>Adequacy of Staffing:</u>

- **202.** Defendants shall hire and retain staff at (Riverview) sufficient to carry out the requirements of this Agreement.

Since the signing of the Consent Decree on August 2, 1990, there have been wide-ranging changes in the availability of and access to community-based supports for class members. As a result, an important development has been in the initial use of community hospitals for the provision of acute care services for individuals with serious mental illness. As a result of the shift of Riverview's admission requirements

for civil clients and its continued primary use for forensic admissions, there is a clear change in the acuity level of the individuals admitted to Riverview.

There is reason to believe that the staffing requirements in the Consent Decree should now be considered minimal staffing expectations. In particular, the staffing requirements on the admission units (Lower Saco and Lower Kennebec) may be insufficient to address the acuity levels of individuals now being hospitalized at Riverview.

In order to minimize the possibility of risk to class members and their staff and to enhance the likelihood of individualized treatment, it is imperative that these staffing requirements be reviewed in light of the changing demographics of admissions to Riverview.

Subsequent to the site visit conducted in early October 2014, information was obtained regarding mandated overtime and staff vacancies at Riverview. Without questioning the validity of the statistical information provided by Riverview's administration, it was clear during time on the Units that staff are experiencing considerable pressure in meeting their work requirements and expectations. It could not be fully determined whether this pressure results from insufficient staffing due to higher acuity levels, the inability to fill vacant positions in a timely manner or the absence of assigned staff because of medical or family leave. In any case, the adequacy of staff needs to be reviewed in a comprehensive manner, without preconceived assumptions.

In order to ensure compliance with the Consent Decree, it again needs to be determined whether there are sufficient nursing and Mental Health Worker positions assigned to Riverview. Additionally, the vacancy rate needs to be addressed and incentives to assist with the retention of qualified staff should be implemented. There should be consideration of supplemental pay for staff who are assigned to work on the Lower Saco Unit. Certainly, the qualifications for Mental Health Workers, including proof of status as a Certified Nursing Assistant (CNA), should not be decreased. More skills are needed for staff, not less.

The routine use of staff who "float" in their duties from one unit to another, based on the availability of regularly assigned staff, was raised repeatedly as a potential risk factor. In particular, supervisory and other staff were concerned that "float" staff lacked knowledge and familiarity about individual clients, especially those with challenging behaviors or specialized interventions. In fact, class members on the Upper Saco Unit raised an identical concern, citing an exceptionally disruptive incident that occurred because "float" staff did not know how to approach a certain individual with a history of escalating behavior.

The assignment of "acuity specialists" to certain Units was viewed as a positive development because these staff have extensive experience in the field of mental

health and have the skills to defuse potentially volatile situations. They are a valuable resource that should be used for mentoring.

However, any reliable review of the adequacy of staffing at Riverview must include discussions with Mental Health Workers and nursing staff on the four Units. These are the individuals who accept the day-to-day responsibility for the direct implementation of the provisions of the Consent Decree. Without their meaningful involvement in the analysis of staffing patterns and staffing resources, it is unlikely that an accurate assessment can be obtained as to the resources required for individualized treatment and full compliance with the Consent Decree.

Reporting of Abuse, Neglect and Exploitation:

The final observations in this Report relate to one of the most critical aspects of treatment at Riverview:

- **192.** All staff shall be required to report instances of patient abuse, neglect and exploitation immediately.

Regrettably, as widely reported through the media and other investigative actions, there is evidence that two major incidents of abuse (the use of pepper spray and a Taser weapon) were not reported, as required. These are grave violations of the Consent Decree.

During the course of the site visit, voluntary interviews were conducted with both victims. Each described, in unflinching terms, the pain and degradation they experienced during the abusive episodes.

Although these two abuse episodes now are very high-profile incidents, it is critical to ensure that sufficient staff training in the **immediate** reporting of abuse, neglect and exploitation is sustained continuously throughout Riverview. It must be underscored that **all staff,** including those in management/administrative positions, have the obligation to report or will be subject to disciplinary action, including termination.

Furthermore, the possible precedents to abuse and neglect, including inadequate staffing and support of staff and the lack of individualized treatment interventions, must be consistently and thoroughly examined in order to prevent the occurrence of such unacceptable actions. In addition, in light of the extensive publicity surrounding the two high-profile incidents of abuse, the administration at Riverview is encouraged to conduct candid discussions with class members, staff, peer specialists and advocates about the Hospital-wide weaknesses and vulnerabilities that create an environment where abuse and neglect can occur and be unreported.

CONCLUDING COMMENTS

As documented through the methods described above, there is sufficient reason to question whether the State is in compliance with the Consent Decree provisions regarding individualized treatment and adequate staffing. The lack of individualized treatment and adequate staffing places class members and staff at risk of harm. In fact, it is documented clearly that both class members and staff have been injured at Riverview.

The State's voluntary exclusion of Lower Saco from federal funding under Medicaid has negatively impacted the provision of individualized treatment.

There is evidence that Riverview's stated policy to "involve the patient in developing interventions to assist him/her to maintain safe behavior and identify 'triggers' as well as individualized coping techniques that may assist him/her in the hospital as well as the community" is not uniformly implemented.

There is evidence that Riverview did not report, as required, two egregious incidents of abuse.

Respectfully Submitted,

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Elizabeth Jones, Consultant

November 3, 2014

RECOMMENDATIONS

Treatment Planning:

- Prior to his/her treatment team meeting, the class member should be provided the opportunity to meet with a peer specialist in order to prepare for the discussion and to clearly outline any preferences for treatment or discharge planning. Recovery-oriented approaches to treatment, including employment, should be consistently explored with and offered to the class member, despite disinterest or refusal at the time of admission.
- Riverview's leadership should take immediate steps to ensure that the principles of the Recovery model are clearly defined, articulated and supported throughout each of the four Units.
- Riverview's clinical leadership should work with nursing and Mental Health Worker staff to design and implement case conferences or Grand Rounds so that there is greater knowledge, skill and support in working with class members with challenging behaviors.
- Efforts should be initiated to intensify the opportunities offered to class members on the Forensic Units in order to increase their social skills and their knowledge and performance competencies about subjects of interest to them.
- Riverview should be managed as a single Hospital and the exclusion of Lower Saco from the federal Medicaid program should be reconsidered as an urgent priority.
- In order to ensure that any limitations are not in violation of the Consent Decree, restrictive practices, including access to outdoor areas, should be reviewed with involvement by class members and Mental Health Workers.

Seclusion and Restraint:

- The use of seclusion and restraint requires continued independent review to ensure that there are adequate alternatives designed and implemented for any class member potentially subject to such restrictive measures. Specifically, class members with a history of unacceptable behavior, such as aggression towards peers and/or staff, need to be reviewed again by the treatment team, and, if necessary, by an independent clinical consultant, to determine whether sufficiently individualized interventions are being designed and consistently implemented to replace unacceptable behavior with appropriate alternative behaviors.
- The reporting required by Paragraphs **188** and **189** of the Consent Decree should be completed as mandated.

Adequacy of Staffing:

- In light of the current demographics of admissions to Riverview, the adequacy of staffing requires further independent review. It is highly recommended that staffing ratios be determined by acuity rather than by census on the Units.
- The use of "float" staff, especially those recently hired at Riverview, requires review in order to reduce the likelihood of risk due to unfamiliarity with and knowledge of individuals with challenging behaviors or the need for specialized interventions. This review is especially critical for any assignment to the Forensic Units.
- There should be consideration of supplemental pay for staff assigned to the Lower Saco Unit.
- Discussions should be held with Mental Health Workers and nursing staff to determine what additional measures are required to reduce the pressures experienced by staff and the resulting effects on the class members hospitalized for treatment.
- Qualifications for Mental Health Workers should not be reduced.

Reporting of Abuse, Neglect and Exploitation:

- Continuing effort is required to ensure that all staff understand the mandate for reporting any suspected abuse, neglect or exploitation of class members.
- With consultation from class members and staff on the Units, there should be an examination of the weaknesses and vulnerabilities that could lead to abuse, neglect and exploitation at Riverview.
- The Consent Decree language should be modified to specify that timely reporting of abuse and neglect cases should be made to Adult Protective Services (APS), Licensing, the Court Master and Plaintiffs' Counsel.