STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE FIFTH JUDICIAL CIRCUIT

T.R., P.R., K.W., and A.M. on behalf of themselves and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc.,

Plaintiffs,

v.

State of South Carolina; South Carolina Department of Corrections; and Jon Ozmint, as Director of the South Carolina Department of Corrections,

Defendants.

Civil Action No. 2005-CP-40-02925

ORDER SETTING FORTH APPLICABLE CONSTITUTIONAL STANDARDS

INTRODUCTION

In this class action Plaintiffs allege that conditions in South Carolina prisons violate the state constitution. More specifically, the plaintiff class, consisting of inmates who suffer from serious mental illness, seeks declaratory and injunctive relief, alleging that the mental health system operated by the State of South Carolina, South Carolina Department of Corrections, and Jon Ozmint, as Director of the South Carolina Department of Corrections ("SCDC" collectively) violates Article I, § 15 and Article XII, § 2 of the South Carolina Constitution.. The matter was declared complex and assigned to this Court for disposition. In an Order dated November 1, 2007, this Court defined the term "serious mental illness" for purposes of this litigation and certified the plaintiff class.

Because there is little case law under the cited provisions of the State Constitution, it became apparent early on, for reasons of judicial economy and limitation of discovery, that the Court should determine the appropriate constitutional standard and necessary burden of proof

well in advance of any hearings on the merits of the case. The parties were accordingly instructed to brief these issues. The Court heard arguments on December 11, 2009, and after substantial review and analysis, herein sets forth the standards of liability and burden of proof applicable to Plaintiffs' constitutional allegations.

The Court is mindful of the general absence of specific South Carolina caselaw in this area and the significance of devising a legal framework consistent with South Carolina jurisprudence. Thus, the Court has looked to other jurisdictions that have considered the complex and constitutional issues addressed in this litigation, as well as South Carolina's own canon in similar areas. The legal structure outlined herein is designed to delineate the issues and set forth a standard by which these issues can be contested and resolved; provide a fair and neutral framework through which the parties can expound the merits of their case; and, most importantly, afford a just result for all parties to or affected by this matter.

I. The Standard Applicable to Article I, § 15.

Article I, § 15 of the South Carolina Constitution, the State's counterpart to the Eighth Amendment of the United States Constitution, provides that neither "cruel, nor corporal, nor unusual punishment be inflicted" on inmates. S.C. CONST. art. I, § 15. South Carolina courts apply the same analysis to Article I, § 15 as they do to the Eighth Amendment. *State v. Wilson*, 306 S.C. 498, 512, 413 S.E. 2d 19, 27 (1992) (explaining that the analysis is the same under both the United States and South Carolina constitutions).

While Plaintiffs' claims are not limited to the provision of mental health medical care, the United States Supreme Court has spoken directly to the issue of prisoner medical care, and by analogy to the substance of Plaintiffs' additional claims. In *Estelle v. Gamble*, 429 U.S. 97

(1976), the Supreme Court set forth the "elementary principles" that establish the government's Eighth Amendment obligation to provide medical care to prisoners:

> The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . .," against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society" . . . or which "involve the unnecessary or wanton infliction of pain."

Id. at 102-03 (internal citations omitted).

Estelle ruled that to establish liability under the Eighth Amendment in a prison conditions case, plaintiffs must prove that defendants acted with "deliberate indifference to serious medical needs of prisoners." *Id* at 104. The Supreme Court has further held that this deliberate indifference standard contains both an objective and a subjective component. *See Farmer v. Brennan,* 511 U.S. 825, 834-37 (1994).

A. Positions of the Parties with Regard to these Components

Before discussing the substance of the law with regard to the two components, it is illustrative to comment on the positions of the parties thereto. While the parties agree as to the existence of the deliberate indifference standard and its application to this case, a great discovery battleground has ensued over proof relating to these components.

SCDC argues that because Plaintiffs seek only injunctive and declaratory relief, their case pertains only to the future. Thus, an examination of "a great amount of archeology" in past actions of SCDC with regard to seriously mentally ill prisoners is neither relevant nor probative. Going further, SCDC asserts these types of claims are now discouraged within the federal court system[1], and if Plaintiffs are in fact able to show the deliberate indifference required in a federal prison conditions case, this Court should follow the remedial provisions of the Prison Litigation

[1] SCSC contends that the existence of the PLRA may explain Plaintiffs' decision to file this case in state court instead of in federal court.

Reform Act that provides generally that a court should "extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1)(A).

Plaintiffs respond that a showing of the history of how seriously mentally ill prisoners have been handled within SCDC is necessary to an understanding of the scope and degree of the alleged present mistreatment of seriously mentally ill prisoners, and an exposure of the "culture" that exists within SCDC employees permitting such mistreatment. Moreover, a review of the history is directly relevant to the present day corporate recalcitrance to take action to prevent future harms. Further, Plaintiffs chide SCDC for criticizing the law Plaintiffs cite to support their allegations, arguing that SCDC have failed to provide any specific legal guidelines by which this controversy might be adjudicated.

Realizing that some review of the past is necessary to an understanding of present conditions and predictability of future actions, this Court has attempted to strike a balance between the parties' positions, as well as reduce the costs and magnitude of discovery, and by Order dated June 20, 2006, limited discovery to any acts occurring on or after January 1, 2003. It should be noted that this case was initially filed on June 20, 2005.

B. <u>A Discussion of The Objective Component of Deliberate Indifference</u>.

1. Plaintiffs Must Demonstrate a Substantial Risk of Serious Harm.

To satisfy the objective component of the *Estelle* standard, Plaintiffs must demonstrate that the risk of harm to which they are subjected is sufficiently serious. *Farmer* 511 U.S. at 834-37. The Court in *Farmer* referred to this standard as "an objectively intolerable risk of harm." *Id.* at 846. The risk must involve an extreme deprivation, such as the withholding of a basic human need like food, clothing, or medical care. *Helling v. McKinney*, 509 U.S. 25, 32 (1993).

The potential must be substantial, and the anticipated injury must be serious. A serious medical need does not include the "routine discomfort" that results from incarceration and which "is part of the penalty that criminal offenders pay for their offenses against society." *Coleman v. Wilson*, 912 F.Supp. 1282, 1298 (E.D. Cal. 1995). Rather, a medical need is sufficiently serious under the Eighth Amendment only if the failure to adequately treat it "could result in further significant injury or the unnecessary or wanton infliction of pain." *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (quoting *Estelle*, 429 U.S. at 104); *Harrison v. Barkley*, 219 F.3d 132, 136 (2d Cir. 2000); *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997).

While South Carolina courts have not yet contemplated the rights and duties of Article I, § 15 with respect to seriously mentally ill inmates, it is firmly established among jurisdictions that have considered the question that "serious medical needs," for Eighth Amendment purposes, include serious mental illness. In fact, looking at an overview of judicial reasoning, it is apparent that the analytic framework that should be applied to this case is the approach of a modern society that recognizes mental illness as a real and quantifiable medical condition that deserves real and quantifiable medical care.

The Fifth Circuit affirmed the above when it succinctly stated, "mental health needs are no less serious than physical needs." *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004). Likewise, the Seventh Circuit stated over 25 years ago that "treatment of the mental disorders of mentally disturbed inmates is a serious medical need." *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983). Furthering this line of reasoning, one can look to the Tenth Circuit, which stated "the states have a constitutional duty to provide necessary medical care to their inmates, including psychological or psychiatric care." *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996). Even our own Fourth Circuit found there is "no distinction between the Eighth

Amendment's right to medical care for physical ills and its psychological or psychiatric counterpart." *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977). And finally, while this illustration is by no means exhaustive, the First Circuit confirmed, "deliberate indifference to an inmate's serious mental health needs violates the Eighth Amendment." *Torraco v. Maloney*, 923 F.2d 231, 234 (1st Cir. 1991).

2. The Eighth Amendment Protects Against the Risk of Future Serious Harm.

The objective component of the *Estelle* analysis is not limited to past harm, but also protects inmates from an unreasonable risk of serious future harm. In *Helling v. McKinney*, 509 U.S. 25 (1993), the plaintiff argued that defendant prison officials had been deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment, by requiring him to share a cell with another prisoner who smoked five packs of cigarettes a day. Defendants argued that unless the plaintiff could show he was *currently* suffering serious medical problems caused by his cellmate's smoking, there could be no violation of the Eighth Amendment. *Id.* at 32. The Amendment, defendants urged, did not protect against prison conditions that "merely threaten to cause health problems in the future." *Id* at 32-33.

The Supreme Court disagreed, reasoning that "a remedy for unsafe conditions need not await a tragic event." *Id.* at 33. Under *Helling*, the Eighth Amendment does more than protect an inmate from current harm; it also protects him from "an unreasonable risk of serious damage to his future health." *Id.* at 35; *see also Farmer*, 511 U.S. at 845 (explaining that the aim of an injunction suit in a prison conditions case is "to prevent a substantial risk of injury from ripening into actual harm"). The Fourth Circuit has favorably cited *Helling* in support of this conclusion. *See Shakka v. Smith*, 71 F.3d 162, 168 (4th Cir. 1995) (noting that "the Eighth Amendment

provides protection against conditions that have not resulted in past injury, but are reasonably likely to cause serious harm in the future.")

3. The Objective Component May Be Demonstrated by Proof of Systemic Deficiencies.

In the context of a prison conditions case, other courts have agreed that Plaintiffs can demonstrate the objective component of the Eighth Amendment standard by showing *either* a pattern of negligent conduct[2] by SCDC *or* by "such systemic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care." *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983); *Flynn v. Doyle*, 2009 WL 4262746 at *19 (E.D. Wis. 2009); *see also Ginest v. Bd. Of County Comm'rs*, 333 F.Supp. 2d 1190, 1198 (D. Wyo. 2004); *Madrid v. Gomez*, 889 F.Supp. 1146, 1256 (N.D. Cal. 1995).

An injunctive relief case alleging systemic deficiencies does not rest "on the individual facts of each case." *Neiberger v. Hawkins*, 208 F.R.D. 301, 317 (D. Colo. 2002). Allegations of systemic deficiencies "can be addressed without resorting to a case-by-case analysis." *Id.* While evidence may be offered in systemic suits of individual instances of suffering, such episodes are not intended to stand or fall on their own individual merits; rather, they are presented as representative evidence of how the system affects a broader inmate population. *See, e.g, Robert E. v. Lane*, 530 F.Supp. 930, 940 n.12 (N.D. Ill. 1981).

As in *Flynn, Neiberger,* and *Madrid,* the Plaintiffs in this case advise the Court they are pursuing a systemic suit, alleging that the SCDC mental health system exposes all seriously mentally ill inmates to an unreasonable risk of serious future harm, a claim that is vigorously disputed by Defendants. Thus, applying *Helling, supra,* to the case at hand, for Plaintiffs herein

[2] A pattern of negligent conduct does not mean that a negligence standard is all that is required. As discussed herein, the Eighth Amendment's subjective component requires "deliberate indifference" on the part of defendants to the pattern of conduct.

to meet the objective standard, this Court finds that each member of the plaintiff class is not required to show that they have suffered actual harm in the past or that they are currently suffering harm; instead, they may prove that systemic deficiencies in the SCDC mental health program pose an unreasonable and substantial risk of serious future harm to inmates who suffer from serious mental illness, as discussed further below.

4. Factors to Consider in Analyzing Allegations of Systemic Deficiencies.

In cases alleging systemic deficiencies, courts analyze the objective prong of the Eighth Amendment standard by considering various components of a prison mental health system. These components typically include six common factors identified as the "minimum standards for mental health treatment" in a correctional setting. *See Ruiz v. Estelle*, 503 F.Supp. 1265, 1339 (S.D. Tex. 1980), *aff'd in part, rev'd in part*, 679 F.2d 1115 (5th Cir. 1982), *amended in part, vacated in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Courts focus on the presence or absence of the following "six basic, essentially common sense" *Ruiz* factors in determining whether a prison mental health care delivery system is minimally adequate.

1. a systematic program for screening and evaluating inmates to identify those in need of mental health care;

2. a treatment program that involves more than segregation and close supervision of mentally ill inmates;

3. employment of a sufficient number of trained mental health professionals;

4. maintenance of accurate, complete, and confidential mental health treatment records;

5. administration of psychotropic medication only with appropriate supervision and periodic evaluation; and

6. a basic program to identify, treat, and supervise inmates at risk for suicide.

Coleman, 912 F.Supp at 1298 n.10 (citing *Balla v. Idaho St. Bd. of Corr.*, 595 F.Supp. 1558, 1577 (D. Idaho 1984) (noting that the basic components of a constitutionally adequate system are described in *Ruiz*); *see also Coleman v. Schwarzenegger*, 2009 WL 2430820 at *14 (E.D. Cal and N.D. Cal. Aug. 4, 2009); *Madrid*, 889 F.Supp. at 1256-57; *Perri v. Coughlin*, 90-CV-1160 (NPM), 1999 U.S. Dist. LEXIS 20320, at *19-20 (N.D.N.Y. 1999) (finding six components of a minimally adequate prison mental health care delivery system under the Eighth Amendment); *Bryant v. State*, 393 Md. 196, 207, 900 A.2d 227, 233-34 (Ct. App. Md. 2006) (discussing the National Commission on Correctional Health Care's *Position Statement, Mental Health Services in Correctional Settings* (1992).

The SCDC questions Plaintiffs' reliance on the *Ruiz* factors, asserting that they have been given only limited application in subsequent decisions in the *Ruiz* line of cases, and have never been widely adopted elsewhere. In support of this position, SCDC cites *Ruiz v. Johnson,* 154 F.Supp.2d 975 (2001), a subsequent case in the *Ruiz* line. In *Johnson*, the federal Court granted defendants' motions to terminate judicial oversight of certain aspects of the Texas prison system, a role the court had assumed twenty years earlier in *Ruiz v. Estelle. Id.* at 860-62. A close review of *Johnson,* however, does not reveal a repudiation of the *Ruiz* factors, but instead recognition that Texas prisons had advanced to the point that judicial oversight was no longer needed in most areas of operations. Thus, this Court finds the *Ruiz* factors remain a viable point of analysis. In so holding, the Court is aware that SCDC, while questioning *Ruiz,* has offered no alternative.

SCDC further argues that a showing of noncompliance with one or more of the *Ruiz* factors, which SCDC does not concede, does not carry the day for Plaintiffs, as Plaintiffs are still required to show how and why such noncompliance would be certain to cause serious illness and

needless suffering (quoting *Helling* at 33), and proof of such connection must be more than "abstract, conclusory, or theoretical."

To assist the parties in the direction of remaining discovery, and to focus the issues at trial, this Court now holds, in the context of the *Estelle* standard's objective component, the *Ruiz* factors are relevant and probative, not as bright line standards, but rather as an organizational framework – broad areas into which the parties' evidence concerning the adequacy of SCDC's mental health system may be funneled and considered. Ultimately, the *Ruiz* factors will be employed as aids to the Court in making its determination whether Plaintiffs satisfy their burden under the objective component by showing that SCDC's system exposes seriously mentally ill inmates to a substantial and intolerable risk of serious future harm. Other courts have employed a similar analysis. *See, e.g., Ginest v. Bd. Of County Comm'rs*, 333 F.Supp. 2d 1190, 1199-1204 (D. Wyo. 2004) (analyzing Eighth Amendment liability for alleged failures in treatment, record keeping, suicide prevention, monitoring of medications, and training staff); *Madrid*, 889 F.Supp. at 1256-58 (analyzing quality assurance programs and systemic use of force practices); *Ruiz v. Johnson*, 37 F.Supp. 2d 855, 913-14 (S.D. Tex. 1990), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F.Supp. 2d 975, (S.D. Tex. 2001) (enjoining prison officials' segregation practices).

B. <u>A Discussion of The Subjective Component of Deliberate Indifference</u>.

1. The Sufficiently Culpable State of Mind.

The subjective component of deliberate indifference requires "more than mere negligence," but "less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer*, 511 U.S. at 835. *Farmer* likened deliberate indifference to criminal recklessness, which makes a person liable when he or she "consciously

disregard[s] a substantial risk of serious harm." *Id.* at 836-38. *Farmer* held that a defendant has a sufficiently culpable state of mind when "he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Id.* at 847.[3]

2. Proof and Timing of Deliberate Indifference.

Questions concerning the level and amount of proof necessary to meet the burden of showing the subjective prong of a constitutional deficiency persist in this case. As in all cases before this Court, evidence may be either direct or circumstantial. Due to the nature of Plaintiffs' allegations, it is axiomatic that Plaintiffs may attempt to prove deliberate indifference by circumstantial evidence:

> Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstrations in the usual ways ... including inference from circumstantial evidence, and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.

Id. at 842 (citations omitted). Similarly, a defendant would "not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist." *Id.* at 843 n.8. *See also Vinning-El v. Long*, 482 F.3d 923, 925 (7th Cir. 2007) ("[A] reasonable jury could infer that prison guards working in the vicinity necessarily would have known about the condition of the segregation cells"); *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004) ("[T]he obvious and

[3] In claims brought against individual officers for excessive use of force when acting "in haste, under pressure" in attempts to quell riots or disturbances, the subjective standard applied is that of "malicious or sadistic" intent. *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986). However, in conditions cases where plaintiffs allege systemic policies and practices of condoning excessive force in non-emergent situations, the appropriate standard to apply is that of deliberate indifference. *Trammell v. Keane*, 338 F.3d 155, 162-63 (2d Cir. 2003); *Hope v. Pelzer*, 240 F.3d 975, 978 (11th Cir. 2001); *Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996); *Berry v. City of Muskogee*, 900 F.2d 1489, 1495 (10th Cir. 1990); *Thomas v. McNeil*, 2009 WL 64616 at *21 (M.D. Fla. 2009); *Madrid*, 889 F.Supp. at 1250 n.198: *Coleman v. Wilson*, 912 F.Supp. at 1321-22; and *Kosilek v. Maloney*, 221 F.Supp. 2d 156, 179-80 (D. Mass. 2002).

pervasive nature of these conditions supports the trial court's conclusion that [defendants] displayed a deliberate indifference to these conditions"). Thus, evidence proving the objective prong may tend to prove the subjective prong as well.

As in any case, the amount and degree of circumstantial evidence required to prove any point is determined by the trier of fact, and the Court as the eventual trier of fact in this non-jury case is not in a position to offer an advisory opinion. Suffice it to say, however, that such proof as is required to show a constitutional violation cannot be inconclusive or speculative, or merely arousing suspicion, and cannot relate to individual or isolated circumstances, but must relate to systematic and gross deficiencies that detail a broad pattern of deprivation. As to proof of the subjective component of deliberate indifference in a systemic case, there must be a showing that defendants are knowingly and unreasonably disregarding substantial risks of serious injury, or turning a blind eye to inferences of serious risk that defendants reasonably should strongly expect to exist. *See Farmer*, 511 U.S. at 842.

In *Farmer*, the Court further elaborated on the timing relevant to establishing defendants' deliberate indifference.

> [T]he subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct, their attitudes and conduct at the time suit is brought and persisting thereafter. An inmate seeking an injunction on the ground that there is a contemporary violation of a nature likely to continue, must adequately plead such a violation; to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and that they will continue to do so

Id., 511 U.S. at 845-46 (internal citations omitted).

Thus, it follows from the above, with regard to SCDC's efforts to respond to the underlying conditions that Plaintiffs assert form the basis of subjective deliberate indifference, SCDC cannot be held liable under the cruel and unusual punishment clause when they respond reasonably under the circumstances to the underlying conditions and the risks of serious harm they pose. *See Farmer* at 844 and 845. However, corrective action will not necessarily foreclose a finding of deliberate indifference. "Patently ineffective gestures purportedly directed towards remedying objectively unconstitutional conditions do not prove a lack of deliberate indifference, they demonstrate it." *Coleman*, 912 F.Supp. at 1319.

II. The Standard Applicable to Article XII, § 2.

Plaintiffs also allege that another section of the South Carolina Constitution imposes a duty on the defendants to provide mental health services to seriously mentally ill inmates. Article XII, § 2 provides:

> The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.

S.C. CONST. art. XII, § 2.

SCDC disputes Plaintiffs' claims under this constitutional section in a number of ways, listed herein in no particular priority. First, SCDC argues that this section mandates action by the General Assembly, which is no longer a party to this action, having been released by this Court under the separation of powers doctrine. Thus, SCDC alleges that this provision is not judicially enforceable against the present defendants in the case. Second, even if the provision is judicially enforceable, then the only type of health care system necessary to be provided is one that is "minimally adequate" (*see Abbeville County School District, et al. v. State of South Carolina, et al.*, 335 S.C. 58, 515 S.E.2d 535 (1999)), and as a matter of law SCDC already

meets this standard. Third, SCDC contends that the South Carolina Supreme Court has established a policy that does not permit "the judicial branch [to become] micro-managers of the prison system" or impose rulings in such a way that "would conflict with the hands-off approach that this Court has taken towards internal prison matters." *Sullivan v. South Carolina Department of Corrections,* 355 S.C. 437, 444-45, 586 S.E.2d 124, 127-28 (2003). Fourth, SCDC argues that the public duty rule of statutory enforcement also applies to constitutional analysis; thus, Article XII is intended to provide for the structure and operation of government, and provides no private right of action to the Plaintiffs in this case. Finally, SCDC argues that even if Article XII, § 2 of our constitution allows a private right of action, the standard it imposes is the same as that imposed under Article I, § 15, and thus Plaintiffs' claims under Article XII are superfluous at best. These contested issues are discussed below.

A. **Article XII, § 2, Mandates the Provision Mental Healthcare Services to Inmates.**

1. Article XII, § 2 Creates an Affirmative Duty.

Abbeville County School District, et al. v. State of South Carolina, et al., 335 S.C. 58, 515 S.E.2d 535 (1999), which interpreted the education clause in Article XI, § 3, provides a framework for the interpretation of Article XII, § 2. In *Abbeville,* the Supreme Court found a constitutional duty to provide a minimally adequate education to the children of South Carolina.

The education clause in Article XI, § 3 and the prison clause in Article XII, § 2 are very similar. The education clause and the prison clause each begin with the phrase "[t]he General Assembly shall . . . ." Each clause imposes express obligations upon the General Assembly to undertake certain affirmative responsibilities. Each clause addresses an essential societal function, namely the education of children and the care of inmates. More specifically, each clause requires the legislature to provide for, among other things, the maintenance and support of

an educational system and a correctional system, respectively, that incorporate certain fundamental elements for the benefit their charges, as well as for the public at large.

In construing the meaning of the education clause, the Supreme Court in *Abbeville* gave particular attention to the phrase "[t]he General Assembly *shall* provide for . . . ." *Id.* at 539-540 (emphasis added). The Court noted that it must be guided by the "ordinary and popular meaning of the words it uses." *Id.* at 540 (citing *State v. Broad River Power Co.*, 177 S.C. 240, 181 S.E. 141 (1935)). The Court reasoned that "[s]ince the education clause uses the term 'shall,' it is mandatory." *Id.*

As in *Abbeville*, this Court is guided here by the ordinary and popular meaning of the phrase "[t]he General Assembly *shall* . . . ." *See Abbeville* at 515 S.E.2d at 539. Moreover, South Carolina Article I, § 23 provides: "The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory" unless the constitution expressly provides that terms are intended to be directory or promissory. *Id.* at 540. As with the education clause in *Abbeville*, this Court finds that nothing in the Article XII, § 2 prison clause expressly provides, or is susceptible to the inference, that it is not intended to be "taken, deemed, and construed to be mandatory." S.C. CONST. art. XII, § 2.

2. Our Supreme Court has not Prohibited a Private Right of Action Under Article XII.

As stated previously, SCDC contends that no private right action arises from an alleged violation of Article XII, § 2. Plaintiffs argue that because Article XII, § 2 mandates that the State provide mental health services to seriously mentally ill inmates, the provision, by implication, also creates a private right of action for inmates to enforce that duty.

The South Carolina Supreme Court has had several opportunities to deny the existence of a private right of action under Article XII, yet has not done so. In fact, the Court has

implicitly recognized a private right of action in several cases. In *Sullivan v. S.C. Dept. of Corrections*, the Court rejected the plaintiff's claim that he had a right under the prison clause to immediate enrollment in a particular advanced sex offender treatment program after he had completed the introductory program and had been placed on a waiting list to enroll in the advanced program. *Sullivan v. S.C. Dept. of Corrections*, 355 S.C. 437, 444, 586 S.E.2d 124, 127 (2003). However, the Court implicitly acknowledged the existence of a broader right than the facts of the case presented and did not deny the plaintiff's ability to bring a claim under Article XII § 2, observing that "[e]ven if this provision is read to require *some* rehabilitation for inmates, it does not mandate any specific programs that must be provided by the General Assembly or the SCDC and, more importantly, it does not mandate any particular timetable for the furnishing of any rehabilitative services." *Id.* (emphasis in original).

The South Carolina Supreme Court once again implicitly acknowledged a private right of action in *In the Matter of the Care and Treatment of Lasure*, 379 S.C. 144, 666 S.E.2d 228 (2008). In *Lasure*, the plaintiff argued that the Sexually Violent Predators Act violates Article XII, § 2 of the South Carolina Constitution on the grounds that Article XII, § 2 mandates the rehabilitation of inmates, and as such, the State should not have waited until the end of the plaintiff's sentence to provide treatment. *Id.* at 147, 666 S.E.2d at 229. The Court cited *Sullivan* and rejected the plaintiff's argument, finding that Article XII, § 2 does not mandate any specific programs or provide a timeline as to when the state should provide such services. *Id.* Nonetheless, the Court did not question whether a private right of action arose from the alleged constitutional violation, which it could have done summarily without ever reaching the merits of plaintiff's claim. Moreover, as in *Sullivan*, the Court once again recognized that Article XII, § 2 may require some rehabilitation for inmates.

In the present matter, unlike *Sullivan* and *Lasure*, Plaintiffs do not seek to participate in a particular rehabilitation program. Rather, they seek to enforce the rights that accrue under the prison clause -- those that inure to the benefit of inmates as a whole. This Court finds that these rights form the basis for the duty imposed on defendants by Article XII, § 2 to provide for certain essential correctional programs, including a system of mental health services. South Carolina law clearly contemplates a private right of action under the circumstances of this case; otherwise, this section of the constitution would be unenforceable and meaningless.

3. The Term "Health" Includes Mental Health Services.

This Court finds that the term "health" contained in Article XII, § 2 includes mental healthcare. An undefined statutory term must be interpreted in accord with its usual and customary meaning. *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000); *Santee Cooper Resort v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) ("Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation."). A statute must be given its plain and ordinary meaning "without resort to subtle or forced construction to limit or expand its operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). Recognized definitions of the term "health" include the mental health component of health. *See, e.g.*, MERRIAM-WEBSTER COLLEGIATE DICTIONARY, 574 (11th ed. 2007) (defining health as "[t]he condition of being sound in body, mind, or spirit.") When the general term "health" is used in legal matters it is recognized to include mental health. *See* BLACK'S LAW DICTIONARY (8th ed. 2004) (defining health as "[t]he state of being sound or whole in body, mind, or soul.").

Further, in an Eighth Amendment context, numerous courts have acknowledged that medical care encompasses treatment for mental illness. No distinction exists between the Eighth Amendment's "right to medical care for physical ills and its psychological or psychiatric counterpart." *Bowring*, 551 F.2d at 47; *see also Ruiz*, 503 F.Supp. at 1338; *Young v. Quinlan*, 960 F.2d 351, 364 (3rd Cir. 1992) *superseded by statute not affecting this provision* ("The touchstone is the health of the inmate. While the prison administration may punish, it may not do so in a manner that threatens the physical and mental health of prisoners."); *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979) (noting that prisons cannot deprive inmates of exercise as it is important to both physical and mental health). In *Madrid v. Gomez*, the court observed:

> We thus can not ignore, in judging challenged conditions of confinement, that all humans are composed of more than flesh and bone - even those who, because of unlawful and deviant behavior, must be locked away not only from their fellow citizens, but from other inmates as well. Mental health, just as much as physical health, is a mainstay of life.

Madrid, 889 F.Supp at 1261. Basic statutory construction law and Eighth Amendment jurisprudence clearly demonstrate that mental health is an essential component of a person's "health," for purposes of Article XII, § 2.

4. The Duty under Article XII, § 2 Extends to SCDC.

It is well settled that the General Assembly may delegate its administrative functions to various governmental agencies. *DeLoach v. Scheper, et al,* 188 S.C. 21, 198 S.E. 409, 416 (1938) ("There is no constitutional reason legislative functions which are merely administrative or executive in their character should not be delegated by that branch of the Government to other departments and there is a distinction between delegation of power to make a law and a grant of authority relative to its execution. . . ."); *State ex. rel. v. Richards v. Moorer,* 152 S.C. 455, 150

S.E. 269, 273 (1929) (noting that while the legislature cannot delegate its power to make laws, it may delegate to other agencies authority or discretion as to the execution of laws). *Joytime Distributors and Amusement Co., Inc. v. State*, 338 S.C. 634, 643, 528 S.E.2d 647, 652 (1999) ("Although the legislature may delegate its authority to create rules and regulations to *carry out* a law, the legislature may not delegate its power to *make* the law.") (emphasis in original).

South Carolina's legislature has delegated to SCDC the responsibility for executing the correctional policies of the State. *See* S.C. Code § 24-1-30. In 1961, the legislature created the SCDC as an administrative agency of the State government." The Department's functions are "to implement and carry out the policy of the State with respect to its prison system, as set forth in § 24-1-20," which provides:

> It shall be the policy of this State in the operation and management of the Department of Corrections to manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system, and with the view of making the system self-sustaining, and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation.

S.C. Code § 24-1-20. Consistent with its delegation of the responsibility to operate South Carolina's prison's systems, the General Assembly also delegated to SCDC its responsibility under Article XII, § 2 to provide for the health and welfare of inmates. This delegation is particularly evident from an examination of the responsibilities the legislature imposed upon the Department of Corrections. Under its enabling legislation, SCDC must provide humane treatment to inmates, take steps to rehabilitate the inmates, and run the prison in a matter "consistent" with modern prison systems. *See Id.* These legislative duties conform closely to the General Assembly's duties under Article XII, § 2 and reflect the legislature's obvious intent to delegate such responsibilities to SCDC, and this Court so holds.

5. Article XII, § 2 Contains a Qualitative Component.

Based upon the Supreme Court's holding in *Abbeville*, this Court finds that Article XII, § 2 contains a qualitative component. The degree of that component is one of the primary disputes within this litigation. The effect of the qualitative component is that SCDC bears a constitutional duty to provide Plaintiffs with minimally adequate mental health services, and this duty cannot be satisfied under the prison clause merely by demonstrating that there are some programs in place to address the medical needs of the seriously mentally ill.[4] The Supreme Court's decision in *Abbeville* mandates a different result.

The central question in *Abbeville* was whether the education clause contained a qualitative standard or required the state to do no more than maintain a system of free public education without regard to the adequacy of the services it renders. *Abbeville*, 335 S.C. at 66, 515 S.E.2d at 539. The trial court found the latter, ruling that the provision did not require schools to be adequate or their educational services to meet any qualitative standards. *Id.* In the absence of an allegation that a free public education open to all children of the state did not exist, the trial court held that no claim was stated under the education clause and granted the defendants' motion to dismiss. *Id.* The Supreme Court reversed, however, holding that "the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education." *Id* at 68, 515 S.E.2d at 540.

[4] Defendants argue that if this Court finds Article XII, § 2 contains a qualitative component, the applicable standard is the same as the Article I, § 15 standard. This Court finds that SCDC's duty under Article XII, § 2 to provide mental health services to inmates also contains a qualitative component distinct from the analysis of Plaintiffs' Article I, § 15 claim. A different conclusion would mean that Article XII, § 2 has no meaning independent of Article I, § 15. *See Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) ("This Court is bound to presume that the framers of the constitution had some purpose in inserting every clause and every word contained in the document. It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning.").

In recognizing that the education clause contains a qualitative component, however, the Supreme Court emphasized the limitation of its ruling. The Court expressly disavowed usurping the legislature's authority to determine the form educational opportunities should take. *Id* at 69, 515 S.E.2d at 541. Disclaiming expertise in education and any intent to dictate public educational programs, the Court stated: "We do not intend the courts of this State to become super-legislatures or super-school boards." *Id.* This Court finds that the same judicial limitations, in following the dictates above enunciated, should be applied to the case at bar, and this Court should impose specific remedial measures only in reaction to a clear showing of constitutional violation(s) upon clear evidence that SCDC will not otherwise rectify the situation.

In *Abbeville*, the Supreme Court demonstrated the manner by which it could determine the qualitative standards imposed by the education clause without engaging in legislative or administrative functions. In doing so, it "defined, within deliberately broad parameters, the outlines of the constitution's requirement of a minimally adequate education." *Abbeville*, 335 S.C. at 69, 515 S.E.2d at 540. *Abbeville*'s analytical framework demonstrates that Article XII, § 2 is not satisfied merely by the existence of a correctional program for mental health services, but that it contains a qualitative standard, consisting of well-recognized, broadly defined parameters. This Court finds no reason to distinguish, diminish, or negate the application and analysis of *Abbeville* to the prison clause of Article XII, § 2.

In announcing its holding in *Abbeville* that the South Carolina Constitution's education clause contains a qualitative standard that requires every child to have the opportunity to receive a "minimally adequate education," the Supreme Court cited decisions from five other states with constitutional educational clauses similar to the South Carolina provision, where each court had found its state's particular clause to contain a qualitative component. *Id,* at 540. No comparable

body of authority from other jurisdictions addresses whether state constitutional provisions similar to the Article XII, § 2 prison clause have been held to impose qualitative standards. In the absence of such authority, however, this Court turns again to an instructive body of Eighth Amendment jurisprudence that identifies the well-recognized components of a minimally adequate correctional mental health system, finding that these provide helpful guidance.

6. The *Ruiz* Factors Identify Core Components of a Minimally Adequate Correctional Mental Health System.

As this Court has already discussed, in analyzing Eighth Amendment claims that allege systemic deficiencies in prison systems, courts have generally recognized six core components of a minimally adequate correctional mental health system. These basic components were first identified in *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D. Tex. 1980), *rev'd in part*, 679 F.2d 1115 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). *See* discussion, *supra* at page 7.

This Court has already held that in this case, under the Article I, § 15 and Eighth Amendment cruel and unusual punishment claims, the *Ruiz* factors will not be employed as specific standards, but as elements of an analytical framework that serve to organize the evidence the parties would introduce concerning the adequacy of SCDC's mental health system. This Court finds that the analysis under the Article XII, § 2 claim, however, is fundamentally different. The plain meaning of the terms "cruel and unusual" and "minimally adequate" connote disparate concepts. The subjective and objective tests under the Eighth Amendment are not identical to the obligations imposed by Article XII, § 2; otherwise, the language of Article XII, § 2 would have no meaning, and its enactment would be purely superfluous.

Thus, this Court holds that the issue under the Plaintiffs' Article XII, § 2 claim is whether the SCDC's system for delivering mental health services is minimally adequate. Again, by way

of analysis to the holding in *Abbeville*, the Supreme Court identified three fundamental components of a minimally adequate system of education in South Carolina:

1. the ability to read, write, and speak the English language, and knowledge of mathematics and physical science;

2. a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and

3. academic and vocational skills.

Abbeville, 335 S.C. at 69, 515 S.E.2d at 540. In *Abbeville*, the Court's adoption of these components of a minimally adequate educational system had the effect of establishing the standards by which liability under the education clause would be determined.

Similarly, because the *Ruiz* factors have been generally recognized by other courts, and specifically recognized by this Court, as constituting general guidelines for the framework of a minimally adequate correctional mental health system, this Court further finds they are appropriate benchmarks for determining whether the Plaintiffs can meet their burden to demonstrate by a preponderance of the evidence that SCDC has failed to provide the plaintiff class with a minimally adequate system of delivering mental health services. While strict compliance and bright line tests are not the evidentiary threshold that will be employed by this Court, the parties are advised that this Court intends to generally rely upon the precepts contained within the *Ruiz* factors in the trial of this case to determine whether Plaintiffs' Article XII, § 2 claims are meritorious, and whether Plaintiffs are able to meet their burden of proof.

IT IS SO ORDERED.

J. Michael Baxley
Presiding Judge
Complex Jurisdiction

September 29, 2010
Hartsville, South Carolina