

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE FIFTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2005-CP-40-02925

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. )

**ORDER GRANTING PLAINTIFFS'**  
**MOTION TO COMPEL RESPONSES**  
**TO 14<sup>TH</sup> INTERROGATORIES, 15<sup>TH</sup>**  
**INTERROGATORIES, AND 15<sup>TH</sup>**  
**REQUEST FOR PRODUCTION**

2011 JUL -6 PM 3:51  
FILED  
RICHLAND COUNTY  
CLERK OF COURT  
C.C.P. & G.S.

**I. BACKGROUND**

Plaintiffs served the South Carolina Department of Corrections ("SCDC") their 14<sup>th</sup> Interrogatories on July 8, 2010 and their 15<sup>th</sup> Interrogatories and 15<sup>th</sup> Requests for Production on August 3, 2010. On September 22, 2010 Plaintiffs filed a motion to compel SCDC to respond. Hearings were held on this motion on September 29 and October 6, 2010. On November 12, 2010 this Court issued an order requiring SCDC to fully respond to the requests at issue. That same day SCDC served its initial responses.

On December 2, 2010 Plaintiffs filed another motion to compel and alternative motion for sanctions. On February 4, 2011 arguments were heard and the Court took the matter under advisement. From March 17 to May 6, 2011 all circuit court proceedings were stayed by order of the South Carolina Supreme Court.

*JMB*

II. PLAINTIFFS' FOURTEENTH INTERROGATORIES

1. For each inmate in GPH at the time of the next inspection, provide:

- a) name and SCDC number;
- b) Specific Housing Location;
- c) current diagnosis;
- d) current medications; and
- e) security level.

SCDC RESPONSE: To the extent that portion(s) are available, this Defendant is currently compiling responsive data and will produce same as soon as possible.

ORDER: The intent of this interrogatory was to obtain information prior to Plaintiffs' August 26, 2010 inspection of Gilliam Psychiatric Hospital (GPH). Since the inspection has already taken place, SCDC is hereby ordered to produce the information requested as of June 1, 2011, rather than as of the date of the inspection. SCDC is ordered to produce this information by August 1, 2011.

2. Provide the total number of inmates on January 1 of each year, from January 1, 2008 to the present, in GPH.

SCDC RESPONSE: The Defendant is currently compiling responsive data and will produce same as soon as possible.

*Job 2*

ORDER: SCDC is hereby ordered to produce all responsive information by August 1, 2011.

3. Provide the total number of inmates in segregation at GPH on January 1, of each year, from January 1, 2008 to the present.

SCDC RESPONSE: All cells in GPH are single cells.

ORDER: As SCDC well knows, the term "segregation" means more than a status of not having a cellmate. Instead, it means isolation from other inmates with significant

activity restrictions for disciplinary and/or administrative reasons. SCDC is hereby ordered to produce the requested information by August 1, 2011.

4. Identify by name and SCDC number all inmates who have been in segregation in GPH during the past twelve months and the length of time each stayed in segregation.

SCDC RESPONSE: All cells in GPH are single cells.

ORDER: For the reasons set forth above, SCDC is hereby ordered to produce all responsive information by August 1, 2011.

5. Provide the number of FTE clinical positions allocated to provide services and the number who actually provided services at GPH each month from January 1, 2008 to the present, broken out by:

- a) psychiatrists;
- b) psychologists;
- c) social workers;
- d) counselors;
- e) nurse practitioners;
- f) RNs;
- g) LPNs; and
- h) others.

*Job 3*

SCDC RESPONSE: This Defendant cannot provide the requested information via automated report.

ORDER: SCDC's response is non-responsive. By August 1, 2011, SCDC must answer this interrogatory in one of three ways.

- 1) If it can do so without undue burden, SCDC must produce all requested information;
- 2) If it cannot produce the requested information without undue burden, it must provide its best and most reasonable estimates of the information sought and also identify a Rule 30(b)(6) witness who can testify how such estimates were determined;
- 3) If it cannot provide reasonable estimates SCDC must so state without qualification.

### III. PLAINTIFFS' FIFTEENTH INTERROGATORIES

#### A. Interrogatories 2-6, 13, 17-18, 20, 32-34, 36-37, 44-45

SCDC responded to each of these interrogatories by stating that it could not provide the requested information by automated report or that it was attempting to determine whether it could provide the requested information by automated report.

Such responses are non-responsive. By August 1, 2011, SCDC must answer each of these interrogatories in one of the three ways set forth above with respect to Plaintiffs' 14<sup>th</sup> Interrogatory 5.

#### B. Interrogatories 1, 7-12, 14-16, 35

SCDC responded to each of these interrogatories by stating that Plaintiffs can themselves extrapolate the requested information from inmate bed histories previously produced. However, in a letter to SCDC's counsel dated November 19, 2010 ("11/19/10 letter") and attached to Plaintiffs motion as Exhibit C, Plaintiffs' counsel explained that the bed histories do not contain mental health classifications or the meanings of various codes referenced. As a result, Plaintiffs are unable to extrapolate the information sought from the bed histories.

SCDC is therefore ordered to produce all requested information by July 1, 2011.

#### C. Interrogatories 4c, 5c, 21-22, 42-43

SCDC responded to each of these interrogatories by stating that it was searching for or compiling the requested information. SCDC is hereby ordered to produce the requested information by August 1, 2011.

#### D. Interrogatories 6c, 19, 23-24, 39-41, 46, 48

SCDC's responses to each of these interrogatories is incomplete or otherwise inadequate. SCDC is hereby ordered to produce all requested information by August 1, 2011.

E. Interrogatories 31, 38, 47

SCDC's responses to these interrogatories are sufficient, but may require supplementation pursuant to the scheduling order.

IV. PLAINTIFFS' FIFTEENTH REQUESTS FOR PRODUCTION

A. RFPs 1-6, 9, 20, 23, 28, 30

SCDC responded to these requests by stating that the documents sought will be made available for inspection and copying. SCDC is hereby ordered to schedule with Plaintiffs a mutually convenient time for inspection and copying by August 1, 2011.

B. RFPs 7, 10, 13

SCDC responded to these requests by stating that it was searching for or compiling the requested documents. SCDC is hereby ordered to produce all requested information by August 1, 2011.

C. RFPs 2, 11, 14-17, 19, 21-22, 24

SCDC's responses to these requests are sufficient, but may require supplementation pursuant to the scheduling order.

D. Miscellaneous RFPs

1. RFP 18: Produce all utilization assessments related to the provision of mental health services to SCDC's inmates, including without limitation those prepared, requested, or reviewed by SCDC's Director of Mental Health Services or his staff from July 1, 2005 to the present.

SCDC RESPONSE: This Defendant is unclear on what "utilization assessments" are and would request that Plaintiffs provide clarification as to this request.

ORDER: In the 11/19/10 letter, Plaintiffs defined "utilization assessments" as "all reports and other documents related to actual or projected utilization of mental health

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services at SCDC." SCDC is hereby ordered to produce all responsive information by August 1, 2011.

**2. RFP 25: Produce documents showing the number of restraint chair incidents and use of gas incidents at area mental health centers involving:**

- a) all inmates; and
- b) MI inmates.

**SCDC RESPONSE:** This Defendant objects to this request for production on the ground that same is duplicative of other requests for production which have been previously answered in this matter. Management information notes, incident reports and use of force reports for all subject institutions have been produced and/or made available for copying by Plaintiffs' counsel.

**ORDER:** The documents SCDC referenced in its response all relate to RFP 25(b). SCDC has produced nothing responsive to RFP 25(a). SCDC is therefore ordered to produce all responsive information by August 1, 2011.

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**3. RFP 26: Produce all documents related to exit interviews, resignations, and terminations since January 1, 2007 for all persons leaving SCDC's employment who provided mental health services or who administered medication to mentally ill inmates at any Area Mental Health institution, GPH, MSU, ICS, or BMU.**

**SCDC RESPONSE:** This Defendant objects to this request for production on the ground that same is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

**ORDER:** The quality of care provided mentally ill inmates goes to the heart of this lawsuit. Turnover in the mental health and medical staff who provide that care is highly relevant. The Court does not find this request overly broad, unduly burdensome, or irrelevant and therefore orders SCDC to provide all responsive information by August 1, 2011.

4. RFP 27: Produce all individual training files since January 1, 2005 on correctional officers who worked since January 1, 2008 at GPH, MSU, or any Area Mental Health institution.

SCDC RESPONSE: This Defendant objects to this request for production on the ground that same is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

ORDER: In the 11/19/10 letter Plaintiffs agreed to limit this request to training files since January 1, 2008. SCDC is hereby ordered to produce all responsive information by August 1, 2011.

5. RFP 29: Produce detailed, schematic floor plans drawn to scale and with measurements indicated of GPH, MSU, ICS-K, and the SMUs at each Area Mental Health institution.

SCDC RESPONSE: This Defendant objects to this request for production on the ground that production of the requested documents would pose a serious security risk to its institutions.

ORDER: The information sought in this request relates to Plaintiffs' proposed remedies and the opinions of Plaintiffs' architectural and cost expert Stephen Carter. The requested information is necessary for Mr. Carter to form his opinions concerning the adequacy of current space at SCDC facilities and for him to create alternative designs and offer opinions on construction costs. The information sought is subject to the current Protective Order; however, in order to further protect the security interests of SCDC, it is further ordered that the produced information in response to this inquiry shall only be viewed by Plaintiffs' attorneys and expert witness Carter, shall not be copied in whole or in part, shall not be viewed by any staff for either counsel or expert Carter, nor any party to this litigation. Counsel for SCDC is instructed to affix a notice to each page that contains the strictures set forth

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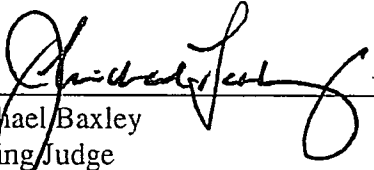
in bold above. The Court instructs counsel in advance for security reasons it is unlikely any such plans will be admitted as an exhibit at trial so an alternative should be devised, and at the end of trial, the plans provided by SCDC must be returned to counsel for SCDC before leaving the courtroom. Within these parameters, SCDC is therefore ordered to provide the requested information by August 1, 2011.

**6. RFP 31: Identify all cases, by caption, in which each of Plaintiffs' experts has served as an expert witness, consultant, or court monitor.**

**SCDC RESPONSE:** This Defendant objects to this request on the ground that it is not a proper request for production of a document or other tangible object. Moreover, this Defendant objects to this request, as Plaintiffs are the only parties to this litigation who are in possession of the requested information. To date, Plaintiffs have not provided even minimal information regarding their experts.

**ORDER:** This request contains an obvious misprint. SCDC is hereby ordered to produce all responsive information related to SCDC's experts by August 1, 2011.

AND IT IS SO ORDERED.

  
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J. Michael Baxley  
Presiding Judge  
Complex Jurisdiction

Hartsville, South Carolina  
June 23, 2011