

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 SCDC'S
FINAL SUPPLEMENTAL
RESPONSES

2011 OCT 11 PM 4:04
RICHLAND COUNTY
FILED
C.C.P. & G.S.
KAREN W. McBRIDE

This matter came before the Court upon motion of the Plaintiffs to compel complete responses to various discovery requests submitted to Defendant SCDC. The Court finds that additional supplementation and/or clarification is necessary in the following three categories of discovery responses: (1) Defendant's electronic database, (2) inspect and copy responses, and (3) other responses needing complete or clarifying responses.

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1. SCDC's Electronic Database

In its Final Supplemental Responses to Plaintiffs' discovery requests, Defendant produced on September 9, 2011 an electronic database of over 50,000 pages that presents electronically stored information on all SCDC inmates, including members of the Plaintiff class. Defendant has asserted that Plaintiffs can organize the information contained in this database in such a way as to make it responsive to Plaintiffs' discovery requests. Plaintiffs, however, have insisted that the format of the database makes it virtually impossible to determine whether the information is in fact responsive to their discovery requests.

The Court believes that a meeting between IT personnel from both Plaintiffs' and Defendant's counsel would be the most efficient way to assist Plaintiffs in accessing the information in a beneficial way. Therefore, the Court orders Defendant to direct those members of its IT staff most knowledgeable with the database—and its capabilities in answering Plaintiffs' requests—to meet with Plaintiff's IT staff. This meeting shall take place within (7) days of the date of this Order at a location agreed upon by counsel for both parties; however, no counsel shall be present at the meeting to allow IT staff to resolve the issues. Defendant should direct its staff to be fully cooperative with Plaintiffs' staff in assisting them to understand what information the database contains and how it may be organized, sorted, and cross-referenced so that Plaintiffs' requests can be answered. In like fashion, Plaintiffs' counsel should direct its own IT staff to be cooperative and not oppositional with Defendant's staff.

2. Inspect-and-Copy Response

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In addition to using the electronic database, Defendant responded on September 1 to many of Plaintiffs' requests by proposing to make documents available for review and copying. Plaintiffs' counsel has indicated no need to review these categories of records and wants all available documents in these categories copied at Plaintiffs' expense. At the hearing on Plaintiffs' motion, Defendant argued that Plaintiffs should be required to provide copiers and send their staff to the various institutions around the state copying the material they desire. The Court finds that such a process would be unreasonable and inefficient.

Instead, the Court orders that Defendant should be responsible for contacting a copy professional who will provide an estimate to Plaintiffs' counsel and the Court as to the anticipated cost that making copies at the various SCDC institutions will entail. This estimate shall be submitted within five (5) days of the date of this Order and should be consistent with

standard reproduction charges. If Plaintiffs accept the proposed charges contained in the estimate, then Defendant has ten (10) additional days to provide the copied records to Plaintiffs' counsel. The Court has been made well aware of the fiscal restraints currently existing for the Defendant. In the event that Defendant believes an inordinate amount of Defendant staff time has been consumed in the search for and retrieval of documents sought in discovery, a bill may be submitted to Plaintiffs' counsel for this staff time. If the amount of the bill cannot be agreed upon between the parties, the Court will decide the issue.

3. Specific Discovery Objections

Plaintiffs have also moved to compel responses to several specific discovery requests. Of these requests, the following should be among the requests specifically addressed in the meeting between the Plaintiffs and Department staff related to the electronic database: Plaintiff's Eighth Interrogatories 27-28 and Fifteenth Interrogatories 22, 25-28, and 44-45. The remaining requests are addressed below. It should be noted by the parties that the Defendant's response times for specific discovery responses are within twelve days of the date of this Order, not the date of service of this Order. To this end, this Order is being electronically forwarded to all counsel on its date of issue.

Jan 3

Plaintiffs' First Interrogatories 13. For each year from January 1, 2000, to the present, please provide the number of full-time equivalent ("FTEs") employed or contracted by SCDC to provide mental health services, categorized as follows:

- a. Psychiatrists;
- b. Psychologists;
- c. Certified psychiatric nurses;
- d. Registered nurses;
- e. Licensed practical nurses;
- f. Masters of social work ("MSW")
- g. Other mental health clinical staff; and
- h. Other mental health non-clinical staff.

Response: For 2011, the following data on FTE psychiatrists is available:

January - 5.32
February - 4.73
March - 5.21
April - 5.22
May-5.43
June-5.13
July - 5.22

However, this Defendant is not in possession of the requested information for other positions.

ORDER: Defendant is ordered to provide the number of FTEs employed or contracted on the first day of each month from January 1, 2008 through September 1, 2011 for categories a-c and f-h. Defendant is to produce this information within twelve (12) days of the date of this Order.

Plaintiffs' Seventh Interrogatories 11 and 12.

Jan 4

- 11)** For each month since January 1, 2007, list the names of all clinicians who provided mental health services at Lee and Lieber. For each name listed, provide:
 - a. the professional title;
 - b. program assignment;
 - c. job responsibilities;
 - d. caseload;
 - e. the number of hours worked each month; and
 - f. whether the clinician is employed by SCDC or is an independent contractor.

Response: Current personnel information will be made available for inspection and/or copying.

- 12)** For each month since January 1, 2007, list the names of all SCDC mental health staff members and administrators who provided services at Lee or Lieber. For each name listed, provide the:
 - a. job title;
 - b. program assignment;

- c. caseload; and
- d. number of hours worked each month.

Response: Current personnel information will be made available for inspection and/or copying.

ORDER: Defendant is ordered to provide the specific information requested in these interrogatories within twelve (12) days of the date of this Order.

Plaintiffs' Seventh Request for Production 7. A current organizational chart showing mental health staffing and administration at Lee and Lieber.

Response: The mental health organizational chart as of September 1, 2011, win [sic] be produced as soon as it is completed.

ORDER: Defendant is ordered to produce an updated version of its February 2011 organizational chart for the Department's mental health staff within twelve (12) days of the date of this Order.

James

Plaintiffs' Tenth Request for Production 2. Please provide copies of all completed mental health evaluation forms, similar to Exhibit 1 to the James Blackwell deposition and Exhibit 1 to the Sharon Patterson deposition, provided to a Disciplinary Hearing Officer at Lee, Lieber, Perry, and/or Graham since January 1, 2007 for the inmates listed in Attachment F.

Response: This Defendant will make all disciplinary hearing officer files, including mental health statements, for the relevant time period available for inspection and/or copying at a mutually convenient time upon request.

ORDER: Defendant is ordered to provide copies of the requested forms for the inmates listed in Attachment F of Plaintiffs' request. Defendant shall produce these copies within twelve (12) days of the date of this Order.

Plaintiffs' Twelfth Request for Production 3 and 4.

- 3) All documents, including but not limited to personnel files, related to corrective action taken against correctional officers or other Perry staff relating to crisis

intervention or falsification of crisis intervention records as referenced in the deposition of Warden McCall at pp. 68-71.

Response: Upon information and belief, Plaintiffs are already in possession of all responsive documentation.

- 4) All documents, including but not limited to personnel files, related to disciplinary action taken against Captain Wade Byrd relating to the use of the restraint chair as referenced in the deposition of Warden McCall at pp. 101-104.

Response: Upon information and belief, Plaintiffs are already in possession of all responsive documentation.

ORDER: Defendant shall provide a full, complete, and unqualified response to both of these requests within twelve (12) days of the date of this Order.

Plaintiffs' Fifteenth Interrogatories 3. Provide the total number of SCDC inmates in ICS on the first of each month from January 1, 2008 to the present, by Institution.

Response: This Defendant craves reference to the data being produced, including inmate medical classification history, inmate movement history and inmate custody history, for responsive information. Upon information and belief, Plaintiffs can glean the requested information for the time period beginning in mid-2010.

To the extent that this request pertains to the time period prior to mid-2010, this Defendant would crave reference to individual inmate medical records as to participation in the ICS program.

ORDER: Defendant is ordered to provide a full, complete, and unqualified response to this interrogatory within twelve (12) days of the date of this Order. If it cannot retrieve the requested information prior to mid-2010, it must so state without ambiguity.

Plaintiffs' Fifteenth Interrogatories 5 and 6.

- 5) Provide the total number of SCDC inmates on the first of each month from January 1, 2008 to the present, broken down as follows:
 - a. Participating in the BMU Cutters Program;
 - b. Participating in other cutters programs by Institution; and
 - c. MSU.

Job 6

Response: This Defendant craves reference to the data being produced, including inmate movement history and inmate custody history, as well as individual inmate medical records, for responsive information. Upon information and belief, Plaintiffs can glean the requested information.

- 6) Provide the total number of Mentally Ill Inmates on January 1, 2008 to the present, broken down as follows:
 - a. Participating in the BMU Cutters Program;
 - b. Participating in other cutters programs by Institution; and
 - c. MSU.

Response: This Defendant craves reference to the data being produced, including inmate medical classification history, inmate movement history and inmate custody history, as well as individual inmate medical records, for responsive information. Upon information and belief, Plaintiffs can glean the requested information.

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ORDER: Defendant is ordered to provide full, complete, and unqualified responses to these interrogatories within twelve (12) days of the date of this Order. If it cannot retrieve the requested information, it should so state without ambiguity. If no cutters programs exist, SCDC should so state without ambiguity.

Plaintiffs' Fifteenth Interrogatories 31. Describe any SCDC credentialing process to which individuals who provide clinical or professional mental health services to Mentally Ill Inmates are subject before providing such services.

Response: None other than agency-mandated training.

ORDER: Defendant's attorneys stated at the motions hearing that Defendant has no credentialing process. Plaintiffs' motion is therefore denied with respect to this interrogatory.

Plaintiffs' Fifteenth Request for Production 11. Produce copies of all documents relating to any credentialing standards for SCDC mental health professionals, including mental health counselors.

Response: None other than what is required when hiring same.

ORDER: Defendant is ordered to produce copies of all requested documents within twelve (12) days of the date of this Order.

Plaintiffs' Fifteenth Request for Production 19. Provide copies of all audio or video recordings of group therapy sessions held by mental health counselors at any SCDC institution since January 1, 2008.

Response: None.

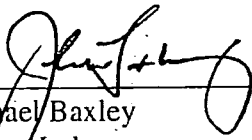
ORDER: Defendant is ordered to produce within twelve (12) days of the date of this Order, *all* audio and video recordings of all or part of any group therapy sessions held by mental health counselors at any SCDC institutions since January 1, 2008, including but not limited to the one that defense counsel admitted having at the motions hearing.

Plaintiffs' Seventeenth Request for Production 2. Produce a copy of the most recent Special Management Unit Procedural Manual, also known as the "SMU Cookbook."

Response: None.

ORDER: Defendant's response is in conflict with the deposition testimony of its employee, Captain Fred Withers. Within twelve (12) days of the date of this Order, Defendant is directed either to provide the updated document or to state unambiguously that Captain Withers was incorrect and that the document has not been updated or revised since being produced to Plaintiffs.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge
Complex Jurisdiction

Hartsville, South Carolina

October 5, 2011