

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
1320 Main Street / 17<sup>th</sup> Floor / Columbia, South Carolina 29201  
Tel: 803.799.2000 Fax: 803.256.5164  
www.nelsonmullins.com

Daniel J. Westbrook  
Tel: 803.255.9456  
Fax: 803.255.5164  
dan.westbrook@nelsonmullins.com

July 3, 2014

**Hand Delivered**

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

**RECEIVED**

JUL 03 2014

**S.C. Supreme Court**

RE: T. R. v. South Carolina Department of Corrections  
Appellate Case No. 2014-001080  
Civil Action No. 2005-CP-40-2925  
Our File No. 33999/00424

Dear Mr. Shearouse:

Enclosed are the original and seven copies of Respondents' Return to Appellants' Petition for Writ of Supersedeas or Stay Pending Appeal in the above-captioned matter. Please return a clocked-in copy to us.

By copy of this letter to all counsel, we are hereby serving them with a copy of this document.

Very truly yours,



Daniel J. Westbrook

DJW:mybrown

Enclosures

cc: Andrew F. Lindemann, Esq.  
William H. Davidson, II, Esq.  
Kenneth P. Woodington, Esq.  
Daniel C. Plyler, Esq.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
J. Michael Baxley, Circuit Court Judge  
Case No. 2005-CP-40-2925

**RECEIVED**

JUL 03 2014

Appellate Case No. 2014-001080

**S.C. Supreme Court**

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., ..... Respondents,

v.

South Carolina Department of Corrections; and William  
R. Byars, Jr., as Agency Director of the South Carolina  
Department of Corrections, ..... Appellants.

---

**RESPONDENTS' RETURN TO APPELLANTS'  
PETITION FOR WRIT OF SUPERSEDEAS OR  
STAY PENDING APPEAL**

---

**I. INTRODUCTION**

Plaintiffs-Respondents (“Plaintiffs”), consisting of Protection and Advocacy for People with Disabilities, Inc. (“P&A”) and a class of inmates with serious mental illness, submit this Return to the Petition for Writ of Supersedeas or Stay Pending Appeal filed by Appellants South Carolina Department of Corrections (“SCDC”) and its Director. Plaintiffs filed the underlying action in June 2005, alleging SCDC’s mental health program violated the South Carolina Constitution and seeking declaratory and injunctive relief. In 2005, the South Carolina Supreme Court assigned the case to the Honorable J. Michael Baxley. In June 2007, Judge Baxley certified the plaintiff class.

A bench trial was held during February and March 2012. On January 8, 2014, the Court issued an Order Granting Judgment for Plaintiffs (the “Final Order”). Exh. A; Appellants’ Appendix at 1-45. The Final Order concluded that SCDC’s mental health program was systemically deficient, subjecting mentally ill inmates to cruel and unusual punishment in violation of Article I, § 15 of the South Carolina Constitution.

## II. ARGUMENT

### A. The Remedial Plan

#### 1. Costs of Implementing a Remedial Plan Cannot Be Estimated Until a Plan is Developed.

The Final Order requires SCDC to submit a written remedial plan within 180 days. Exh. A. at 37-38. The plan must incorporate or address a list of factors and guidelines identified by the Court. *Id.* at 37-44.

Once the plan is approved, its implementation would undoubtedly involve some expense. While the Petition characterizes the expense as exorbitant, the amount of funding necessary to correct the constitutional violations identified in the Final Order is simply unknown at this point. To a large extent, the cost of remediation will depend on the plan developed by SCDC. To offer just one example, the Final Order found that SCDC ordinarily places inmates undergoing a mental health crisis in designated crisis intervention (“CI”) cells, located in disciplinary segregation units. Cells are typically cold and filthy and CI inmates have little access to clinical treatment. Even worse, at times CI inmates have been placed for hours and days at a time in shower stalls and other inappropriate spaces. *Id.* at 28-29. Among the “remedial factors and guidelines” SCDC must consider in drafting the remedial plan, the Court identified the following:

- i. Locate all CI cells in a healthcare setting;
- ii. Prohibit any use for CI purposes of alternative spaces such as shower stalls, rec cages, holding cells, and interview booths.

Exh. A. at 44.

The cost of correcting this problem could vary enormously, depending on SCDC's remedial plan. As SCDC acknowledges, potentially this problem could be remedied without need for new construction. Petition at 27. If SCDC is able to convert existing space into crisis intervention rooms, the cost could be significantly less than if it decides to construct new crisis intervention units. There may also exist a number of other options. The Final Order does not identify those options or mandate which ones SCDC must choose. Instead, it simply requires SCDC to pick an option and identify it in the written plan. Until SCDC proposes a detailed plan, the plan costs are impossible to estimate.

## **2. Plan Development Should Not Be Stayed.**

While the Petition contends plan development itself would be expensive, SCDC offers no reasonable support for this contention. Plan development simply requires SCDC administrators and consultants to determine the best ways SCDC can effectively address the remedial factors and guidelines identified in the Final Order, commit the plan to writing, and submit it to the Court. The Court would either accept the plan or modify it, presumably with further input from the parties.

SCDC asserts that the standard of review applicable to a supersedeas petition consists of two parts: first, whether the issue is debatable; and second, whether a stay is necessary to preserve the fruits of a successful appeal, "considering the equities of the situation." Petition at 7, citing *Purser v. Rahm*, 104 Wash.2d 159, 177, 702, P.2d 1196, 1206 (1985). If merely

being debatable were all that is required, virtually every supersedeas petition would be granted, for an appeal without a debatable issue would be frivolous. The second part of SCDC's asserted standard is, therefore, the key. Is a stay of the development of the remedial plan necessary to preserve the fruits of the victory, should SCDC win this appeal, considering the equities of the situation?

The Final Order concludes "[t]he evidence is overwhelming that SCDC has known for over a decade that its system exposes seriously mentally ill inmates to a substantial risk of serious harm." Exh. A. at 32. Moreover:

The evidence shows that from 1999 until the filing of this action in 2005, SCDC did virtually nothing to address, much less eliminate, the substantial risks of serious harm to which class members were exposed. What limited action SCDC has taken since the filing of this lawsuit has had little to no effect in abating the unconstitutional deficiencies this Court has found.

*Id.* at 33-34.

The equities of the situation, therefore, are that for over a decade SCDC has possessed actual knowledge of the wretched treatment it provides thousands of mentally ill inmates, yet has done virtually nothing to improve it. Given those circumstances, simply requiring SCDC to develop and submit a remedial plan to the Court is equitable. Plan development would be inexpensive and should not be stayed.

**B. The Standard of Liability**

The bulk of the Petition is spent arguing the merits of the appeal and criticizing Judge Baxley and the Final Order. Many of SCDC's arguments and complaints arise from the standard of liability Judge Baxley applied.

**1. The Standards Order and the Article XII, § 2 Claim**

Plaintiffs originally asserted two claims against SCDC, a claim under Article I, § 15 of the South Carolina Constitution and a claim under Article XII, § 2. Article I, § 15 prohibits cruel and unusual punishment, while Article XII, § 2 provides that the General Assembly “shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of inmates.” In 2011 Plaintiffs voluntarily dismissed their Article XII, § 2 claim.

In 2010 the Court directed the parties to submit briefs on the appropriate standards of liability for each of Plaintiffs’ claims. Following oral arguments, on September 29, 2010 the Court issued its Order Setting Forth Applicable Constitutional Standards (“Standards Order”), Exh. B, which set forth separate standards for Article I, § 15 and Article XII, § 2. SCDC now argues that in the Final Order Judge Baxley applied the Article XII, § 2 standard to Plaintiff’s Article I, § 15 claim.

Ironically, in 2010 SCDC argued that the same standard applied to both constitutional claims. Exh. B at 14. In the Standards Order, Judge Baxley rejected SCDC’s position, finding the analyses appropriate to the two claims “fundamentally different.” *Id.* at 22. The standard for Article XII, § 2 is purely objective: are mental health services “minimally adequate.” *Id.* Noting that in *Abbeville County School Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999) the South Carolina Supreme Court identified three specific components of a minimally adequate educational system, Judge Baxley identified six components (the “*Ruiz* factors”)<sup>1</sup> of a minimally adequate prison system. Exh. B at 23.

---

<sup>1</sup> 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.  
Exh. B at 8; Exh. A at 4-5.

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 rely generally upon the precepts contained within the *Ruiz* factors in the trial of this case to determine whether Plaintiffs' Article XII, §2 claims are meritorious.

Exh. B at 23. Nothing in the Standards Order suggests that minimal adequacy should be analyzed in the terms of a future risk of harm or in terms of any subjective component.

**2. The Article I, § 15 Standard of Deliberate Indifference**

**a) The Objective Component**

The Final Order clearly rules that the standard of liability for an Article I, § 15 claim is the “deliberate indifference” standard<sup>2</sup> applied by federal courts in Eighth Amendment cases. Exh. B at 2-3; Exh. A at 3-4, *citing Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The deliberate indifference standard has both an objective and a subjective component. Exh. B at 3; Exh. A at 4, *citing Farmer v. Brennan*, 511 U.S. 825, 834-37 (1994).

The objective component of the deliberate indifference standard requires proof of a substantial risk of harm that is sufficiently serious and which involves an extreme deprivation, such as the deprivation of appropriate mental health care for those with serious mental illness. Exh. B at 4-5, *citing Farmer*, 511 U.S. at 834-36, 847; *Helling v. McKinney*, 509 U.S. 25, 32 (1993); *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004); *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1975). The objective component does not require proof of past or current harm to individual plaintiffs, but is satisfied by proof that systemic deficiencies expose plaintiffs to a substantial risk of serious future harm. Exh. B at 6-8, *citing Helling*, 509 U.S. at 35; *Farmer*,

---

<sup>2</sup> SCDC argues that the Final Order does not apply the “cruel and unusual punishment standard” or even reference the term “cruel and unusual punishment” but one time. Petition at 18. The cruel and unusual punishment standard, however, is commonly referred to as the “deliberate indifference” standard. *See* Exh. A at 4, *citing Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The deliberate indifference standard and its two components are referenced throughout the Final Order.

511 U.S. at 845; *Shakka v. Smith*, 71 F.3d 162, 168 (4th Cir. 1995); *Neiberger v. Hawkins*, 208 F.R.D. 301, 317 (D. Colo. 2002); Exh. A at 4.

As discussed previously, the Court determined that the six *Ruiz* factors were useful “benchmarks” in analyzing the minimal adequacy of SCDC’s system. Exh. B at 23. The Court also concluded that the *Ruiz* factors were “relevant and probative” to the objective component of the deliberate indifference standard, “not as bright line standards, but rather as an organizational framework.” *Id.* at 4-10. Accordingly, in the Final Order the Court organized the objective component analysis by the *Ruiz* factors. The Court concluded that Plaintiffs proved that SCDC’s mental health program was systemically deficient in each *Ruiz* area (screening and evaluation, treatment beyond force and segregation, clinical staffing, mental health records, medication administration, and suicide prevention/crisis intervention), to the extent that it exposed all class members to a substantial risk of serious future harm. Exh. A at 5-6, 8-32.

**b) The Subjective Component**

The most striking difference between the Article XII, § 2 standard and the Article I, § 15 standard is that the latter contains a subjective component, as connoted by the term “deliberate indifference.”<sup>3</sup> To prove deliberate indifference Plaintiffs must do more than simply demonstrate that a prison system objectively exposes them to a substantial risk of serious future harm. In addition, Plaintiffs must prove that Defendants had a “sufficiently

---

<sup>3</sup> SCDC notes that in the Standards Order Judge Baxley held that the deliberate indifference standard and the minimally adequate standard were different, yet in an August 2013 e-mail said that evidence in the Plaintiffs’ two claims was “substantially similar.” Petition at 12-13. As plainly set forth in the Standards Order, the Court intended to use the *Ruiz* factors as organizational frameworks and benchmarks both for evidence related to the objective component of the deliberate indifference standard and for evidence related to the minimally adequate standard. As a result, evidence related to the two claims would be, as the judge noted, substantially similar. Nevertheless, the two standards remain very different, primarily because only the deliberate indifference standard contains a subjective component.

culpable state of mind,” meaning that Defendants know that conditions expose inmates to a substantial risk of serious harm, yet “disregard that risk by failing to take reasonable measures to abate it.” Exh. B at 11 (quoting *Farmer*, 511 U.S. at 835-38, 847). The subjective component “should be determined in light of prison authorities’ current attitudes and conduct, their attitudes and conduct at the time suit is brought and persisting thereafter.” *Id.* at 11 (quoting *Farmer* at 845-46).

The harshest criticism the Final Order directs at SCDC is contained in its analysis of the subjective component of the deliberate indifference standard. *See* Exh. A at 7, 32-35. The Court cites a litany of evidence “that SCDC has known for over a decade that its system exposes seriously mentally ill inmates to a substantial risk of serious harm.” *Id.* at 32. That evidence includes reports, over a period of years, by an outside consultant, the South Carolina Department of Mental Health, a Joint Legislature Proviso Committee, a task force whose members included three former SCDC Directors, the SCDC Inspector General, and the United States Department of Justice, in addition to SCDC internal documents and data.

The Court finds from this evidence that SCDC knows and has known, since before this lawsuit was filed, and persisting thereafter until the time of trial and even to present date, that its mental health program is systemically deficient and exposes seriously mentally ill inmates to a substantial risk of serious harm.

*Id.* at 33.

The Order goes on, however, to consider the second part of the subjective component analysis: “has SCDC taken reasonable measures to abate the risks of which it is aware?” *Id.* The answer, Judge Baxley concluded, is a resounding “no.”

The evidence shows that from 1999 until the filing of this action in 2005, SCDC did virtually nothing to address, much less eliminate, the substantial risks of serious harm to which class members were exposed. What limited action SCDC has taken since the filing of this lawsuit has had little to no effect in abating the unconstitutional deficiencies this Court has found.

*Id.* at 33-34.

The Final Order lists the measures SCDC claims to have taken since 2005 to improve its mental health program, then explains why each of these measures is insufficient. *Id.* at 34-35. The Court then concludes its analysis of the subjective component:

Half-hearted measures will not 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.” [Exh. B] at 13, (quoting *Coleman v. Wilson*, 912 F.Supp. 1282, 1319) (E.D. Cal 1995)). *See also Thomas*, 614 F.3d at 1320 (11th Cir. 2010) (“practices may be reinstated as swiftly as they were suspended”). The steps SCDC has taken have been small ones, characterized by SCDC itself as “band aids,”<sup>4</sup> many of which were instituted shortly before and even during trial, that have failed to adequately address the known systemic deficiencies in its mental health program. The SCDC mental health program needs far more than band aids, and the court finds that the measures taken by SCDC to correct its systemic deficiencies are neither reasonable, timely, nor effective. Plaintiffs have therefore satisfied the subjective component of the deliberate indifference standard.

*Id.* at 35.

SCDC’s argument that Judge Baxley did not apply the deliberate indifference standard is baseless. The Final Order uses the six *Ruiz* factors as an organizational framework to find that SCDC’s systemic deficiencies expose inmates with serious mental illness to a substantial risk of serious future harm, thereby addressing the objective component of the standard. Exh. A at 8-32. Then the Final Order cites “overwhelming” evidence that SCDC has long known of this risk, while failing to take reasonable measures to abate it, thereby addressing the

---

<sup>4</sup> SCDC’s June 8, 2009 Memorandum on Applicable Standards contended that SCDC had a “well-developed mental health system . . . in place for decades,” that needed nothing more than “band aids or other minor remedies.” Exh. A at 35 n. 13.

subjective component. *Id.* at 32-35. The Final Order applied the correct standard and found SCDC liable.

**C. Factual Findings in the Final Order on the Risk of Future Harm**

SCDC argues that the Final Order’s factual findings related to the objective component (pp. 8-31 of Final Order) are “largely devoid of findings of past harm or the likelihood of future harm to any specific inmates.”<sup>5</sup> *Wellman v. Faulkner*, 715 F.2d 269,272 (7th Cir. 1983); *Flynn v. Doyle*, 209 WL 4262746 at \*19 (E.D. Wis. 2009); *Ginest v. Bd. Of County Comms’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*, 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).

. . . .

[F]or Plaintiffs herein 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 . . . .

Exh. B at 7-8.

**1. Screening and Evaluation**

---

<sup>5</sup> SCDC also criticizes Judge Baxley’s analysis as “cursory,” noting that a similar case, *Madrid v. Gomez*, 889 F.Supp. 1146 (N.D. Cal. 1995), was much lengthier. Petition at 7 n. 5. The quality of analysis, however, is not measured by length. Moreover, the scope of *Madrid* was much broader than that of the present case, addressing not only mental health, but also medical care and the entire range of inmate conditions. *Id.* at 1155.

Judge Baxley found that there is “a high likelihood that there are hundreds of inmates with a serious mental illness at SCDC who are not receiving any treatment due to deficiencies in the screening and evaluation process used to identify and classify those with a serious mental illness.” Exh. A at 8. As a result, he ordered SCDC to incorporate into its remedial plan “screening parameters and modalities that will more accurately diagnose serious mental illness . . . with the stated goal of increasing the number of inmates recognized as mentally ill . . . by a minimum of two percentage points . . . .” *Id.* at 39.

SCDC asserts there is “nothing to support” the Court’s findings and that the remedial guideline is “virtually absurd” with “no rational support.” Petition at 32.

Ironically, the Court relies in part on SCDC’s own expert, Dr. Scott Haas, for the finding. Dr. Haas testified that “seriously mentally ill inmates ordinarily comprise 18 percent of a prison population.” Exh. A at 8. The testimony of Plaintiffs’ experts and findings of multiple national studies are consistent with Dr. Haas’s testimony. *Id.* Yet, SCDC contends that only 12-13 percent of its prisoners suffer from any form of mental illness – serious or otherwise. *Id.* SCDC offered no reasonable explanation for the discrepancy between the percentage of mentally ill inmates in South Carolina and the percentage in the rest of the United States. Clearly, some SCDC inmates with serious mental illness are slipping through the cracks in SCDC’s deficient screening and evaluation process. Significant evidence supports Judge Baxley’s finding and his remedial guideline.

2. **Treatment Beyond Segregation and Force**

a) **Segregation**

Judge Baxley found that SCDC's mental health program "places heavy reliance on segregation and use of physical force against seriously mentally ill inmates, as opposed to treatment." Exh. A at 10.

Twenty-three percent of SCDC inmates in segregation (SCDC's term for solitary confinement) have been diagnosed mentally ill, though less than 12 percent of SCDC's prison population have been diagnosed mentally ill. *Id.* Mentally ill inmates spend far longer time in solitary than non-mentally ill inmates. *Id.* at 11. SCDC sentences mentally ill inmates to far lengthier period of time in solitary than non-mentally ill inmates, often far beyond their release dates. *Id.* The Final Order provides examples of two mentally ill inmates who had received extremely long sentences in solitary for non-assaultive behavior. *Id.* at 11-12. The court found that "the great majority of the extreme periods in segregation are in fact served." *Id.* at 12. The Court offered three examples of mentally ill inmates who had each spent between 4-7 years in solitary, noting that other mentally ill inmates "were confined in solitary for similarly lengthy periods." *Id.*

The Court found that inmates were placed in solitary even after findings by SCDC that they were "not accountable" for their disciplinary infractions due to their mental illness. *Id.* at 12-13. An SCDC psychiatrist estimated 40-50 percent of the segregation inmates she treated were "actively psychotic." *Id.* at 13. An SCDC Mental Health Coordinator acknowledged that solitary confinement increased the risk for depression, psychosis and suicide. *Id.* at 14.

The Court further found that inmates in solitary receive no group therapy. Sessions with psychiatrists and mental health counselors are not held on a timely basis and are not confidential. *Id.* at 14. Segregation cells "are both extremely cold and inordinately filthy,

often with the blood and feces of previous occupants smeared on the floor and walls.” *Id.* at 15.

Despite these findings, SCDC asserts that the Final Order “cites virtually no evidence that would show systemic deficiencies that led either to cruel and unusual punishment in the past or a likelihood of cruel and unusual punishment in the future.” Petition at 28-29.<sup>6</sup>

The Court disagreed:

The inappropriate and extended reliance on segregation to manage inmates with serious mental illness, . . . exposes them to a substantial risk of serious harm by limiting their access to mental health counselors and psychiatrists, disturbing their eating and sleeping cycles, disrupting the administration of medications, and deepening their mental illness. These conditions have contributed to the deaths of multiple inmates in segregation, while placing other inmates and staff at risk. They have also led to the stigmatization of mental illness within SCDC that discourages inmates from seeking the limited mental health care the agency does provide.

Exh. A at 6.

**b) Use of Force**

Judge Baxley found that mentally ill inmates were subjected to uses of force “at a rate two and a half times greater than non-mentally ill inmates.” Exh. A at 16. Of the thirty inmates most frequently subjected to force at SCDC, twenty-six were mentally ill. *Id.* at 17. From 2008-2011 inmate James Howard was hospitalized for psychiatric treatment on five occasions and subjected to use of force on 81 occasions. *Id.*

---

<sup>6</sup> SCDC dismisses the example of Jerome Laudman as “one inmate at one institution” whose death from hypothermia and heart disease while in solitary confinement under appalling conditions of filth and neglect “is insufficient to show [systemic] deficiencies.” Petition at 29 n. 19. The Court disagreed, specifically rejecting the argument that Laudman and the other examples used in the Final Order were outliers: “while no system involving thousands of inmates is expected to be perfect, the Court finds that the individual circumstances referred to below are the result of a system that is inherently flawed in many respects, understaffed, underfunded, and inadequate.” Exh. A at 7-8.

The Final Order relies on Plaintiffs' corrections expert, Steve J. Martin, in concluding that SCDC's use of force against mentally ill inmates is not only disproportionate, but also often unnecessary and excessive, in violation of SCDC's own policies.<sup>7</sup> *Id.* Mr. Martin reviewed over 1,000 SCDC incident reports involving OC spray (pepper spray), testifying "in detail about eighteen case examples at SCDC . . . where OC spray was used simply as punishment."<sup>8</sup> *Id.* SCDC officers "routinely gas inmates with OC spray in amounts that exceed manufacturer instructions and at closer distances than the manufacturer directs." *Id.* at 18.

Similarly, SCDC places mentally ill inmates naked in restraint chairs for predetermined four-hour blocks of time, with infrequent bathroom breaks. The Court cited two "gruesome SCDC videotapes of inmates with self-inflicted wounds who were kept in the restraint chair for extended periods of time before receiving adequate medical treatment." *Id.* at 19. A "common practice" at one SCDC prison is to place inmates in a restraint chair in a painful, "crucifix" position for hours at a time. *Id.* at 19-20.

SCDC dismisses the Court's use of force findings for taking "at face value" the testimony of Plaintiffs' expert, Mr. Martin, rather than considering the testimony of SCDC's corrections expert. Petition at 30. In fact, Judge Baxley did consider the testimony of SCDC's experts. He simply found them less credible than Plaintiff's experts:

Finally, having observed the testimony of the psychiatric and correctional experts for both Plaintiffs and Defendants, this Court finds Plaintiffs' experts more credible. In part, this finding is due to a comparison of their credentials

---

<sup>7</sup> SCDC criticizes Mr. Martin for "not offering an opinion as to whether the use of pepper spray constituted cruel and unusual punishment, and that he had not reviewed cases on that issue from the Fourth Circuit, the District of South Carolina, or the state courts of South Carolina." Petition at 18 n. 9. However, it is not the role of an expert to offer legal opinions. Mr. Martin's opinion was that SCDC used pepper spray against mentally ill inmates disproportionately, excessively, and unnecessarily.

<sup>8</sup> SCDC inaccurately refers to these 18 case examples, representative of the 1,000 incident reports Mr. Martin reviewed, as "a handful of instances." Petition at 18.

and experience; in part, due to their relative persuasiveness on the witness stand; and in part, due to the wide disparity between Plaintiffs' and Defendants' experts in case preparation and particular knowledge of the SCDC system.

Exh. A at 31.

Moreover, the Final Order stresses that SCDC offered little or no evidence from its expert, or any other source, to rebut Mr. Martin's opinions. Exh. A at 20. Of the more than 1,000 cases Mr. Martin reviewed, "very few were referred to senior SCDC officials" for review and of the few cases that were referred, SCDC officials "made virtually no findings of excessive or unnecessary force." *Id.* The Court expressed concern about the absence of oversight, finding that "excessive uses of force have been largely unreported, uninvestigated, and unmanaged." *Id.* at 21.

**c) Limited Involvement of Psychiatrists**

The Court found that the limited role psychiatrists play in SCDC's mental health system was a "substantial contributing factor to the lack of an effective treatment program." Exh. A at 21. SCDC characterized this issue as "whether psychiatrists knew the meanings of acronyms." Petition at 31. In fact, the Court's findings go far beyond acronyms.

SCDC psychiatrists do not participate in the development of treatment plans, have "no idea" who drafts treatment plans, and do not attend treatment team meetings. *Id.* at 21-22. They do not know the difference in mental health classifications, that an "SMU" is a segregation unit, or that "CI" means crisis intervention. *Id.*

The Court finds these examples both illuminating and disturbing. For psychiatrists and other mental health staff at SCDC to provide effective services, they must have a more intimate knowledge of the processes and procedures vital to the mental health services system they are expected to direct.

*Id.* at 22.

d) Limited Access to Higher Levels of Care

The Court found that from 2008-2012 the percentage of mentally ill inmates receiving higher levels of care (area, intermediate, and inpatient) dramatically declined without explanation. Exh. A at 22-23. For example, the women's intermediate care program "was discontinued, then revived, but at the time of trial consisted of only five inmates." *Id.*

SCDC claims this decline has no relevance to the deliberate indifference standard, Petition at 31, but the Court disagreed, finding that "systemic obstacles in accessing higher levels of care creates a substantial risk of serious harm for inmates with serious mental illness." *Id.* at 23.

3. Clinical Staffing

The Court found that the current ratio of psychiatric staff (psychiatrists and psychiatric nurse practitioners) to inmates on psychotropic medications is approximately 1:575, when an appropriate ratio is 1:150-200. Exh. A at 23-24. SCDC has less than one FTE psychologist, but, by its own admission, needs at least seven. *Id.* at 24. SCDC's Mental Health Director testified counselor-patient ratios at Area Mental Health prisons should be 1:40 and at other prisons 1:65. *Id.* The Court found, however, much higher ratios in many SCDC institutions. *Id.* Moreover, many SCDC counselors are unqualified, as evidenced by personnel records and internal SCDC audits. *Id.* at 25.

SCDC believes that these findings "are devoid of a showing of . . . likely future harm to even a single inmate as a result of alleged staffing deficiencies." Petition at 28. The Court, however, disagreed:

[T]he mental health program at SCDC is severely understaffed, particularly with respect to mental health professionals, to such a degree as to impede the proper administration of mental health services. This

deficiency has a substantial impact on every aspect of the mental health program, beginning at Reception and Evaluation (“R&E”), where inmates are screened and evaluated for mental health needs, continuing into the treatment programs for seriously mentally ill inmates, and ending with deficient discharge planning for seriously mentally ill inmates being returned to the general public.

Exh. A at 5.

#### **4. Mental Health Records**

The Court found that SCDC treatment plans and automated medical records “do not clearly state problems, objectives, goals, or even identify plan-responsible staff.” *Id.* at 26. In addition, SCDC’s computer system cannot retrieve such basic information as the names or numbers of inmates referred to the Intermediate Care Services program; the numbers of women inmates referred for inpatient psychiatric services; the numbers of inmates who have made serious suicide attempts; or the number of inmates whose psychotropic medications have expired without renewal. *Id.* at 26.

Again, SCDC’s position is that these findings fail to indicate any systemic deficiency or risk of harm. Petition at 33. Again, the Court disagrees:

In summary, the evidence in this case shows that the recordkeeping system for SCDC is outmoded, poorly maintained, and not readily accessible to all staff. The Court finds that SCDC’s failure to maintain accurate and complete mental health treatment records represents a substantial risk of serious harm to mentally ill inmates.

Exh. A at 26.

#### **5. Medication Administration**

The Court found SCDC’s medication administration records are poorly maintained and monitored by unqualified counselors, a practice that led to the suicide of inmate Robert

Hamberg. *Id.* at 27-28. The court also criticized the SCDC practice of pill lines at 3:00-4:00 a.m., which lends itself to inmates failing to take psychotropic medications. *Id.* at 28.

SCDC's position is that a single suicide is insufficient to support the Court's findings. Petition at 33. SCDC misses the point that even without any suicide, unreliable medical records and pill line practices that discourage medication compliance are systemic deficiencies that create a substantial risk of serious harm.

## **6. Suicide Prevention and Crisis Intervention**

Inmates in mental health crises are ordinarily placed in specially designated crisis intervention ("CI") cells, located in disciplinary segregation units. Exh. A at 28. Inmates in mental health crises are placed naked in CI cells, typically for one-two weeks, but sometimes longer. They often are not provided a blanket and when one is provided it often is not clean. CI cells have no mattresses, so that inmates must sleep directly on a steel or concrete slab. CI cells "are cold and filthy, with trash, blood, and feces scattered or smeared about." Most CI inmates do not see a psychiatrist and are not allowed group therapy. Interaction with counselors is "brief, limited, and not confidential." *Id.* at 29.

For at least a three-year period, from 2008-2010, CI inmates at Lieber Correctional Institution were "routinely" placed naked in shower stalls and similarly inappropriate spaces for hours and even days at a time, as documented by SCDC's own logs. *Id.* at 29. These spaces were "often filthy and too small a space in which to lie down." Infrequent bathroom breaks forced some inmates to urinate and defecate in the same spaces where they were fed. SCDC criticizes the Exh. A for over-emphasizing a "temporary, unsanctioned, and discontinued practice at one institution." Petition at 27 n. 18. The Court, however, found:

. . . the use of such inappropriate spaces for CI has not been limited to Lieber. Plaintiffs presented inmate testimony and other evidence that SCDC has placed CI inmates in such spaces at other institutions prior to 2008 and after 2010. For the reasons discussed, the Court finds that SCDC's normal CI placements expose inmates with serious mental illness to a substantial risk of serious harm. The dehumanizing conditions of SCDC's alternative CI placements expose inmates to even greater risk.

Exh. A at 30.

SCDC's suicide prevention policy does not require constant observation of CI inmates, a practice with which even SCDC's expert disagrees. *Id.* at 30. The Final Order gives four examples of inmates whose suicides could have been prevented had they been under constant observation. *Id.* at 30-31. e

#### **D. Reliance on Case Law**

SCDC repeatedly criticizes Judge Baxley for failing to cite case law in his factual findings related to the objective component. *See, e.g.*, Petition at 10 (pages 8-31 of the Final Order “contain not a single citation of a case”); at 17 (“the court’s subjective opinions were untethered to any specific case law whatsoever”); at 29 (“the Order is devoid of legal analysis”).

As an initial matter, factual findings are just that. It would be unusual for the findings of fact in a trial court order to contain many case cites or an extended legal analysis. In fact, however, both the Final Order and Standards Order cite to numerous decisions.

SCDC accuses the Court of “disregarding” cases from the Supreme Court, the Fourth Circuit, and the District of South Carolina. Petition at 35. This is not true. The Final Order and Standards Order cite cases from the Supreme Court and several federal circuit courts of appeal, including the Fourth. The Final Order and Standards Order also cite several state court

cases, including decisions from South Carolina. Judge Baxley did not “disregard” the cases offered by SCDC, he simply found them distinguishable. Either they are not class actions, they do not involve systemic deficiencies, or they do not allege cruel and unusual punishment. See Order Denying Defendant’s Motion to Alter or Amend (“Reconsideration Order”) at 10 (discussing why *Williams v. Branker*, 2012 WL 165035 (4th Cir. 2012) and other cases offered by SCDC are dissimilar to the case at hand.) Exh. C; Appellants’ Appendix at 46-58.

**E. Legal Issues**

**1. Standing**

The parties have been briefing and arguing the issue of standing since 2005.<sup>9</sup> In an order dated June 27, 2006, the Court ruled that P&A had statutory standing.<sup>10</sup> In the Reconsideration Order the Court found that class representative T.R. had standing not only because Plaintiffs introduced evidence of past injuries he had suffered, but also because, as a class member, he suffered actual injury by exposure to the risks of SCDC’s systems:

Plaintiffs presented evidence at trial of systemic deficiencies in SCDC’s mental health program that expose every inmate with serious mental illness – including specific reference to T.R. – to a substantial risk of serious future harm. Under this Court’s Order on Constitutional Standards dated September 29, 2010, injury in an Eighth Amendment case alleging systemic deficiencies may be established by evidence of a substantial risk of serious future harm. Therefore, under this constitutional standard governing this case and the evidence presented at trial, T.R. and, by extension, the entire plaintiff class has standing to pursue their claims.

Exh. C at 4; see *Helling v. McKinney*, 509 U.S. 25, 35 (1993) (holding that the Eighth Amendment protects inmates from the risk of future harm); *Shakka v. Smith*, 71 F.3d 162, 168

---

<sup>9</sup> SCDC complains that it was not allowed to submit a post-trial brief, but this case was litigated from 2005-2012, then tried over six weeks. During this period many briefs were filed and argued. The Court was well aware of SCDC’s positions and apparently believed that no further briefing was required.

<sup>10</sup> P&A also has associational standing. Exh. C at 6, citing *Beaufort Realty Co., Inc. v Beaufort County*, 346 S.C. 298, 551 S.E.2d 588, 589 (Ct. App. 2001).

(4th Cir. 1995) (holding that the Eighth Amendment protects against “conditions that have not resulted in past injury, but are reasonably likely to cause serious harm in the future”).

Finally, both P&A and the class have standing through the public importance exception to standing requirements. Exh. C at 4-6, 7. SCDC contends that the public importance exception applies only to cases involving “primarily legal” issues, but cites no opinion with such a holding. South Carolina courts have held that the public importance exception confers standing on plaintiffs in a variety of cases, including some involving heavily disputed factual issues. See *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007); *Sloan v. Dep’t of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Thompson v. S.C. Comm’n on Alcohol and Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976).

## **2. Other Legal Issues Raised by SCDC.**

The other legal issues raised in the Petition (private right of action, separation of powers, public policy, *State v. Wilson*, and political question) have all been rejected by the Court on several occasions since 2005, most recently in the Reconsideration Order. Exh. C at 7-9.

### **F. The Issue of Emotion**

SCDC accuses Judge Baxley of relying on emotion, rather than law, particularly in the introduction and conclusion of the Final Order. Petition at 16. It is certainly worth reading those sections carefully, as they clearly articulate the Court’s serious concerns. In the introduction, Judge Baxley notes that he has presided over more than 70,000 cases during his tenure on the bench. “This case, far above all others, is the most troubling.” Exh. A at 1. The rest of the introduction is largely factual. The Court notes that:

The evidence in this case has proved that inmates have died in the South Carolina Department of Corrections for lack of basic mental health care, and hundreds more remain substantially at risk for serious physical injury, mental decompensation, and profound, permanent mental illness.

Exh. A at 2. The introduction concludes by foreshadowing the Court's findings on the subjective component of the deliberate indifference standard:

While the Court finds the inadequacy of the mental health system at SCDC has not occurred by design, but instead by default, the court further finds this decision in favor of Plaintiffs should not come as a shock to SCDC. Previous internal and external reviews of the SCDC mental health system have found multiple inadequacies and failures. Despite its knowledge of the grave risks these deficiencies pose to mentally ill inmates, SCDC has failed through the years to take reasonable steps to abate those risks.

Exh. A at 3.

If SCDC sounds defensive when accusing Judge Baxley of being over-emotional, it may be due to the Final Order's conclusion, which begins with a factual summary: "Even the most brief and facile view of the evidence put forth by Plaintiffs in this case reveals obvious, significant, and longstanding problems with mental health services delivery at SCDC." The Court then focuses directly on SCDC:

We are now eight years into this litigation. Rather than accept the obvious at some point and come forward in a meaningful way to try and improve its mental health system, Defendants have fought this case tooth and nail – on the facts, on the law, on the constitutional issues, portraying itself as beleaguered by the burdensomeness of Plaintiffs' discovery, and generally harrumphed by the invasive nature of Plaintiff's counsels' tactics and strategies. This Court has spent dozens of hours in hearings and conferences in an effort to resolve discovery disputes, most of which involved delay, missed deadlines, and recalcitrance on the part of the Defendants.

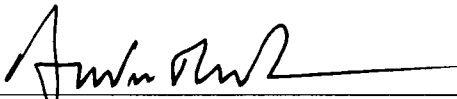
*Id.* at 44-45.

While this language is pointed, nothing suggests that it is overly emotional or anything other than coldly accurate.

**III. CONCLUSION**

For the reasons set forth above, the Court should deny Appellants' Petition.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  \_\_\_\_\_

Stuart M. Andrews, Jr.

SC Bar No. 000400

E-Mail: [stuart.andrews@nelsonmullins.com](mailto:stuart.andrews@nelsonmullins.com)

Daniel J. Westbrook

SC Bar No. 012939

E-Mail: [dan.westbrook@nelsonmullins.com](mailto:dan.westbrook@nelsonmullins.com)

1320 Main Street / 17th Floor


Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Respondents

Columbia, South Carolina

 \_\_\_\_\_, 2014

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
J. Michael Baxley, Circuit Court Judge

JUL 03 2014

Appellate Case No. 2014-001287  
Case No. 2005-CP-40-2925

**S.C. Supreme Court**

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., ..... Respondents,

v.

South Carolina Department of Corrections; and William  
R. Byars, Jr., as Agency Director of the South Carolina  
Department of Corrections, ..... Appellants.

---

**CERTIFICATE OF SERVICE**

---

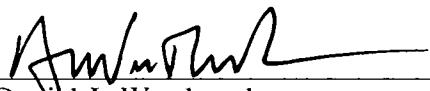
I certify that I have served Respondents' Return to Appellants' Petition for Writ of Supersedeas or Stay Pending Appeal During Mediation by depositing a copy of it in the United States mail, postage prepaid on July 3, 2014, addressed to attorneys of record:

Counsel Served:

Andrews F. Lindemann, Esq.  
William H. Davidson, II, Esq.  
Kenneth P. Woodington, Esq.  
Daniel C. Plyler, Esq.  
Davidson & Lindemann, PA  
1611 Devonshire Drive, 2nd Floor (29204)  
Post Office Box 8568  
Columbia, SC 29202-8568  
(803) 806-8222

Attorneys for Appellants

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:   
Daniel J. Westbrook  
Stuart M. Andrews, Jr.  
Nelson Mullins Riley & Scarborough LLP  
1320 Main Street, 17<sup>th</sup> Floor  
Post Office Box 11070  
Columbia, SC 29211-1070  
(803) 799-2000

Attorneys for Respondents

# EXHIBIT A

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

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

Plaintiffs, )

v. )

South Carolina Department of Corrections )  
and William R. Byars, Jr., as Agency )  
Director of the South Carolina Department )  
of Corrections )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C/A No.: 2005-CP-40-2925

**ORDER GRANTING JUDGMENT IN  
FAVOR OF PLAINTIFFS**

FILED  
2014 JAN -8 PM 12:36  
J. STEVEN MCGIBBE  
C.C.P. & G.S.

It has been the privilege of this writer to serve the State of South Carolina as a general jurisdiction judge for fourteen years. At the time this case was heard, Court Administration reported there were more than 5,000 new case filings per year for each of our state's circuit court judges. Thus, over 70,000 cases of every imaginable sort have come to this Court over the years. This case, far above all others, is the most troubling.

This case is a class action brought on behalf of approximately 3,500 state inmates who meet the definition of being seriously mentally ill. For purposes of this suit, the term "serious mental illness" was specifically defined in the Class Certification order dated November 1, 2007, and may be succinctly stated as all SCDC inmates from the date of the filing of the complaint who have been hospitalized for psychiatric services, referred to an Intermediate Mental Health Care Services Unit, or diagnosed by a psychiatrist with the following mental illness: Schizophrenia, Schizoaffective Disorder, Cognitive Disorder, Paranoia, Major Depression, Bipolar Disorder, Psychotic Disorder, or any other mental condition that results in significant

functional impairment including inability to perform activities of daily living, extreme impairment of coping skills, or behaviors that are bizarre and/or dangerous to self or others. Plaintiffs claim that their treatment within SCDC, or lack of treatment, constitutes a violation of the state constitution.

The evidence in this case has proved that inmates have died in the South Carolina Department of Corrections for lack of basic mental health care, and hundreds more remain substantially at risk for serious physical injury, mental decompensation, and profound, permanent mental illness. As a society, and as citizen jurors and judges make decisions that send people to prison, we have the reasonable expectation that those in prison – even though it is prison – will have their basic health needs met by the state that imprisons them. And this includes mental health. The evidence in this case has shown that expectation to be misplaced in many instances.

*JMS*  
*2*

Economic downturn and financial pressures have brought great change to our country. One of these is that the various state departments of corrections are now more than ever the collection place of the seriously mentally ill among the citizenry. The incidence of serious mental illness within the general population is less than four (4%) percent<sup>1</sup>. In the typical Department of Corrections, it is between 15 and 20 percent. In South Carolina, the evidence in this case shows it to be approximately 17 percent, in spite of the Department's claim that it is 12.9 percent. If 17 percent of the prison population had advanced cancer and there was inadequate and in some cases nonexistent treatment for cancer in prison, the public would be outraged. Yet this is the case for serious mental illness.

---

<sup>1</sup> Figures vary depending upon the source, demographics, and differences in various definitions of "serious mental illness." The Court takes judicial notice of the statistical findings of the National Institute of Mental Health, which places the general population figure at 3.9%. Further statistical information may be obtained from the NIH at [www.nimh.nih.gov/statistics/SMI\\_AASR.shtml](http://www.nimh.nih.gov/statistics/SMI_AASR.shtml).


This litigation does not occur in a vacuum. What happens at the Department of Corrections impacts all of us, whether it is from the discharge of untreated seriously mentally ill individuals from prison into the general population, or tremendously increased costs for treatment and care that might have been prevented, or the needless increase in human suffering when use of force replaces medical care. The decisions of our Courts reflect the values of our society. To that end, our state can no longer tolerate a mental health system at the South Carolina Department of Corrections that has broken down due to lack of finances and focus.

While the Court finds the inadequacy of the mental health system at SCDC has not occurred by design, but instead by default, the Court further finds this decision in favor of Plaintiffs should not come as a shock to SCDC. Previous internal and external reviews of the SCDC mental health system have found multiple inadequacies and failures. Despite its knowledge of the grave risks these deficiencies pose to mentally ill inmates, SCDC has failed through the years to take reasonable steps to abate those risks. The Court recognizes that the Department is underfunded and understaffed in many particulars, not just mental health services delivery. The operation of any state agency is a matter of competing priorities, and the General Assembly, as keeper of the public purse, is not in a position to excessively fund any entity. Thus, this decision will ultimately require an increase in priority for mental health services commensurate with the level of serious mental illness within the prison population.

### DECISION

In its prior Order Setting Forth Applicable Constitutional Standards (“Standards Order”), the Court delineated the standard of liability and burden of proof applicable to Plaintiffs’ constitutional claim under Article I, § 15 of the South Carolina Constitution, which prohibits “cruel and unusual punishment.” To prevail on a claim under Article I, § 15, the Court stated

that Plaintiffs must prove that Defendants acted with “deliberate indifference to serious medical needs of prisoners.” Standards Order at 3 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). This deliberate indifference standard contains both an objective and subjective component. See *Farmer v. Brennan*, 511 U.S. 825, 834-37 (1994). To satisfy the objective component, Plaintiffs must demonstrate that they are subjected to a substantial risk of harm that is sufficiently serious. *Id.* The objective component is not limited to past harm, but also protects inmates from an unreasonable risk of future harm. *Helling v. McKinney*, 509 U.S. 25, 35 (1993). Plaintiffs may satisfy the objective component by showing that systemic deficiencies in a prison mental health system expose inmates with serious mental illness to a substantial risk of serious future harm. Standards Order at 7-8, citing *Helling*; 509 U.S. at 35; *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983); *Flynn v. Doyle*, 2009 WL 4262746 at \*19 (E.D. Wis. 2009); *Madrid v. Gomez*, 889 F. Supp. 1146, 1256 (N.D. Cal. 1995); *Neiberger v. Hawkins*, 208 F.R.D. 301, 317 (D. Colo. 2002).

The Court noted the need for guideposts in determining whether Plaintiffs satisfied the objective component of the deliberate indifference standard. Accordingly, within this legal framework, the Court identified and articulated six factors that would serve as benchmarks for determining whether SCDC’s mental health program exposed mentally ill inmates to a substantial risk of serious harm. Stated succinctly, the evidence at trial should establish whether the SCDC mental health services system contained the following adequately functional components:

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.

Standards Order at 8-10, *citing Ruiz v. Estelle*, 503 F. Supp. 1265, 1339 (S.C. 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).

Employing these factors in the context of the objective component of the deliberate indifference standard, the Court finds by a preponderance of the evidence that the Plaintiffs have met the burden of proof and makes the following threshold findings.


*JMS*  
5  
First, the mental health program at SCDC is severely understaffed, particularly with respect to mental health professionals, to such a degree as to impede the proper administration of mental health services. This deficiency has a substantial impact on every aspect of the mental health program, beginning at Reception and Evaluation ("R&E"), where inmates are screened and evaluated for mental health needs, continuing into the treatment programs for seriously mentally ill inmates, and ending with deficient discharge planning for seriously mentally ill inmates being returned to the general public.

Second, seriously mentally ill inmates are exposed to a disproportionate use of force and segregation (solitary confinement) when compared with non-mentally ill inmates. Segregation and use of force are often used in lieu of treatment, with severe consequences for inmates with

serious mental illness. The inappropriate and extended reliance on segregation to manage inmates with serious mental illness, particularly those in crisis, exposes them to a substantial risk of serious harm by limiting their access to mental health counselors and psychiatrists, disturbing their eating and sleeping cycles, disrupting the administration of medications, and deepening their mental illnesses. These conditions have contributed to the deaths of multiple inmates in segregation, while placing other inmates and staff at risk. They have also led to the stigmatization of mental illness within SCDC that discourages inmates from seeking the limited mental health care the agency does provide.

Third, mental health services at SCDC lack a sufficiently systematic program that maintains accurate and complete treatment records to chart overall treatment, progress, or regression of inmates with serious mental illness.

Fourth, SCDC's screening and evaluation process is ineffective in identifying inmates with serious mental illness and in providing those it does identify with timely treatment.

Fifth, SCDC's administration of psychotropic medications is inadequately supervised and evaluated.

Sixth, SCDC's current policies and practices concerning suicide prevention and crisis intervention<sup>2</sup> are inadequate and have resulted in the unnecessary loss of life among seriously mentally ill inmates.

As a result of the above findings, the Court further finds that SCDC's mental health system exposes seriously mentally ill inmates to a substantial risk of serious harm and Plaintiffs have therefore satisfied the objective component of the deliberate indifference standard.

---

<sup>2</sup> "Crisis intervention" refers to SCDC's response to an actively mentally ill inmate who poses an immediate danger and must be sequestered for his own protection or the protection of other inmates and correctional officers.

The subjective component is met by proof that a defendant “knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Farmer*, 511 U.S. at 834-837. At trial, the Plaintiffs presented overwhelming evidence that SCDC has known for years that its policies and practices expose seriously mentally ill inmates to a substantial risk of serious harm but has failed to take reasonable measures to abate that risk. The Court finds, therefore, that the Plaintiffs have satisfied the subjective component of the deliberate indifference standard.

As a result of the above findings, the Court grants judgment in favor of the Plaintiffs.

Below, the Court has separated the remainder of this Final Order into two sections. The first section articulates the factual findings and conclusions underlying the Court’s decision with respect to the objective component by examining each of the six *Ruiz* factors listed above. The first section then articulates the factual findings and conclusions related to the subjective component. The findings made therein are by a preponderance of the evidence. Section Two then addresses the remedy the Court will grant in this case and the mechanism used to achieve it.

With regard to the factual findings and conclusions mentioned below in Section One, there are several references to individual circumstances involving specific inmates. The Department argued at trial that reference to an individual inmate and his/her particular situation was anecdotal and not indicative of the general administration of mental health services. Moreover, counsel for SCDC essentially argued that some of the specific inmate situations were “outliers” in that such was a constellation of unique events and circumstances that brought about an unfortunate result. The Court specifically rejects that argument. While no system involving thousands of inmates is expected to be perfect, the Court finds that the individual circumstances

Sub  
7

referred to below are the result of a system that is inherently flawed in many respects, understaffed, underfunded, and inadequate.

I. **FACTUAL FINDINGS/DISCUSSION**

A. **Objective Component**

1. **A systematic program for screening and evaluating inmates to identify those in need of medical care**

As of 2011, 12-13 percent of the SCDC inmate population had been diagnosed by SCDC with a mental illness and was on the Department's mental health caseload. From that data, with a total inmate population at the time of trial of 23,306, a 12.9 percent fraction yields an approximate figure of 3,006 inmates that have been diagnosed as mentally ill.<sup>3</sup> Based on universally accepted national statistics, evidence presented to the Court at trial strongly indicates this percentage should be much higher. Multiple studies conducted nationwide suggest that a more accurate percentage of inmates with a serious mental illness should be somewhere in the range of 15 to 20 percent. SCDC's expert, Dr. Scott Haas, testified that seriously mentally ill inmates ordinarily comprise 18 percent of a prison population. Plaintiffs' expert, Dr. Raymond F. Patterson, testified that after detailed analysis, 17 percent was a conservative estimate of SCDC's seriously mentally ill population, and the Court finds the basis of his analysis to be credible.

The Court further finds this low, acknowledged percentage of mentally ill inmates at SCDC troubling because it indicates a high likelihood that there are hundreds of inmates with a serious mental illness at SCDC who are not receiving any treatment due to deficiencies in the screening and evaluation process used to identify and classify those with a serious mental illness.

---

<sup>3</sup> Exact numbers fluctuate due to the constant intake and release of inmates.

This low identification of mentally ill inmates has a synergistic impact on the mentally ill population, as it leads to a reduction in mental health professionals, the further disproportionate cutting of costs in difficult economic times within the mental health system because of a perceived lack of need for services, and a skewed analysis as to the efficacy of the existing mental health system. R&E serves as the intake facility for inmates entering into SCDC. If inmates with mental illnesses are not identified and appropriately classified at R&E, the Court finds that these inmates face a substantial risk of serious harm.

In addition to the concerns mentioned above, there was also evidence presented to the Court of regular violations of the SCDC mental health policy, two of which are particularly relevant to the Court as they relate to the screening and evaluation process at R&E. First, SCDC policy requires that a mental health counselor must meet with an inmate within 48 hours of the inmate being assigned to that counselor's caseload. At trial, there was evidence submitted to the Court of regular and persistent violations of this policy. Second, inmates are not being seen by a psychiatrist within thirty days of the counselor's initial assessment when a need for psychiatric treatment is indicated, also a violation of SCDC policy. Consequently, this results in inmates who are referred to a psychiatrist at R&E, but are then transferred into SCDC general population prior to assessment by that psychiatrist, creating a risk of harm for all inmates.

The Court finds, due to the concerns listed above, that the program used by SCDC for screening and evaluation fails to adequately identify and classify those inmates suffering from serious mental illness, thereby exposing them to a substantial risk of serious harm.

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

The treatment program at SCDC places heavy reliance on segregation and use of physical force against seriously mentally ill inmates, as opposed to treatment.

Mentally ill inmates are substantially overrepresented in segregation units, known as Special Management Units ("SMU"), within SCDC. Inmates in segregation stay in solitary confinement in their cells 23-24 hours a day. Visitation, telephone, and other privileges are significantly restricted. As of September 2011, the percentage of mentally ill inmates in SMUs at the three SCDC institutions where the majority of men with serious mental illness are assigned ("Area Mental Health Institutions") demonstrates the disproportionate use of segregation to which members of the Plaintiff class are subjected. At Lee Correctional Institution ("Lee"), 16 percent of the total inmate population was mentally ill, yet 27 percent of its inmates in SMU were mentally ill.<sup>4</sup> The corresponding numbers at Perry Correctional Institution ("Perry") were 24 percent and 40 percent. At Lieber Correctional Institution ("Lieber"), the differential was even greater, where mentally ill inmates comprised 20 percent of all inmates, yet 42 percent of the inmates that were in segregation. During this same period, the percentage of mentally ill inmates in SMUs in all SCDC institutions was 23 percent, even though they represented less than 13 percent of the total inmate population.

Taking the entire population into consideration, a mentally ill inmate is twice as likely to be placed in segregation as a non-mentally ill inmate. As of September 2011, 16 percent of inmates on the mental health caseload were in SMUs in contrast with 8 percent of non-mentally ill inmates. For security detention, the most restrictive form of segregation, where inmates are placed in solitary confinement for indefinite periods, mentally ill inmates are more than three

---

<sup>4</sup> These percentages are based on the SCDC mental health caseload.

times more likely to be assigned this status than other inmates, at a rate of 8.7 percent compared with 2.8 percent.<sup>5</sup>

Not only are mentally ill inmates overrepresented in SMUs, they also spend disproportionately longer periods of time in the SMUs. For many mentally ill inmates, this period of isolation in SMU has lasted for several years. For example, the average cumulative disciplinary detention sentence for inmates with mental illness as of January 13, 2012 was 647 days, compared to 383 days for non-mentally ill inmates. These averages include extremely long periods of segregation for inmates whose disciplinary detention sentences exceeded their projected release date from SCDC. Again, these extended sentences were meted out against mentally ill inmates at over twice the rate of other inmates. The lengths of these sentences in segregation were also far greater for members of the Plaintiff class, exceeding their projected release date on average by 1,968 days or 5.39 years, compared with 1,065 days or 2.92 years for other inmates. Of the ten longest periods of disciplinary detention sentences beyond projected release dates, nine of the inmates were mentally ill. Their cumulative sentences for solitary confinement ranged from 20-36 years.

The evidence showed that these extended periods of segregation too often reflect the accumulation of disciplinary detention sentences for non-assaultive behavior of mentally ill inmates. For example, one 51-year-old mentally ill inmate who had been hospitalized at SCDC's psychiatric facility accumulated 19 years of disciplinary detention sentences from 2005-2008. For one non-assaultive offense in which he threatened harm, he received 999 days of disciplinary detention and lost visitation for three years. In interviews with Plaintiffs' experts, he was

---

<sup>5</sup> The two principal forms of punitive segregation are security detention and disciplinary detention. Disciplinary detention consists of sentences served in segregation for a specific period of time for violation of SCDC administrative rules. Security detention is a classification assigned to inmates determined to present a particular risk to other inmates or staff that often remains in effect for periods lasting several years.

distressed that he was being denied “400 million dollars in his bank” and was set to appear on the television program “The Rich and Famous.”

A 27-year-old female mentally ill inmate accumulated six and a half years of disciplinary detention segregation and lost access to the telephone and visitation for eight years for non-assaultive offenses, most of which were verbal or profane threats to staff or other inmates. One of the charges was prompted when she threatened two inmates who were making derogatory remarks about a medical condition that required her to wear diapers.

The evidence revealed that the great majority of the extreme periods in segregation are in fact served. For example, Leslie Cox, a member of the Plaintiff class, was confined in SMU for at least 2,565 consecutive days, from February 2001 - February 2008. James Wilson, another mentally ill inmate, was confined in SMU for at least 2,491 consecutive days.<sup>6</sup> SCDC records provide conflicting information about mentally ill inmate Rowland Dowling, who spent either 1,777 or 2,200 consecutive days in solitary. Other mentally ill inmates were confined in solitary for similarly lengthy periods.

SCDC's Guilty But Not Accountable (“GBNA”) policy should theoretically reduce the number of mentally ill inmates in segregation but, in fact, has had a negligible effect. SCDC counselors are responsible for recommending findings of GBNA but this Court finds that, as Dr. Patterson testified, many SCDC counselors are not qualified to analyze accountability. Only 2 percent of mentally ill inmates receiving segregation sentences are determined to meet GBNA criteria.<sup>7</sup> Moreover, of those found to be GBNA, the finding has had no effect on their

<sup>6</sup> SCDC records indicate that inmates Cox and Wilson were still in segregation as of February 25, 2008. It is unknown how much longer they remained in segregation after that date.

<sup>7</sup> Evidence introduced by Plaintiffs also showed that a small percentage of the disciplinary detention sentences for male mentally ill inmates at Area Mental Health Institutions were reduced or waived during a 21-month review period between 2010 and 2011.

sentences. Of all inmates in SCDC custody on September 1, 2011 who had been found GBNA, 25 were mentally ill. Despite being found “not accountable,” all 25 had been sentenced to segregation.

The American Correctional Association (“ACA”) defines disciplinary detention or punitive segregation as follows:

A form of separation from the general population in which inmates committing serious violations of conduct regulations are confined by the disciplinary committee or other authorized group for *short periods of time* to individual cells separated from the general population.

*ACA Standards for Adult Correctional Institutions Supplement*, p. 306 (2008) (emphasis added).

The ACA standards also recognize the potentially harmful effects of punitive segregation on the mental health of any inmate:

Inmates whose movements are restricted in segregation units may develop symptoms of acute anxiety or other mental health problems; regular psychological assessment is necessary to ensure the mental health of any inmate confined in such a unit beyond 30 days.

*ACA Standards for Adult Correctional Institutions*, 3<sup>rd</sup> Edition, Standard 3-4244 (2008).

The evidence presented by Plaintiffs demonstrates that SCDC consistently showed little to no regard for the mental health of inmates in imposing periods of disciplinary or security detention, in the lengths of the segregation imposed, or in the effects on mentally ill inmates. The Department’s practice consistently violates the ACA standards. Neither the disciplinary detention sentences nor classifications in security detention are for short periods of time. Once in segregation, the level of therapeutic care or intervention to address the needs of mentally ill inmates is grossly inadequate.

Dr. Janet Woolery, the principal psychiatrist at Lee, estimated that approximately 40-50 percent of the Lee SMU inmates she saw were demonstrating active psychotic symptoms.

Rather than placing mentally ill inmates into treatment programs, it appears that they are merely placed in SMUs. SMU patients receive no group therapy and sessions with both psychiatrists and mental health counselors are seldom held in a confidential setting. Sixty-three percent of the counselor audits produced by SCDC noted deficiencies for untimely psychiatric sessions and 77 percent noted deficiencies for untimely counselor assessments. Patient medical records provide further evidence that SMU patients often do not see psychiatrists or counselors on a timely basis. For example, SCDC policy requires that Edward Barton, diagnosed with schizophrenia and classified as an Area Mental Health patient, be seen by a mental health counselor at least once every 30 days, as well as by a psychiatrist at least once every 90 days. Yet, from July 2008 – November 2010, while confined in an SMU, Barton on six occasions went over 30 days without seeing a counselor; on four of those occasions he went over 60 days without seeing a counselor; and once he went 9 months without seeing a counselor. From September 2010 – August 2011, Barton twice went over 120 days without seeing a psychiatrist and once went over 6 months.

*J.B.  
14*

SCDC's heavy reliance on segregation of mentally ill inmates raises serious concerns for the Court. As acknowledged by SCDC Mental Health Regional Coordinator Jacqueline Strong, risk factors for psychosis and suicide increase while an inmate is in SMU. It is not uncommon for an inmate in SMU to develop depression and experience a disturbance in eating and sleeping cycles.<sup>8</sup>

---

<sup>8</sup> Defendants relied upon a Colorado Department of Corrections study to assert that long-term segregation has no significant detrimental effect on mental health. However, the Court finds that the Colorado study is distinguishable from the situation at SCDC for two reasons. First, the Colorado study was limited to inmates who had spent no more than twelve consecutive months in segregation. Many SCDC mentally ill inmates stay in segregation for much longer periods of time. Second, the Colorado study was expressly limited to SMUs with substantially similar conditions to the Colorado State Penitentiary. Plaintiffs' two psychiatric experts, Dr. Metzner and Dr. Patterson, each testified they were familiar with the Colorado State Penitentiary and that conditions in SCDC segregation units were much harsher. As Dr. Patterson testified, the difference was like "night and day."

Moreover, evidence in the case shows conditions in SMUs fall below what is acceptable for a 21st century correctional institution. SMU cells are both extremely cold and inordinately filthy, often with the blood and feces of previous occupants smeared on the floor and walls.

Within the SMU of Lee Correctional Institution is a special 8-cell unit known as "Lee Supermax." On February 7, 2008, inmate Jerome Laudman was transferred to a cell in Lee Supermax. Laudman was schizophrenic, intellectually disabled, and had a speech impediment. According to his mental health counselor, he was neither aggressive nor threatening. No one notified the counselor of Laudman's transfer to Lee Supermax. According to an internal SCDC investigative report, Laudman was sprayed with chemical munitions and physically abused by a correctional officer during the transfer to Lee Supermax. The move was videotaped pursuant to policy, but when viewed by the SCDC investigator, the tape was, inexplicably, mostly blank. Laudman was stripped naked and left in a completely empty Supermax cell.

*JMB*  
*1.5*

On February 11, a correctional officer observed that Laudman was sick and weak but did not report it. At some point after February 11, Laudman stopped eating and taking medication. On the morning of February 18, a correctional officer saw Laudman lying on the cell floor in feces and vomit. He lay there "all morning," according to the SCDC investigative report. At approximately 1:30 or 2:00 p.m., two nurses were called. They reported that, in addition to feces and vomit, 15-20 trays of rotting, molding food were in the cell. Both the nurses and the correctional officers refused to retrieve the body. After a further delay, two inmates came to retrieve Laudman, who was unconscious but alive. Later that afternoon, however, he died in a local hospital ER of a heart attack. The hospital report noted the presence of hypothermia. The SCDC investigator found evidence of an attempted cover-up by correctional officers who cleaned Laudman's cell before photographs could be taken. Even after the cleaning, the

photographs taken by the investigator show the cell in a deplorably dirty state. After Laudman's death, SCDC did no quality improvement reviews of Lee Supermax procedures and practices. In September 2008, seven months after Laudman's death, Dr. Metzner and Dr. Patterson inspected Lee Supermax and described it as "filthy."

**b. Use of force**

Mentally ill inmates also suffer from disproportionate, unnecessary, and excessive uses of force.

i. Disproportionate Use of Force. Between January 2008 and September 2011, mentally ill inmates were subjected to uses of force at a rate two and half times greater than non-mentally ill inmates. During this period, 27 percent of the Plaintiff class was subjected to the use of force in contrast to only 11 percent of other inmates. At the Area Mental Health Institutions for men, the reliance on use of force was even greater. At Lee, Lieber, and Perry, 40 percent, 43 percent, and 44 percent of mentally ill inmates were subjected to force, respectively, while the corresponding numbers of non-mentally ill inmates subjected to force at these institutions were 23 percent, 21 percent, and 16 percent, respectively. Although force was applied far less frequently at Camille G. Graham Correctional Institution ("Graham"), the Area Mental Health Institution for women, the same pattern was present. During the relevant review period, only fourteen use-of-force incidents were reported; however, ten of these incidents were directed toward mentally ill women, even though members of the Plaintiff class constituted less than half of the total inmates at Graham.

The evidence was clear and compelling that SCDC resorts to use of force in the agency's attempt to manage the conduct of mentally ill inmates. Of the inmates who were subjected to use of force, each mentally ill inmate who had been the object of a reported use of force during this

period was subjected on average to 3.35 separate incidents, while the use-of-force rate for other inmates was almost half that, at 1.72 incidents per inmate.

Of the thirty inmates most frequently subjected to the use of force, twenty-six were on the mental health caseload. The mental health conditions were so serious for many of these individuals that fifteen of the twenty-six required hospitalization during the same period at Gilliam Psychiatric Hospital (“Gilliam” or “GPH”). Ten of these fifteen inmates were hospitalized on multiple occasions. James Howard was subjected to 81 separate use-of-force incidents. Mr. Howard was hospitalized for psychiatric treatment on five separate occasions during this same period between January 2008 and September 2011.

SCDC’s overreliance on the use of force in attempting to manage mentally ill inmates is, in part, a direct effect of the lack of training correctional officers receive. SCDC training coordinator Yolanda Delgado testified in deposition only twelve days before trial that “less than a handful” of correctional officers attended training sessions intended to improve the staff’s knowledge and skills in dealing with mentally ill inmates.

John  
1.7

ii. Unnecessary and Excessive Use of Force. Plaintiffs’ corrections expert, Steve J. Martin, testified that while SCDC’s use-of-force policy was consistent with national correctional standards, its use-of-force practices were not. Based on his review of over 1,000 incident reports at SCDC involving OC spray (pepper spray), Mr. Martin testified a pattern and practice existed that violated national standards and SCDC’s own use-of-force policy. First, Mr. Martin testified in detail about eighteen case examples at SCDC of the unnecessary use of force where no threat of harm or other urgent circumstances were present and, in some cases, where OC spray was used simply as punishment. Mr. Martin testified, and the Court finds, that these cases were representative of the more than 1,000 incidents he

reviewed. Second, Mr. Martin found it common for SCDC correctional officers to use excessive force. For example, contrary to SCDC policy, SCDC officers routinely gas inmates with OC spray in amounts that exceed manufacturer instructions and at closer distances than the manufacturer directs. Mr. Martin identified nine case examples, documented in SCDC reports, where SCDC officers had used MK-9 crowd control fogger devices in large disbursements in individual closed cells, again contrary to manufacturer instructions and SCDC policy. In fact, Mr. Martin testified that having reviewed thousands of uses of OC spray in prisons and jails throughout the country, he had “never seen MK-9, a crowd control contaminant, so frequently used by a correctional force inappropriately.” The use of such force is without penalogical justification.

SCDC’s unnecessary and excessive use of OC spray on mentally ill inmates is consistent with its unnecessary and excessive use of physical restraints. Contrary to its policy and national correctional standards, SCDC places inmates in restraint chairs for predetermined blocks of time in set, four-hour increments.<sup>9</sup> For example, on December 12, 2007, inmate Steven Patterson was transferred to Perry from Gilliam but, by SCDC’s mistake, with only five days’ worth of psychotropic medications. On January 2, 2008, Patterson’s medical record noted that he had not received medication since December 17, 2007 “and he’s not doing well.” That same day, he cut himself with a plastic spoon and was placed naked in a restraint chair for twelve hours, even though the videotape of his time in the chair shows him calm and cooperative. On January 3, he was returned to Gilliam.

---

<sup>9</sup> SCDC witnesses testified this practice was changed shortly before the start of this trial so that inmates no longer will be placed in restraint chairs for predetermined blocks of time. The timing of this change concerns the Court, however, for “practices may be reinstated as swiftly as they were suspended.” *Thomas v. Bryant*, 614 F.3d 1288, 1320 (11<sup>th</sup> Cir. 2010).

Mr. Patterson's experience was only one example of how SCDC uses restraint chairs as a substitute for medical treatment. Plaintiffs entered into evidence two gruesome SCDC videotapes of inmates with self-inflicted wounds who were kept in the restraint chair for extended periods of time before receiving adequate medical treatment. Inmate Jerod Cook cut himself on his arm. Approximately 90 minutes after being discovered, he was placed in a restraint chair where he remained for four hours. The videotape shows a pool of blood on the floor of Mr. Cook's cell. He is hardly able to stand before being placed in the restraint chair. He continues to bleed while in the restraint chair and pleads with correctional officers for medical help. As Dr. Patterson testified, the decision by security staff – rather than by medical staff – to keep Mr. Cook in a restraint chair for four hours under those conditions was an “outrageous, horrific response.”

*Feb 19*  
Inmate Baxter Vinson underwent a similar experience, cutting himself in the abdomen while in his cell. Approximately three hours and twenty minutes after his wound was discovered, security staff placed him in a restraint chair where he remained for approximately two hours before being transported to a hospital. The videotape shows that while in the restraint chair, Mr. Vinson is eviscerating, with his intestine coming out of the abdominal wall. The tape shows correctional officers tightening the restraints, thereby putting additional pressure on his abdomen. As Dr. Patterson testified, this was a medical emergency that required a sterile environment. The videotape gives further evidence of what Dr. Patterson characterized as “a broken system.”

Inmates are often placed naked in restraint chairs. Bathroom breaks are infrequent, so that at times they are forced to urinate in the chair. A common practice at Perry when placing inmates in a restraint chair is to secure them in a painful, “crucifix” position, demonstrated to

Mr. Martin both by Perry correctional officers and inmates. Inmates Richard Patterson and Jonathan Roe both testified about spending hours in what they characterized as the “Jesus” position.

OC spray and restraint chairs are not the only methods of physical force employed by SCDC against mentally ill inmates. Shawn Wiles, a mentally ill inmate in SCDC’s Maximum Security Unit, testified that correctional officers restrained his arms in a twisted position, soaked him with water, and left him outside for approximately an hour on a cold December night.

While SCDC contends these are isolated examples of inappropriate conduct by correctional officers, it offered little or no evidence of effective supervisory oversight of the use of force. Mr. Martin testified that one of the standard protections prison systems use to guard against excessive use of force is review of use-of-force incidents. The first element of an effective review process is an examination of the cases that are referred to senior management for review of questionable uses of force. The second element consists of an assessment of the findings concerning allegations of inappropriate force and corrective actions taken. Of the more than one thousand cases Mr. Martin reviewed, very few were referred to senior SCDC officials to assess an alleged inappropriate use of force. Mr. Martin found that of the few cases that were referred, SCDC officials made virtually no findings of excessive or unnecessary force.

In a prison system of more than 23,000 inmates, Mr. Martin testified that the almost complete absence of the identification by managers of inappropriate uses of force is a “huge red flag” that raises serious questions about the existence of an effective system to manage the use of force by correctional officers. Mr. Martin testified that the risk of harm to mentally ill inmates from the unnecessary and excessive use of force, if left unattended and not corrected, is ongoing

and substantial. The Court finds Mr. Martin's testimony, and the bases for his opinions, to be credible.

The Court is concerned by the absence of referrals for investigation of the cases presented by Mr. Martin, and the absence of findings by senior SCDC managers that those cases raise serious questions about the application of force against mentally ill inmates. The Court finds that such excessive uses of force have been largely unreported, uninvestigated, and unmanaged. The Court further finds that Plaintiffs have proven a pattern and practice of the use of unnecessary and excessive force.

**c. Limited involvement of psychiatrists**

JAB  
21

A substantial contributing factor to the lack of an effective treatment program is the limited involvement of psychiatrists in creating and administering treatment plans for mentally ill inmates. Psychiatrists at SCDC have no administrative or policy-making duties, and there is evidence that they do not attend meetings to create and develop treatment plans for inmates. The Court finds that psychiatrists, as the lead mental health professionals in the mental health program, must be more directly involved in creating and developing treatment plans. Furthermore, deposition testimony of some psychiatrists reveals an alarming lack of knowledge of policies and procedures at SCDC, the levels of care and criteria for referral to a particular level of care, and the role of the counselor in the mental illness treatment process. For example, SCDC psychiatrist Dr. Poiletman did not know what the terms SMU and CI stood for – meaning Special Management Unit and Crisis Intervention – terms inextricably tied to mentally ill inmates at SCDC. He did not know the difference between Area Mental Health patients and outpatients, did not know what mental health counselors do, and had “no idea” who drafted treatment plans. Likewise, Dr. Crawford, the principal psychiatrist at Graham, could not

describe the distinction between an Intermediate Care Services patient and an Area Mental Health Patient. She did not review treatment plans and did not start attending treatment team meetings until after her deposition. Dr. Woolery, the principal psychiatrist at Lee, was unfamiliar with treatment plans, did not know whether any of her patients were in Lee Supermax, and had never seen Lee Supermax herself. The Court finds these examples both illuminating and disturbing. For psychiatrists and other mental health staff at SCDC to provide effective services, they must have a more intimate knowledge of the processes and procedures vital to the mental health services system they are expected to direct.

**d. Limited access to higher levels of care**

Finally, SCDC's treatment program fails to provide mentally ill inmates with sufficient access to higher levels of care. All correctional mental health systems are organized by levels of care, and SCDC's system comprises four levels. From lowest to highest, these are outpatient, area, intermediate (ICS), and inpatient. The higher the level, the more services and staffing are required.

Jan 22

SCDC's Mental Health Director, Pamela Whitley, estimated that in 2008 the combined ICS and Area Mental Health caseload at SCDC was 515. In 2012, however, the combined ICS and area caseload was only 310, a 40 percent reduction. In February 2008, at Lee and Lieber combined there were 212 area and 211 outpatient mental health inmates, a 50/50 split. By September 2011, however, there were only 83 area inmates at Lee and Lieber (14.8 percent), while the outpatients numbered 478 (85.2 percent). From 2003 to 2011, male ICS inmates decreased from 315 to 135. The women's ICS program was discontinued, then revived, but at the time of trial consisted of only five inmates. In the 1990s Gilliam, the 88-bed inpatient psychiatric facility for male inmates, operated at full capacity, but at the time of trial only 47

beds were filled. It is undisputed that women inmates have a higher rate of mental illness than male inmates, but from 2007-2009 SCDC referred only 13 women to Geo Care (formerly "Just Care"), a private company with which SCDC contracts for inpatient psychiatric services for female inmates. SCDC offered no persuasive explanation for the decline in the number of inmates receiving higher levels of services during a period when the overall inmate population and mental health case load remained flat.

e. Conclusion

This Court finds that SCDC's use of force and segregation, as opposed to treatment, in a mental health system where psychiatrists have limited roles and where inmates face systemic obstacles in accessing higher levels of care, creates a substantial risk of serious harm for inmates with serious mental illness.

3. Employment of a sufficient number of trained mental health professionals

*Jub*  
*23*  
The Court finds that the mental health program at SCDC is substantially understaffed. This has a causal effect for many insufficient aspects of the mental health program and greatly inhibits SCDC's ability to provide effective services to its mentally ill inmate population.

From 2008-2011, psychiatric staff at SCDC (psychiatrists and psychiatric nurse practitioners) ranged from 4.5 to 5.5 full-time equivalents (FTEs). At the time of this trial, SCDC had 5.5 FTE psychiatric staff serving an estimated 2,409 inmates on psychotropic medication, for a ratio of 1:437. If 17 percent of SCDC's population is mentally ill, rather than the 12.9 percent diagnosed by SCDC, the estimated number of inmates on psychotropic medication should be 3,170 and the ratio then is 1:575. Based on the testimony of Dr. Metzner and Dr. Patterson, the Court finds an appropriate ratio would be one FTE psychiatrist/psychiatric

nurse practitioner to every 150-200 inmates on psychotropic medication. At Gilliam, there are 1.2 FTE psychiatrists and psychiatric nurse practitioners for 62 patients, a 1:52 ratio. Based on the testimony of Plaintiffs' experts, the Court finds that an appropriate ratio for an inpatient setting would be 1:20. For the ICS program, there is currently .7 FTE psychiatric staff for 135 patients, a ratio of 1:193. Based on the testimony of Plaintiffs' experts, the Court finds that an appropriate ratio for intermediate care would be 1:150.

The Court also finds that SCDC is understaffed in clinical psychologists. In 2003, SCDC employed or retained four FTE clinical psychologists but needed, by its own admission, seven. From 2007-2011, however, SCDC averaged only .3 FTE psychologists.<sup>10</sup> To add some context, SCDC's expert, Dr. Haas, testified that the Kentucky Department of Corrections, his former employer, had 15-16 FTE psychologists to serve a total population of 12,000 – 13,000 inmates, a ratio of approximately 1:800. By contrast, SCDC's .3 FTE psychologists serve a total population of approximately 23,000 inmates, a ratio of 1:69,697.

Jan 5  
24

Likewise, the ratio for counselors at Area Mental Health Institutions as of January 2012 is also problematic: 1:72 at Lee; 1:84 at Perry, and 1:100 at Lieber. In response to this information, Dr. Patterson and Ms. Whitley, SCDC's Mental Health Director, agreed that a more appropriate ratio for counselors at the Area Mental Health Institutions is 1:40. Counselor staffing at outpatient prisons is also insufficient. Ms. Whitley testified she became "very concerned" when counselor-patient ratios at outpatient prisons exceeded 1:65, and Dr. Patterson agreed. SCDC data, however, shows that counselor ratios at most of its outpatient prisons exceed 1:65. At the time of trial, the counselor-patient ratio at McCormick Correctional Institution was 1:157 and at Turbeville Correctional Institution 1:183.

---

<sup>10</sup> Shortly before trial, SCDC increased its psychologists to .7 FTE.

In total, Dr. Patterson recommended that SCDC employ at least an additional 20 FTE counselors, 14.5 FTE psychiatrists, and 17 FTE other types of mental health professionals. The Court accords great weight to Dr. Patterson's recommendations for staffing.

While it is clear that SCDC does not have enough counselors, it is equally clear that many of the counselors they do employ are unqualified. Hiring unqualified counselors can lead to the kind of deterioration in the delivery of mental health services that Perry experienced in 2009-2010. Within a period of a few months, all five of Perry's counselors were fired or resigned under investigation or following a serious reprimand. As Dr. Patterson testified, those counselor departures had a significant effect on mental health services provided at Perry, resulting in the cancellation of many psychiatric clinics and group therapy sessions. Disciplinary reprimands in counselor personnel files give further evidence of the overall poor quality of SCDC counselor services.

*Jan B  
25*  
In 2009, SCDC began conducting internal audits of its mental health counselors. As Dr. Patterson and Dr. Metzner testified, the audits document a wide range of serious counselor deficiencies. Scores were particularly poor for Lee, Lieber, and Perry, the male Area Mental Health Institutions, where 55 percent of the audits were either "unsatisfactory" or "satisfactory, but with major concerns." Some of the deficiencies listed are disturbing. They include numerous instances of mentally ill inmates going for many months without seeing a counselor or psychiatrist, in violation of SCDC policy; treatment plans that were out of date and incomplete; and inadequate documentation of medication administration and group therapy sessions. Some counselors repeatedly failed their audits.

The Court finds that inadequate mental health staffing at all levels within SCDC represents a substantial risk of serious harm to inmates with serious mental illness.

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

A treatment plan is intended to be a dynamic and fluid process that continues on a regularly scheduled basis, supplemented by constant updates and revisions. In order to be effective, treatment plans must be accurate, complete, readily accessible to professional staff, and confidential. During trial, evidence was presented to the Court indicating that documentation and maintenance of these records is poor. The treatment plans and automated medical records (“AMR”) do not clearly state problems, objectives, goals, or even identify plan-responsible staff.

The importance of maintaining accurate and complete treatment records is vital to any medical services delivery system. For mentally ill inmates in particular, treatment plans and AMRs are critical for assessing progress as well as the effect of medication and therapy.

In addition, Dr. Metzner offered several examples of basic information about its mental health program that SCDC’s aged computer system is unable to provide. For example, SCDC’s computer system cannot retrieve the names or numbers of all inmates referred to the ICS program; the number of women inmates referred to Geo Care for inpatient psychiatric services; the number of inmates who have made serious suicide attempts; or the number of inmates whose psychotropic medications have expired without being timely renewed.

In summary, the evidence in this case shows that the recordkeeping system for SCDC is outmoded, poorly maintained, and not readily accessible to all staff. The Court finds that SCDC’s failure to maintain accurate and complete mental health treatment records represents a substantial risk of serious harm to mentally ill inmates.

JLS  
/26

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

In evaluating this factor, some of the same concerns overlap with those of the previous factor – maintenance of accurate, complete, and confidential mental health treatment plans. The Court, however, will note three specific issues that raise further concerns. First, Medication Administration Records (“MAR”) of mentally ill inmates provide crucial information upon which psychiatrists rely. SCDC uses standard MAR forms where nurses are required to sign their initials to confirm that medication was provided and administered. At trial, various MARs were introduced indicating the absence of initials and absence of any record that medications were provided at all. This indicates either the medication was not provided or the nurses failed to maintain accurate records. For example, in October and November 2008, inmate Jonathan Mathis was prescribed one medication to be taken twice a day and two other medications to be taken once a day. From his MAR, however, it appears he received no medications either month, without explanation.

*Jub  
P27*  
Although counselors monitor MARs, the Court agrees with Dr. Patterson that SCDC counselors are not qualified to do so, as evidenced by counselor audits showing deficient MARs. Ms. Delgado acknowledged that a failure to adequately monitor MARs has no effect on a counselor’s audit score. For example, the only audit that one Lieber counselor has ever passed was an audit in which 14 of the 15 MARs reviewed for which she was responsible were found incomplete or outdated.

The second issue of concern involves the suicide of Robert Hamberg. SCDC records show that Mr. Hamberg’s morning medications had expired – specifically his anti-psychotic medicine Geodon – which he was supposed to receive twice a day. Nevertheless, his counselor

was still recording that he was compliant with his medication – that he was receiving it in the mornings and evenings. Thus, Mr. Hamberg was only receiving half of his prescribed dosage of anti-psychotic medication. Mr. Hamberg committed suicide on June 9, 2010 at Perry Correctional Institution.

The third issue of major concern in the area of medication administration involves pill lines. As Dr. Patterson testified, medication compliance is especially difficult for many mentally ill inmates, due to medication side effects and the nature of their illness. At many institutions, pill lines occur between 3:00 - 4:00 a.m., and mentally ill inmates are often left to their own devices to timely awake, stand in line, and then take their medication. The timing, press of business, and lack of individual attention at the pill line lends itself to inmates failing to take psychotropic medications.

This Court finds that the failure to appropriately supervise, evaluate, and dispense psychotropic medications creates a substantial risk of serious harm to inmates with serious mental illness.

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

a. The setting of Crisis Intervention (“CI”) cells

At trial, Dr. Patterson identified seven mentally ill inmates at SCDC, in addition to Jerome Laudman, whose deaths from 2008-2011 were both foreseeable and preventable.<sup>11</sup> In his opinion, two common factors contributed to these deaths. First, crisis intervention cells are located in segregation units, not in a medical setting, and thus lack sufficient medical interaction

---

<sup>11</sup> Six of these were suicides. The seventh, Stephen Jeter, was not ruled a suicide, but his death was related to a failed suicide attempt. Moreover, the Court is aware that two more SCDC inmate suicides occurred while this trial was actually in progress, one at Lee and one at Lieber, with both decedents either on or should have been on the mental health caseload.

and treatment. For example, CI inmates are not being assessed daily for mental health purposes. As of the date of trial, SCDC policy only required that inmates in CI be seen Monday through Friday, excluding holidays, and this policy is often violated. Inmates in CI cells spend the entire day in those cells, and are held for long periods of time – typically one to two weeks – but sometimes longer. CI cells, like other SMU cells, are cold and filthy, with trash, blood, and feces scattered or smeared about. Inmates are placed naked in CI cells. They often are not provided a blanket, and when one is provided it often is not clean. CI cells do not have mattresses. Inmates sleep directly on a cold steel or concrete slab. Inmate Richard Patterson testified how he tore up his Styrofoam food trays, then spread the pieces on his concrete slab to serve as a form of mattress. In addition, most inmates in CI do not see a psychiatrist and are not allowed group therapy. Interaction with counselors is brief, limited, and not confidential.

JMB  
29

For at least a three-year period, from 2008-2010, correctional officers at Lieber, at times with the acquiescence of mental health staff and at other times without their knowledge, routinely placed CI inmates naked in shower stalls, “rec cages,” interview booths, and holding cells for hours and even days at a time. Most of these alternative CI spaces did not have toilets and none were suicide resistant. Details of these placements are contained in Dr. Metzner and Patterson’s inspection report, entered into evidence, as well as in their testimony and the testimony of various inmates. SCDC’s own logs document over 100 of these alternative placements during the 27 months for which logs were provided.<sup>12</sup> The Court finds that the vast majority, if not all, of these placements were for inmates on crisis intervention. SCDC logs show that 55 of these placements at Lieber were for twelve hours or longer and 29 exceeded 24 hours. Inmate Isaac Anderson was confined over 86 consecutive hours in a Lieber rec cage from April

---

<sup>12</sup> SCDC could not locate Lieber SMU logs for several of the months requested.

2-6, 2009, with his first documented bathroom break coming after 42 hours in the cage. The interview booths and showers used for CI were often filthy and too small a space in which to lie down. Correctional officers brought CI inmates "finger food" meals to these spaces. Since inmates were not always provided bathroom breaks, some were forced to urinate and defecate in the same spaces where they were fed. Moreover, the Court finds that the use of such inappropriate spaces for CI has not been limited to Lieber. Plaintiffs presented inmate testimony and other evidence that SCDC has placed CI inmates in such spaces at other institutions prior to 2008 and after 2010. For the reasons discussed, the Court finds that SCDC's normal CI placements expose inmates with serious mental illness to a substantial risk of serious harm. The dehumanizing conditions of SCDC's alternative CI placements expose inmates to even greater risk.

**b. Lack of constant observation**

*Jub*  
*30*  
Second, SCDC's policy does not require constant observation; rather, inmates in CI cells are checked on 15-minute intervals, documented in cell-check logs. The evidence before the Court contains proven instances of fabricated cell check logs. For example, the cell check log of inmate Edward Broxton noted that at 6:30 a.m. on February 2, 2010, he was eating breakfast, even though an hour earlier, at 5:30 a.m., Broxton had hanged himself in his CI cell at Lee. Many of the cell check logs for Jerome Laudman were initialed "GM," although the only Lee Supermax correctional officer with those initials denied making the entries or authorizing anyone to use his signature. The SCDC Inspector General report on the drug overdose suicide at Perry of inmate James Bell documented evidence that his cell check logs had also been falsified. To make matters worse, on the Saturday before Bell's suicide his aunt, in an upset state, phoned SCDC to warn them of a "goodbye letter," suicidal in nature, she had received from her nephew.

SCDC mental health staff did not check on Bell until two days later, on Monday afternoon, when a counselor found him dead in his cell.

SCDC's expert, Dr. Haas, agreed with Dr. Patterson and Dr. Metzner that inmates on suicide watch require continuous observation. In 2008, inmate Brian Schriefer committed suicide while on CI at Gilliam by stuffing either toilet paper or a paper gown down his throat. As a result of Schriefer's death, SCDC stopped distributing gowns to CI inmates, instead requiring them to remain naked while in CI. SCDC did not change its policy, however, on continuous observation of suicidal inmates. Continuous observation would have prevented Schriefer's death.

The Court finds that SCDC's suicide prevention and crisis intervention practices create a substantial risk of serious harm to seriously mentally ill inmates.

#### 7. Summary of objective component

As detailed above, this Court finds that the evidence in this case has proved SCDC's mental health program is inherently flawed and systemically deficient in all major areas. The Court further finds that a major contributing factor to the deficiencies in the SCDC program is the lack of a formal, comprehensive quality management program.

Finally, having observed the testimony of the psychiatric and correctional experts for both Plaintiffs and Defendants, this Court finds Plaintiffs' experts more credible. In part, this finding is due to a comparison of their credentials and experience; in part, due to their relative persuasiveness on the witness stand; and in part, due to the wide disparity between Plaintiffs' and Defendants' experts in case preparation and particular knowledge of the SCDC system.

Based on the testimony of these experts and the other evidence presented at trial, the Court finds that SCDC's mental health program exposes inmates with serious mental illness to a

substantial risk of serious harm. Plaintiffs have therefore satisfied the objective component of the deliberate indifference standard.

**B. Subjective Component**

The subjective component of the deliberate indifference standard requires proof that SCDC knew that Plaintiffs were exposed to a substantial risk of serious harm, but failed to take reasonable measures to abate the risk. *Farmer*, 511 U.S. at 847. The subjective component should be determined in light of the prison authorities' "attitudes and conduct at the time suit is brought and persisting thereafter." *Id.* at 845-846.

The evidence is overwhelming that SCDC has known for over a decade that its system exposes seriously mentally ill inmates to a substantial risk of serious harm. In 1999, SCDC retained Dr. Patterson (Plaintiffs' expert), through a grant, to inspect its mental health program. His report, issued in 2000, characterized the program as being in a state of "profound crisis." In October 2000, a Joint Legislative Proviso Committee report concluded that "inmates with mental illness are not receiving adequate treatment . . . and oftentimes leave prisons worse off than when they entered." In April 2003, a South Carolina Task Force whose members included three former SCDC Directors issued a report that concluded Gilliam was "clearly inadequate." In May 2003, the South Carolina Department of Mental Health issued a report on SCDC's mental health program, noting "[t]he lack of psychiatric coverage has resulted in a critical situation, with extremes of poor care, inhumane treatment, and dangerousness . . . ." In September 2003, SCDC Director Jon Ozmint, in an application for technical assistance, stated that "[t]he current plight of persons with mental illness at SCDC is at a crisis level." In June 2005, the Plaintiffs filed their Complaint in this case, alleging constitutional deficiencies in SCDC's program. From 2006-2010 Plaintiffs' experts issued eight site inspection reports criticizing conditions in SCDC

Job  
32

facilities. In October 2007, SCDC psychiatrist Dr. Michael Kirby wrote a letter to his supervisor noting several serious problems with SCDC's mental health system. In June 2008, SCDC investigator Lloyd Greer issued his report on the death at Lee Supermax of Jerome Laudman. From 2008-2010, Lieber SMU logs documented the use of shower stalls and other inappropriate spaces for CI placements. In 2009-2010, SCDC was aware that the counselor shortage at Perry created serious deficiencies in the delivery of mental health services. In January 2010, a United States Department of Justice report was highly critical of SCDC's medication management and administration practices. SCDC's own counselor audits from 2010-2011 revealed numerous unsatisfactory practices and major deficiencies. January 2012 internal data showed counselor-to-patient ratios at many SCDC facilities that were excessively high. Finally, through the discovery process in the litigation of this case from 2005-2012, SCDC was made aware of the serious allegations raised by Plaintiffs and their experts, many of which are supported by SCDC's own records.

*Job*  
33

The Court finds from this evidence that SCDC knows and has known, since before this lawsuit was filed, and persisting thereafter until the time of trial and even to present date, that its mental health program is systemically deficient and exposes seriously mentally ill inmates to a substantial risk of serious harm.

That, however, does not end the analysis. The second element of the subjective component focuses on action: has SCDC taken reasonable measures to abate the risks of which it is aware? The evidence shows that from 1999 until the filing of this action in 2005, SCDC did virtually nothing to address, much less eliminate, the substantial risks of serious harm to which class members were exposed. What limited action SCDC has taken since the filing of this lawsuit has had little to no effect in abating the unconstitutional deficiencies this Court has

found. “[T]o rely on intervening events occurring after suit has been filed the defendants must satisfy the heavy burden of establishing that these such events ‘have completely and irrevocably eradicated the effects of the alleged violations.’” *Thomas v. Bryant*, 614 F.3d 1288, 1320-21 (11<sup>th</sup> Cir. 2010).

SCDC has failed to meet this “heavy burden.” At trial SCDC identified the measures it has taken since 2005 to improve its mental health program. These include the hiring of two administrators and some administrative support staff, an increase in psychiatric staff FTEs, a reorganization of group therapy, a new protocol for addressing self-injuring behavior (“SIB”), mental health dorms, increased use of tele-psychiatry, new training programs for clinical and security staff, and counselor audits.

The Court finds that these are small steps that have had little impact on the systemic deficiencies in SCDC’s mental health program. The mere hire of administrators to replace other administrators is not necessarily an improvement. Additional administrative support staff does not address the dire need for more clinical staff. Since 2008, SCDC’s psychiatric staff has remained relatively flat and currently consists of 5.5 FTEs, although this Court has found that at least 14.5 FTEs are needed. As discussed, counselor and psychologist FTEs are far too low. Reorganized or not, group therapy sessions are frequently cancelled and unavailable for most inmates in segregation and crisis intervention. SCDC introduced no persuasive evidence that its new, decentralized SIB protocol has improved SIB-related issues. SCDC’s concentration of some mentally ill inmates in designated dorms is no substitute for an adequately staffed mental health program. At the time of trial, SCDC had not implemented expanded tele-psychiatry services, but had merely requested a feasibility study. SCDC’s training programs are limited in scope and poorly attended. Counselors are the only mental health clinicians subject to formal

audits, and those audits, though limited in scope, reveal alarming deficiencies. Despite a low bar for passing, many counselors fail their audits, some repeatedly.

Half-hearted measures will not 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.” Standards Order at 13, (quoting *Coleman v. Wilson*, 912 F. Supp. 1282, 1319) (E.D. Cal. 1995)). *See also Thomas*, 614 F.3d at 1320 (11th Cir. 2010) (“practices may be reinstated as swiftly as they were suspended”). The steps SCDC has taken have been small ones, characterized by SCDC itself as “band aids,”<sup>13</sup> many of which were instituted shortly before and even during trial, that have failed to adequately address the known systemic deficiencies in its mental health program. The SCDC mental health program needs far more than band aids, and the Court finds that the measures taken by SCDC to correct its systemic deficiencies are neither reasonable, timely, nor effective. Plaintiffs have therefore satisfied the subjective component of the deliberate indifference standard.

Jan 35

## II. REMEDY TO ADDRESS CONSTITUTIONAL VIOLATIONS

### A. Overview

In devising a remedy for the constitutional deficiencies at SCDC, the Court is required to balance two competing interests. First, it is not the role of this Court to micromanage the daily administration of the mental health program at SCDC. Moreover, this decision comes in a time of economic recession and heavy scrutiny of governmental expenses. However, “[c]ourts may not allow constitutional violations to continue simply because a remedy could involve intrusion into the realm of prison administration.” *Brown v. Plata*, 131 S.Ct. 1910, 1928-29 (2011).

---

<sup>13</sup> SCDC’s June 8, 2009 Memorandum on Applicable Standards contended that SCDC had a “well-developed mental health system . . . in place for decades,” that needed nothing more than “band aids or other minor remedies.”

Additionally, the economic “cost of protecting a constitutional right cannot justify its total denial.” *Bounds v. Smith*, 430 U.S. 817, 825 (1977). “A plea of lack of funds is an insufficient justification for the failure of the executive department” to provide constitutionally mandated treatment programs. *Crain v. Bordenkircher*, 176 W.Va. 338, 364, 342 S.E.2d 422, 449 (1986), (quoting *Moore v Starcher*, 167 W.Va. 848 - 853, 280 S.E.2d 693, 696 (1981)).

Second, under the separation of powers doctrine, this Court may not usurp the authority of other branches of government. The separation of powers doctrine, however, “is not fixed and immutable.” *State v. Langford*, 400 S.C. 421, 434, 735 S.E.2d 471, 478 (2012). On the contrary, the doctrine contains “grey areas” and an “overlap of authority” among governmental branches.

*Id.*

“Separation of powers does not require that the branches of government be hermetically sealed; the doctrine of separation requires a cooperative accommodation among the three branches of government; a rigid and inflexible classification of powers would render government unworkable.” At its core the doctrine therefore “is directed only to those powers which belong exclusively to a single branch of government.”

*Id.* (quoting 16A Am.Jur.2d, *Constitutional Law* § 244, 246).

In *Blaney v. Cmmr. of Corrections*, 374 Mass. 337, 372 N.E.2d 770 (1978), following defendants’ submission of deficient plans to remedy prison conditions, the court entered a remedial order giving explicit directions for defendants to follow. The court rejected defendants’ argument that the order violated separation of powers, noting that courts have power to direct public officials to carry out their lawful obligations. 374 Mass at 339-42, 372 N.E.2d at 773-74. “As to judges’ authority to fashion detailed orders to correct established violations of constitutional rights . . . [s]uch functions are judicial, and in no way usurp the power of the executive.” 374 Mass. at 342-43, 372 N.E.2d at 774, citing *Swann v. Charlotte-Mecklenburg*

*County Bd. of Educ.*, 402 U.S. 1, 15 (1971); *U.S. v. Montgomery County Bd. of Educ.*, 395 U.S. 225, 234-36 (1969). See also *In re K.C.*, 325 Ill. App. 3d 771, 779-80, 759 N.E.2d 15, 23 (2001) (“When the legislature creates a statute that contemplates an interplay between the courts and the executive branch, court orders directing the actions of the executive agencies do not violate the doctrine of the separation of powers.”); *Crain*, 176 W.Va. at 364, 342 S.E.2d at 449 (where a court ordered the West Virginia Department of Corrections to implement an extensive remedial plan addressing constitutionally deficient prison conditions.); *Haley v Barbour Cnty.*, 885 So. 2d 783, 790 (Miss. 2004) (noting court regulation of the number of inmates a county may deliver to a prison does not violate separation of powers.); *Massameno v. Statewide Grievance Comm.*, 234 Conn. 539, 567, 663 A.2d 317, 333 (1995) (stating a court does not violate separation of powers doctrine by supervising and disciplining executive branch prosecutors.)

gms  
37  
Finally, this Court is bound to uphold the South Carolina Constitution and protect the rights of the mentally ill inmates at SCDC. Moreover, it is the action of a circuit court that triggers the placement of an inmate into the custody of SCDC, under Court authority, and thus this Court has the inherent power - and responsibility - to see that the imprisonment of that inmate complies with constitutional mandates. The Court is convinced that to view the evidence put forth in this case and then do nothing could be a great miscarriage of justice.

To address the constitutional deficiencies in the mental health system at SCDC, Plaintiffs have proposed a remedial plan comprised of three components. First, SCDC would be required to submit a written plan for remedying the systemic deficiencies identified by the Court. Second, SCDC must rely upon factors and guidelines identified by the Court in creating this plan, which the Court will then review and either approve or disapprove. Third, the Court will retain jurisdiction of this case and appoint expert monitors and/or a special master who will report

periodically to the Court. SCDC has raised objections to this plan, arguing that it constitutes an impermissible burden shift and is violative of the separation of powers doctrine.

The Court denies SCDC's objections. It would be highly impractical for Plaintiffs to identify and create a plan to implement changes to the mental health system at SCDC. Rather, once the Court has ruled, SCDC is in the best position to propose steps and changes to its existing system. *See Alexander S. v. Boyd*, 876 F. Supp. 773, 804-04 (D.S.C. 1995) (where a court ordered the South Carolina Department of Juvenile Justice to submit remedial plan within 120 days of order); *Crain*, 176 W.Va. at 341, 342 S.E.2d at 426 (where a court ordered the West Virginia Department of Corrections to submit remedial plan within 180 days of order). As a result, the Court adopts Plaintiffs' proposals and requires SCDC to submit a written plan to the Court within 180 days of the date of the Final Order in this case. In executing the remedial plan to be submitted by SCDC, the Court will retain jurisdiction but also intends to appoint a monitor who will report periodically to the Court. The Court will provide the parties, through motions, an opportunity to suggest the appropriate appointee(s) to oversee this process.

**B. Remedial Factors and Guidelines**

In formulating specific factors and guidelines for SCDC's remedial plan, the Court will again utilize the *Ruiz* factors above, along with additional sub-factors and components listed thereunder. In devising a plan to remedy the constitutional deficiencies identified by the Court, SCDC shall be directed in the Order to prepare a written plan that includes, at a minimum, the following:

1. **The development of a systematic program for screening and evaluating inmates to more accurately identify those in need of mental health care**

- i. Develop and implement screening parameters and modalities that will more accurately diagnose serious mental illness among incoming inmates at R&E with the stated goal of increasing the number of inmates recognized as mentally ill and being admitted to the mental health program by a minimum of two percentage points (14.9 percent of the inmate population);
- ii. The implementation of a formal quality management program under which mental health screening practices are reviewed and deficiencies identified and corrected in ongoing SCDC audits of R&E counselors;
- iii. Enforcement of SCDC policies relating to the timeliness of assessment and treatment once an incoming inmate at R&E is determined to be mentally ill; and
- iv. Development of a program that regularly assesses inmates within the general population for evidence of developing mental illness and provides timely access to mental health care.

2. **The development of a comprehensive mental health treatment program that prohibits inappropriate segregation of inmates in mental health crisis, generally requires improved treatment of mentally ill inmates, and substantially improves/increases mental health care facilities within SCDC**

a. **Access to Higher Levels of Care**

- i. Significantly increase the number of Area Mental Health inmates vis-a-vis outpatient mental health inmates and provide sufficient facilities therefor;
- ii. Significantly increase the number of male and female inmates receiving intermediate care services and provide sufficient facilities therefor;
- iii. Significantly increase the number of male and female inmates receiving inpatient psychiatric services, requiring the substantial renovation and upgrade of Gilliam

Jas  
39

Psychiatric Hospital, or its demolition for construction of a new facility;

- iv. Significantly increase clinical staffing at all levels to provide more mental health services at all levels of care; and
- v. The implementation of a formal quality management program under which denial of access to higher levels of mental health care is reviewed.

**b. Segregation**

- i. Provide access for segregated inmates to group and individual therapy services;
- ii. Provide more out-of-cell time for segregated mentally ill inmates;
- iii. Document timeliness of sessions for segregated inmates with psychiatrists, psychiatric nurse practitioners, and mental health counselors and timely review of such documentation;
- iv. Provide access for segregated inmates to higher levels of mental health services when needed;
- v. The collection of data and issuance of quarterly reports identifying the percentage of mentally ill and non-mentally ill inmates in segregation compared to the percentage of each group in the total prison population with the stated goal of substantially decreasing segregation of mentally ill inmates and substantially decreasing the average length of stay in segregation for mentally ill inmates;
- vi. Undertake significant, documented improvement in the cleanliness and temperature of segregation cells; and
- vii. The implementation of a formal quality management program under which segregation practices and conditions are reviewed.

*JMB*  
*40*

**c. Use of Force**

- i. Development and implementation of a master plan to eliminate the disproportionate use of force, including pepper spray and the restraint chair, against inmates with mental illness;
- ii. The plan will further require that all instruments of force, (e.g. chemical agents and restraint chairs) be employed in a manner fully consistent with manufacturer's instructions, and track such use in a way to enforce such compliance;
- iii. Prohibit the use of restraints in the crucifix or other positions that do not conform to generally accepted correctional standards and enforce compliance;
- iv. Prohibit use of restraints for pre-determined periods of time and for longer than necessary to gain control, and track such use to enforce compliance;
- v. The collection of data and issuance of quarterly reports identifying the length of time and mental health status of inmates placed in restraint chairs;
- vi. Prohibit the use of force in the absence of a reasonably perceived immediate threat;
- vii. Prohibit the use of crowd control canisters, such as MK-9, in individual cells in the absence of objectively identifiable circumstances set forth in writing and only then in volumes consistent with manufacturer's instructions;
- viii. Notification to clinical counselors prior to the planned use of force to request assistance in avoiding the necessity of such force and managing the conduct of inmates with mental illness;
- ix. Develop a mandatory training plan for correctional officers concerning appropriate methods of managing mentally ill inmates;
- x. Collection of data and issuance of quarterly reports concerning the use-of-force incidents against mentally ill and non-mentally ill inmates; and

JMS  
41

- xi. The development of a formal quality management program under which use-of-force incidents involving mentally ill inmates are reviewed.

3. **Employment of a sufficient number of trained mental health professionals**

- i. Increase clinical staffing ratios at all levels to be more consistent with guidelines recommended by the American Psychiatric Association, the American Correctional Association, and/or the court-appointed monitor;
- ii. Increase the involvement of appropriate SCDC mental health clinicians in treatment planning and treatment teams;
- iii. Develop a training plan to give SCDC mental health clinicians a thorough understanding of all aspects of the SCDC mental health system, including but not limited to levels of care, mental health classifications, and conditions of confinement for caseload inmates;
- iv. Develop a plan to decrease vacancy rates of clinical staff positions which may include the hiring of a recruiter, increase in pay grades to more competitive rates, and decreased workloads;
- v. Require appropriate credentialing of mental health counselors;
- vi. Develop a remedial program with provisions for dismissal of clinical staff who repetitively fail audits; and
- vii. Implement a formal quality management program under which clinical staff is reviewed.

4. **Maintenance of accurate, complete, and confidential mental health treatment records**

- i. Develop a program that dramatically improves SCDC's ability to store and retrieve, on a reasonably expedited basis:
  - Names and numbers of FTE clinicians who provide mental health services;

JS  
42

- Inmates transferred for ICS and inpatient services;
  - Segregation and crisis intervention logs;
  - Records related to any mental health program or unit (including behavior management or self-injurious behavior programs);
  - Use of force documentation and videotapes;
  - Quarterly reports reflecting total use-of-force incidents against mentally ill and non-mentally ill inmates by institution;
  - Quarterly reports reflecting total and average lengths of stay in segregation and CI for mentally ill and non-mentally ill inmates by segregation status and by institution;
  - Quarterly reports reflecting the total number of mentally ill and non-mentally ill inmates in segregation by segregation status and by institution;
  - Quality management documents; and
  - Medical, medication administration, and disciplinary records.
- ii. The development of a formal quality management program under which the mental health management information system is annually reviewed and upgraded as needed.

5. **Administration of psychotropic medication only with appropriate supervision and periodic evaluation**

- i. Improve the quality of MAR documentation;
- ii. Require a higher degree of accountability for clinicians responsible for completing and monitoring MARs;
- iii. Review the reasonableness of times scheduled for pill lines; and
- iv. Develop a formal quality management program under which medication administration records are reviewed.

Job  
43

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

- i. Locate all CI cells in a healthcare setting;
- ii. Prohibit any use for CI purposes of alternative spaces such as shower stalls, rec cages, holding cells, and interview booths;
- iii. Implement the practice of continuous observation of suicidal inmates;
- iv. Provide clean, suicide-resistant clothing, blankets, and mattresses to inmates in CI;
- v. Increase access to showers for CI inmates;
- vi. Provide access to confidential meetings with mental health counselors, psychiatrists, and psychiatric nurse practitioners for CI inmates;
- vii. Undertake significant, documented improvement in the cleanliness and temperature of CI cells; and
- viii. Implement a formal quality management program under which crisis intervention practices are reviewed.

gas  
44

CONCLUSION

Even the most brief and facile view of the evidence put forth by Plaintiffs in this case reveals obvious, significant, and longstanding problems with mental health services delivery at SCDC. Prior to trial, this Court tried its very best to bring the parties together for settlement purposes, even requiring the Director of SCDC and the guardian for the Plaintiffs, attorneys for both sides, and other interested parties to meet in an effort to resolve the case. The Court was not present for these discussions and thus cannot determine why they were unsuccessful.

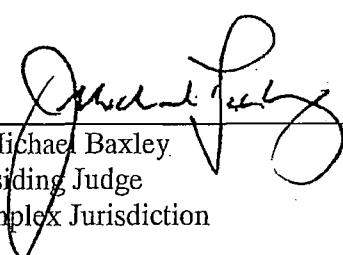
We are now eight years into this litigation. Rather than accept the obvious at some point and come forward in a meaningful way to try and improve its mental health system, Defendants

have fought this case tooth and nail—on the facts, on the law, on the constitutional issues, portraying itself as beleaguered by the burdensomeness of Plaintiffs' discovery, and generally harrumphed by the invasive nature of Plaintiffs' counsels' tactics and strategies. This Court has spent dozens of hours in hearings and conferences in an effort to resolve discovery disputes, most of which involved delay, missed deadlines, and recalcitrance on the part of the Defendants.

This Court can never criticize any party for a vigorous exercise of offense or defense in civil litigation, for such is the foundation of our adversarial system of justice. But justice in this case is not really about who wins or loses this lawsuit. The hundreds of thousands of tax dollars spent defending this lawsuit, at trial and most likely now on appeal, would be better expended to improve mental health services delivery at SCDC.

For the reasons set forth above, the Court grants judgment in favor of the Plaintiffs and orders SCDC to submit a proposed written remedial plan consistent with this Order.

**IT IS SO ORDERED.**



---

J. Michael Baxley  
Presiding Judge  
Complex Jurisdiction

Hartsville, South Carolina

January 8, 2014

# EXHIBIT B

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., )

Civil Action No. 2005-CP-40-02925

Plaintiffs, )

v. )

**ORDER SETTING FORTH**  
**APPLICABLE CONSTITUTIONAL**  
**STANDARDS**

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

Defendants. )

**INTRODUCTION**

*JMB*  
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.

*Just*  
*2*

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**

3  
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<sup>1</sup>, 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

<sup>1</sup> 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.

*Job 4*  
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. A Discussion of The Objective Component of Deliberate Indifference.**

**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 (9<sup>th</sup> 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 (7<sup>th</sup> 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 (5<sup>th</sup> 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 (7<sup>th</sup> 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 (10<sup>th</sup> 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 (4<sup>th</sup> 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 (1<sup>st</sup> 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 (4<sup>th</sup> 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<sup>2</sup> 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 (7<sup>th</sup> Cir. 1983); *Flynn v. Doyle*, 2009 WL 4262746 at \*19 (E.D. Wis. 2009); *see also Ginst 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

<sup>2</sup> 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 (5<sup>th</sup> Cir. 1982), *amended in part, vacated in part*, 688 F.2d 266 (5<sup>th</sup> 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)).

93  
9

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 (5<sup>th</sup> Cir. 2001), *adhered to on remand*, 154 F.Supp. 2d 975, (S.D. Tex. 2001) (enjoining prison officials' segregation practices).

**B. A Discussion of The Subjective Component of Deliberate Indifference.**

**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.<sup>3</sup>

## 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 (7<sup>th</sup> 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 (5<sup>th</sup> Cir. 2004) ("[T]he obvious and

<sup>3</sup> 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 (11<sup>th</sup> Cir. 2001); *Williams v. Benjamin*, 77 F.3d 756, 761 (4<sup>th</sup> Cir. 1996); *Berry v. City of Muskogee*, 900 F.2d 1489, 1495 (10<sup>th</sup> 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).

*Jan 16*  
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. Proconier*, 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. Moorner*, 152 S.C. 455, 150

JB  
18

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.

JMS  
19

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.<sup>4</sup> 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.

Jan 20

---

<sup>4</sup> 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.

JMB  
22 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

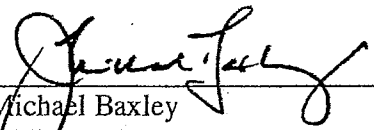
of analysis to the holding in *Abbeville*, the Supreme Court identified three fundamental components of a minimally adequate system of education in South Carolina:

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

# EXHIBIT C

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C/A No.: 2005-CP-40-2925

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

Plaintiffs,

v.

South Carolina Department of Corrections )  
and William R. Byars, Jr., as Agency )  
Director of the South Carolina Department )  
of Corrections )

Defendants.

**ORDER DENYING DEFENDANTS'**  
**MOTION TO ALTER OR AMEND**

2014 APR 16 10:33 AM  
JENNIFER L. GIBSON  
CLERK OF COURT  
FIFTH JUDICIAL CIRCUIT  
RICHLAND COUNTY

I. **INTRODUCTION**

This is an action brought by a class of inmates with serious mental illness and a not-for-profit organization, Protection and Advocacy for People with Disabilities, Inc., ("P&A"). Defendants are the South Carolina Department of Corrections ("SCDC") and, in his official capacity, the SCDC Director. Plaintiffs seek declaratory and injunctive relief, alleging that SCDC's mental health program is systemically deficient and violates the cruel and unusual punishment clause of Article I, § 15 of the South Carolina Constitution.

*Jub*

This action was filed in 2005 and tried non-jury over a six-week period in 2012. The parties presented 36 witnesses and entered well over 200 documents into evidence. SCDC argued that Plaintiffs' evidence was dated and that any deficiencies were relatively minor and had been corrected. The Court rejected both these positions in its January 8, 2014 Order Granting Judgment for Plaintiffs ("Final Order").

As detailed in the Final Order, the Court relied heavily on evidence from 2008-2012 in finding that systemic deficiencies in SCDC's mental health program expose mentally ill inmates to unacceptable risks of harm. The Court further found that SCDC knows and has known of these deficiencies and risks "since before this lawsuit was filed, and persisting thereafter until the time of trial and even to present date." Final Order at 33.

On January 21, 2014, Defendants filed a Motion to Alter or Amend pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. After Plaintiffs filed a memorandum in response, the Court heard oral arguments on March 28, 2014 at the Richland County Courthouse. For the reasons set forth below, SCDC's motion is hereby denied, and the previous decision of this Court is confirmed in its entirety.

## II. DISCUSSION

### A. Standing of Plaintiff Class and Class Representative

*Jmb*  
*2*  
The Plaintiff class consists of approximately 3,500 inmates with serious mental illness. Final Order at 1. By the time of trial, only one class representative remained in SCDC custody, a mentally ill inmate referred to as "T.R."

After six years of litigation and six weeks of trial, SCDC first raised the issue of the standing of the Plaintiff class and class representative during its closing argument.<sup>1</sup> SCDC bases its standing argument on *Lewis v. Casey*, 518 U.S. 343 (1996). South Carolina law, however, not federal law, governs standing in this case. The distinction is significant. Federal courts are courts of limited subject matter jurisdiction, where plaintiffs must overcome a presumption that the court lacks jurisdiction. 13 Wright Miller & Cooper, *Federal Practice and Procedure*:

<sup>1</sup> Fifteen mentally ill inmate members of the Plaintiff class testified over three days at trial. On the morning class representative T.R. was scheduled to testify, SCDC unexpectedly notified Plaintiffs' counsel that T.R. had not been transported to the courtroom along with the other inmate witnesses scheduled for that day. According to SCDC, T.R., who is chronically psychotic, stated he did not wish to testify in court that day.

*Jms*  
3  
*Jurisdiction* § 3522 at 103 (3d ed. 2008). By contrast, South Carolina courts are courts of general jurisdiction. *Limehouse v Hulsey*, 397 S.C. 49, 723 S.E. 2d 211, 218 (Ct. App. 2011).

In the courts of this state, standing may be acquired in any one of three ways: 1) by statute; 2) by constitutional standing; or 3) by the public importance exception to standing requirements. *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). As discussed below, the Plaintiff class and class representative have constitutional standing, as well as standing through the public importance exception.

1. The Plaintiff Class and Class Representative Have Constitutional Standing.

As this Court recognized in its September 29, 2010 Order on Constitutional Standards ("Standards Order"), liability in an Article I, §15 case alleging systemic deficiencies does not depend on past harm; actual injury is established by evidence of a substantial risk of serious future harm.<sup>2</sup> Exposure to the risk, rather than past harm, is the relevant injury. Standards Order at 6-7, citing *Helling v. McKinney*, 509 U.S. 25 (1993); *Farmer v. Brennan*, 511 U.S. 825 (1994); *Shakka v. Smith*, 71 F.3d 162 (4<sup>th</sup> Cir. 1995).

SCDC's reliance on *Lewis* is misplaced. Not only does *Lewis* apply federal standing law, it did not involve an Eighth Amendment allegation of cruel and unusual punishment. Instead, plaintiffs in *Lewis* alleged that the defendant prison system denied them adequate access to the courts, in violation of the First, Sixth, and Fourteenth Amendments. The deliberate indifference standard, requiring a showing of the substantial risk of serious future harm, was not applicable. Instead, liability depended on a showing of past harm, "such as the inability to meet a filing deadline or to present a claim." 504 U.S. at 348-349.

<sup>2</sup> The Standards Order also held that the analysis for a case brought under Article I, §15 of the South Carolina Constitution is the same analysis used by federal courts for cases brought under the Eighth Amendment of the United States Constitution. Standards Order at 2-3.

The present case is quite different. As this Court stated in its July 28, 2013 letter to the parties:

Although T.R. himself never testified, Plaintiffs presented evidence at trial of systemic deficiencies in SCDC's mental health program that expose every inmate with serious mental illness – including specific reference to T.R. – to a substantial risk of serious future harm. Under this Court's Order on Constitutional Standards dated September 29, 2010, injury in an Eighth Amendment case alleging systemic deficiencies may be established by evidence of a substantial risk of serious future harm. Therefore, under this constitutional standard governing this case and the evidence presented at trial, T.R. and, by extension, the entire plaintiff class has standing to pursue their claims.

Although unnecessary to establish actual injury under Article I, §15, Plaintiffs also introduced evidence at trial of past injury suffered by T.R. Evidence showed that T. R. had "a history of extended lockup,"<sup>3</sup> was currently housed at Gilliam Psychiatric Center ("GPH"), had been formerly housed in the Intermediate Care Services program ("ICS"), and had failed to receive confidential psychiatric assessments. Plaintiffs' Trial Ex. 9 at 13-15. During trial, Plaintiffs' experts provided detailed testimony on the systemic deficiencies of SCDC lockup units, GPH, and ICS. Plaintiffs' experts further testified that SCDC's failure to provide psychiatric assessments in confidential settings constituted inadequate mental health treatment. Even if actual injury required a showing of past harm, the evidence submitted about T.R. would be sufficient to confer standing.

2. The Public Importance Exception

South Carolina courts have long recognized the public importance exception to standing requirements. *ATC South*, 380 S.C. at 198, 669 S.E.2d at 341. "Standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Id.* (quoting *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Whether an issue is of sufficient public importance

<sup>3</sup> "Lockup" and "segregation" are synonymous terms meaning solitary confinement.

requires an "appropriate balance" by the court of "competing policy concerns." *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

While the nature of the public importance exception "resists a formulaic approach," the "key" to the analysis is "whether a resolution is needed for future guidance." *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341. "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.*

Over the years, South Carolina courts have held that the public importance exception conferred standing on plaintiffs in a variety of cases. *See, e.g., Davis* (county commissioners have standing to challenge the constitutionality of legislation that authorized their removal from office); *Sloan v. Dep't of Transportation*; 365 S.C. 299, 618 S.E.2d 876 (2005) (taxpayer had standing to sue Department over alleged statutory bidding violations); *Baird*, 333 S.C. at 530, 511 S.E.2d at 75 (doctors have standing to sue county to enjoin issuance of bonds for purchase and renovation of hospital); *Thompson v. S.C. Comm'n on Alcohol and Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976) (law enforcement officials have standing to challenge constitutionality of the Uniform Alcohol and Intoxication Treatment Act).

It is difficult to think of a case more fitting for the public importance exception than the one at hand. An appropriate balance of policy concerns, as called for in *Sloan v. Sanford*, weighs heavily in favor of Plaintiffs, especially now, nearly nine years after the action was filed. To dismiss the case at this point would not only be a colossal waste of time and resources, it would constitute a terrible injustice to mentally ill prisoners. A comprehensive ruling by this Court is absolutely necessary as future guidance to the State on how it may operate its prisons within Constitutional bounds. As discussed above, the Plaintiff class and class representative have

constitutional standing, but even if they did not, the public importance exception would confer standing on them.

**B. Standing of P&A**

SCDC first challenged P&A's standing in its 2005 Motion to Dismiss, which this Court denied in an Order dated June 20, 2006, (the "2006 Order"). SCDC next raised the issue in its closing argument.

When a statute confers standing on a plaintiff, no further standing requirements need be met. *See Fowler v. Beasley*, 322 S.C. 463, 465, 472 S.E.2d 630, 632 (1996). In an order dated June 20, 2006, this Court ruled that S.C. Code § 43-33-350(1) conferred standing on P&A to bring and maintain this suit:

*JMS*  
*6*  
A review of South Carolina law reveals that SCP&A was specifically created pursuant to the dictates of the United States Public Law 94-103, for the express purpose to protect and advocate for the rights of developmentally disabled and handicapped persons by "pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons..." S.C. Code Ann. 43-33-350(1). Defendants argue that under this mandate SCP&A may facilitate litigation, but may not be a party. This Court finds no controlling precedent to support Defendants' position. A plain reading of the statute, which is entitled "Powers and Duties of System" states that the organization is authorized to pursue legal remedies. Filing a lawsuit is the seeking of a legal remedy, and therefore Defendants' motion to dismiss Plaintiff SCP&A for lack of standing is respectfully denied.

June 20, 2006 Order at 1-2.

In addition to statutory standing, P&A has a form of constitutional standing known as "associational" standing, because its mentally ill inmate constituents have standing to sue in their own right,<sup>4</sup> the interests at stake are germane to P&A's purpose, and neither the claims asserted nor relief requested require participation of P&A's individual members or constituents. *See*

<sup>4</sup> Fifteen inmates with serious mental inmates testified at trial. Expert testimony and SCDC records were admitted specific to many others.

*Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 551 S.E.2d 588, 589 (Ct. App. 2001).

Finally, even if it did not have statutory and associational standing, the public importance exception would confer standing on P&A.

**C. Private Right of Action**

SCDC argues that Plaintiffs have no private right of action by which to allege violations of the South Carolina Constitution. SCDC previously raised this argument in its 2005 Motion to Dismiss, in its Rule 41(b) motion at the close of Plaintiffs' case, and in its closing argument.

SCDC relies upon an unpublished South Carolina Court of Appeals opinion, *Gibbs v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 2002-UP-363, to support the proposition that there is no implied private right of action for violations of the South Carolina Constitution. As a threshold matter, unpublished opinions of the Court of Appeals have no precedential value. *Lanham v. Blue Cross Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 349, 526 S.E.2d 253, 256 (Ct. App. 2000); Rule 220(a), SCACR. Even assuming, *arguendo*, that *Gibbs* had precedential value, SCDC's reliance upon its holding would still be misplaced. *Gibbs* addresses the narrow issue of whether an individual has an implied private right of action under the South Carolina Constitution to seek monetary damages. Plaintiffs seek only equitable relief. Accordingly, the *Gibbs* case is inapplicable here, and the court rejects SCDC's argument.

**D. Separation of Powers**

In 2005, both SCDC and the South Carolina General Assembly moved to dismiss this action on several grounds. In its August 16, 2006 Order, the Court granted the General Assembly's motion on grounds of separation of powers, but denied SCDC's. SCDC raised

separation of powers again in its 2012 Rule 41(b) motion, which the Court denied, and reasserted it in closing argument.

The Final Order sets forth the Court's basis for rejecting SCDC's separation of powers argument. *Id.* pp. 36-37. In addition, the August 16, 2006 Order rejects SCDC's separation of powers argument on grounds that, unlike the General Assembly, SCDC is expressly charged with management of the prison system and statutorily authorized to be sued. *Id.* at 12-14, *citing* S.C.Code Ann § 24-1-130, 140 (Supp. 2005). Moreover, SCDC is the agency authorized to request funding from the General Assembly, and to decide how to spend at least some of the funding it receives. For all these reasons, the Court rejects SCDC's argument on separation of powers.

**E. Public Policy Limitations**

SCDC raised this defense in its 2005 Motion to Dismiss, which the court denied, then again in closing arguments. SCDC contends that *Sullivan v. S.C. Department of Corrections*, 355 S.C. 437, 586 S.E. 2d 124 (2004) sets forth as South Carolina's public policy a "hands off" approach to courts with respect to South Carolina prisons. However, *Sullivan* bears little resemblance to the present case. It did not involve allegations of systemic deficiencies under Article I, § 15. In *Sullivan*, the Court ruled that Article XII, § 2 of the South Carolina Constitution did not require SCDC to provide the inmate plaintiff with enrollment in a particular sex offender program. 355 S.C. at 444, 586 S.E.2d at 127.

The present case presents a far different situation. As detailed in the Final Order, inmates with serious mental illness in South Carolina prisons are exposed to a substantial risk of serious harm by system-wide deficiencies in SCDC's mental health program. These deficiencies include inadequate mental health screening that fails to identify a large percentage of mentally ill

inmates; the use of force and long term segregation in lieu of treatment; a denial of access to many inmates of higher levels of mental health care; inadequate record keeping and medication administration; and a suicide prevention and crisis intervention program that involves placing inmates naked in filthy cells, shower stalls, interview booths, and other inappropriate settings for long periods of time without reasonable access to treatment. As further detailed in the Final Order, SCDC has known of the deficiencies of its program for years, but has failed to take adequate corrective measures.

This Court recognizes the importance of judicial restraint, but it cannot ignore the troubling facts of this case. A "hands off" approach towards prison management does not mean that prison officials have free rein to violate the constitutional rights of inmates. The court therefore rejects SCDC's argument.

**F. Use of Force Against Mentally Ill Inmates**

SCDC mischaracterizes the Final Order as prohibiting any use of force against mentally ill inmates, in violation of public policy, and cites *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992) in support. The Final Order, however, does not prohibit the use of force against mentally ill inmates. Instead, it concludes that SCDC's use of disproportionate, unnecessary, and excessive force against mentally ill inmates, often in violation of SCDC's own policies, violates Article I, § 15 of the South Carolina Constitution. Final Order at 16-21.

**G. Political Question**

SCDC argues that this case is a non-justiciable political question, an argument it raised in its 2005 Motion to Dismiss and again in its closing. The Court finds that the actions taken by SCDC in running its mental health programs do not represent policy judgments of the South Carolina General Assembly and that this case is not a non-justiciable political question.

#### H. Fourth Circuit Case Law

SCDC contends that the Final Order failed to give appropriate weight to Fourth Circuit federal case law, especially *Williams v. Branker*, 2012 WL 165035 (4th Cir. 2012). Instead, SCDC contends that the Final Order relies primarily on law from other federal circuits, which SCDC characterizes as inconsistent with Fourth Circuit interpretations of the Eighth Amendment.

As this Court has recognized, the appropriate standard of liability for Article I, § 15 of the South Carolina Constitution is the deliberate indifference standard used by federal courts in analyzing the Eighth Amendment of the United States Constitution. Standards Order at 2-3, citing *State v. Wilson*, 206 S.C. 498, 512, 413 S.E. 2d 19, 27 (1997). This Court is unaware of any split among the circuits as to the deliberate indifference standard. In its Final Order and Standards Order, this Court relied primarily on decisions applying the deliberate indifference standard to cases factually similar to this one, including cases from the courts of appeals of several different federal circuits. This Court has not cited *Williams* or some of the other cases offered by SCDC because they are dissimilar to the case at hand. *Williams*, for example, did not involve a class or an allegation of systemic deficiencies. Instead, it affirmed judgment on the pleadings against an individual inmate plaintiff who failed to allege that defendants actually knew of his exposure to the risk of harm: “Williams alleges no facts suggesting that appellees had actual knowledge of the risks to him.” *Id.* at 5. Defendants’ knowledge of the risk is an essential element of the subjective component of the deliberate indifference standard. As the *Williams* court concluded, Plaintiff’s failure to allege Defendants’ knowledge was, therefore “fatal to his claim.” *Id.*

Job  
10

By contrast, in the present case Plaintiffs alleged and the Court found that SCDC had actual knowledge, for years prior to this lawsuit and continuing "to present date," that all mentally ill inmates in South Carolina prisons are exposed through systemic deficiencies to a substantial risk of serious future harm.

**I. Status of P.R. and K.W.**

SCDC asks the Court to make note of the dismissal of P.R. and K.W. as "party plaintiffs." It is undisputed that class representatives P.R. and K.W. were inmates in SCDC custody at the time this action was filed, but were no longer in SCDC custody at the time of trial. After discharge from SCDC, they remained members of the class, under the definition set forth in the Court's Order of November 2, 2007, even if they were no longer class representatives.

**J. Standard of Liability**

SCDC argues that the Final Order applied the standard of liability applicable to Article XII, § 2 of the South Carolina Constitution, rather than that applicable to Article I § 15. The Court disagrees. See Standards Order and Final Order at 3-7.

**K. Extreme Deprivations**

SCDC claims that the Court failed to acknowledge that cruel and unusual punishment requires proof of "extreme deprivations."

The Final Order states that to satisfy the objective component of the deliberate indifference standard, Plaintiffs must prove a "substantial" risk of harm that is "sufficiently serious". Final Order at 4, citing *Farmer v. Brennan*, 511 U.S. 825, 834-37. Some courts have described the degree of seriousness required as one involving "extreme deprivations," but these are not magic words. Other courts have used different but consistent language. Pages 4-5 of the Standards Order discuss in detail the degree of seriousness required to satisfy the objective

component. The Final Order details numerous examples of extreme deprivations mentally ill inmates have suffered because of SCDC's constitutionally deficient mental health program, including preventable and foreseeable deaths. As the Final Order makes clear, the future harm to which mentally ill inmates are exposed by SCDC's system is sufficiently serious to satisfy the deliberate indifference standard.

**L. Plaintiffs' Experts and ACA Standards**

SCDC contends the Court relied "exclusively" on Plaintiffs' experts and/or American Correctional Association ("ACA") standards. The Court did not do so. The Court simply found Plaintiffs' experts a great deal more credible than SCDC's. Final Order at 31. The Court did not rely exclusively on ACA standards, but did find them relevant and persuasive. However, the Court also relied on a great deal of other evidence – testimony by fact witnesses, documentary evidence, and admissions by SCDC.

Job  
12

**M. Breadth of Remedies**

The Court has ordered SCDC to submit a proposed remedial plan within 180 days of the Final Order, consistent with remedial factors and guidelines listed by the Court. Final Order at 38-44. SCDC argues the Court's remedies are excessive, but the Court disagrees, given the breadth and pervasiveness of the systemic deficiencies in SCDC's mental health program.

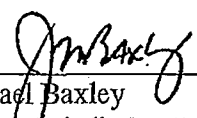
**N. Inherent Authority of the Court**

SCDC also argues that the Court erred in holding that it had the inherent authority "to see that the imprisonment of that inmate complies with constitutional mandates." Final Order at 37. The Court disagrees and again reaffirms that it has the duty and responsibility to see that imprisonment of inmates complies with constitutional requirements.

**III. CONCLUSION**

For the reasons set forth above, the Court denies Defendants' Motion to Alter or Amend.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
J. Michael Baxley  
Complex Jurisdiction Judge  
Fourth Judicial Circuit

Hartsville, SC

April 7, 2014.