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The Honorable MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CASSIE CORDELL TRUEBLOOD, next friend
of A.B., an incapacitated person, et al.,

NO. 2:14-cv-01178-MJP

Plaintiffs,

DECLARATION OF
CARLA REYES

v.

THE WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES, et al.,

Defendants.

I, Carla Reyes, am over the age of 18 years of age, competent to testify to the matters below, and declare based upon personal knowledge:

1. I am assistant secretary for the Behavioral Health Administration (BHA) of the Department of Social and Health Services (DSHS). I am an authorized representative of the Department of Social and Health Services.

2. As assistant secretary, I am responsible for the delivery of prevention, intervention, inpatient treatment, outpatient treatment and recovery support to people with mental health and substance use disorder needs. I am responsible for the operation of the three state hospitals, which includes oversight of hospital policies, procedures and practices to

1 ensure they are aligned with DSHS policies and applicable state and federal laws pertaining to
2 health care facilities. I am also accountable for managing operational issues that cross the
3 divisions within my Administration, strategic planning, performance management, quality
4 assurance, and risk management. I joined the Department of Social and Health Services in
5 1997, and prior to joining BHA, I served as the Director of Planning and Performance.
6

7 3. I have been part of the efforts to respond to this Court's April 2, 2015 order
8 since April 12, 2015. I've been part of the development, planning, and implementation of the
9 Department's efforts to reach a 7 day standard for competency evaluations and restorations. In
10 the past 14 months, extraordinary efforts have been made by Department staff, members of the
11 executive branch, legislators, union representatives, and our criminal justice partners. The
12 Department has made significant changes to the state forensic mental health system.
13

14 a. It has effectively opened two new facilities at Yakima and Maple Lane and
15 expanded capacity at Eastern State Hospital (ESH) and Western State
16 Hospital (WSH). Maple Lane has capacity for up to 30 individuals.
17 Yakima, once the restriction on use of the second floor is lifted, has capacity
18 for up to 24 individuals. ESH increased capacity by 15 beds as originally
19 planned, but as opening beds at WSH became increasingly difficult, the
20 Department capitalized on ESH's physical renovations and successful
21 hiring, and further opened the remaining 12 beds in that ward by April 2016
22 (a full 13 months earlier than planned).
23

24 b. The Department has created from the ground up a brand new Office within
25 the Behavioral Health Administration, the Office of Forensic Mental Health
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1 Services, and fully staffed it within a year. This includes five doctorate
2 level professionals and numerous other staff, including data and technology
3 staff, liaison and outreach staff, and other mental health professionals.
4 Following an unsuccessful first round recruitment effort, the Department
5 successfully hired Dr. Thomas Kinlen to lead the Office of Forensic Mental
6 Health Services. Dr. Kinlen offered not only education and experience in
7 the field of Forensic Mental Health but also brought with him the experience
8 in operating a state hospital, both sets of skills desirable in this position.
9

10 c. The Department has recruited what amounts to a 40% increase in forensic
11 evaluators in less than a year. Using these new and existing resources, the
12 Department has also established three full time evaluation outstation sites
13 (in Everett, King County and Vancouver, WA) with a fourth site (tri-cities)
14 planned to begin operations in Summer 2016. In addition, the Department
15 has coordinated to provide a regularly scheduled visiting evaluator pilot to
16 rotate in service to Thurston, Kitsap, Yakima and Lewis Counties.
17

18 d. Significant efforts have been undertaken to address critical staffing
19 shortages. Actions taken included the hiring of a recruiter in the Human
20 Resources Division to focus specifically on the hiring needs at ESH and
21 WSH; collaboration with the DSHS Office of Communications to devise
22 marketing strategies and resources; convening and attending hiring events
23 on both sides of the state and establishing compensation increases for
24 Psychiatrists, Registered Nurses, Psychiatric Social Workers and
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1 Psychologists. ESH in particular has had success with its hiring in order to
 2 serve the 27 additional competency restoration treatment beds. Since
 3 November of 2015, there have been 51 new nursing positions created. At
 4 the peak of ESH’s nursing staff shortage, we had 139 vacant positions. To
 5 address this crisis, additional changes were made to ESH recruitment
 6 practices in November 2015. A full-time RN, Nurse Recruiter was hired
 7 and ESH hosted its first large scale Hiring Event focused solely on nursing
 8 professionals. In conjunction with the Hiring Events, active recruitment
 9 occurs on a continual basis. Because of these efforts, ESH’s current vacant
 10 nursing positions, as of June 1, 2016, total is 39.5. ESH is also working
 11 with 4 different Travel Nursing Agencies to assist in meeting its nursing
 12 staffing needs. To date, ESH has 18 Travel Nurses either working or
 13 scheduled to begin working here. Unfortunately, WSH has seen far less
 14 success in hiring to fill vacancies—particularly in classifications such as
 15 RN’s, LPN’s and psychiatrists. As noted in the declaration of Dr. James
 16 Polo, it has been difficult to hire psychiatrists and other treatment staff at
 17 WSH during this period of poor performance and potential loss of
 18 certification by CMS. In the meantime, WSH continues to use Locums
 19 professionals and, as indicated in the declaration of Rick Hall, WSH has
 20 pursued the use of contracted physicians to fill vacancies.
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24 4. In its February 8 Order, the Court directed the Department “to take specific
 25 actions recommended by the Court Monitor.” The Court directed that more than 40 specific
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1 actions be taken, in addition to the work already being done by the Department. The Department
2 has complied with each and every one of these specific actions. The only specific action that did
3 not occur on the Court's schedule was the execution of contracts for diversion providers, which
4 was dependent on third-party contractors, and has now been completed.

5 5. This level of systemic change and expansion in a statewide system is something
6 that more frequently takes place over a numbers of years, not months. I believe the
7 Department has made sustained and progressive efforts to successfully reduce the wait times
8 for providing competency services to class members. The Department has made herculean
9 strides for many class members, but admittedly has more work to do since, despite these
10 tremendous efforts, challenges remain in meeting a 7 day requirement for all class members.
11 The greatest outstanding challenge is the ongoing work to improve services at WSH to achieve
12 compliance with the Centers for Medicare and Medicaid Services (CMS) in providing safe,
13 quality care. The Department continues to work diligently toward meeting that goal and is
14 taking proactive steps to resolve the issues with CMS.
15

16
17 6. As previously reported to this Court and the Court monitor, the Department has
18 been actively engaged with CMS at Western State Hospital (WSH) for many months. CMS is
19 legally required to ensure that care provided to Medicare and Medicaid recipients meets
20 standards for patient safety, care provision and respect for patients' rights. These standards are
21 promulgated in the Code of Federal Regulations as the Conditions of Participation (CoPs) —
22 minimum standards for hospitals that receive reimbursement through these federal programs.
23 Enforcement of the CoPs is monitored through state surveys, including validation (post-
24 accreditation) surveys and focused investigations in response to complaints or grievances.
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1 7. Although adherence to all standards is expected, CMS defines certain lapses in
2 adherence to the CoPs as particularly hazardous, creating an immediate jeopardy situation in
3 which there is an immediate threat to safe patient care. A notification of an immediate jeopardy
4 finding requires a hospital to correct the problem (through submission of a "credible allegation
5 of compliance" or corrective action plan) within 23 days of notice, or risk termination from
6 Medicare and Medicaid participation. The corrective action plan must be accepted by CMS,
7 and state surveyors must return to validate that the immediate jeopardy threat has been abated.
8 If it has not been abated, CMS is expected to terminate the hospital's participation in Medicare.
9 Termination is a death sentence for almost any institution for two reasons. First, failure to
10 meet the CoPs largely means failure to provide safe care, quality treatment services, or systems
11 of care that ensure safe and quality care for patients—or all three. Secondly, because a
12 significant portion of revenue is CMS-derived, and most commercial payers mandate good
13 standing with CMS as a minimal condition for plan participation, the hospital likely faces
14 closure or significant reduction in capacity to provide critical health services.
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16 8. Plaintiffs, the Court Monitor and the Monitor's experts continue to suggest that
17 more forensic beds need to be opened at WSH sooner, but this is not a viable solution. The
18 Department cannot add additional forensic capacity to WSH at this time because WSH is in
19 crisis. Safety of patients and staff and quality of care must be our first priorities. The
20 deficiencies cited by CMS, as described below, must be resolved in order to ensure appropriate
21 mental health care for all patients at WSH, including class members.
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1 9. Between October 29, 2015 and November 5, 2015, CMS issued six findings of
2 immediate jeopardy at Western State Hospital (WSH), determining there was high risk of
3 serious harm, injury, and death due to the extent of the deficiencies.

4 10. On November 16, 2015, the Department provided an abatement plan
5 addressing the immediate jeopardy findings to CMS. CMS requested additional feedback on
6 November 18, 2015, and on November 19, 2015 WSH submitted six Immediate Jeopardy
7 abatement plans with addendums that addressed each CMS request.

8 11. On November 20, 2015, CMS conducted a follow-up teleconference and
9 requested additional changes and clarification on three of the six immediate jeopardy
10 abatement plans. The same day, WSH submitted the impacted plans with changes and
11 clarifications to CMS.
12

13 12. During a monitoring visit on November 23-24, 2015, the CMS survey team
14 found that all six of the immediate jeopardies had been removed, but condition level
15 deficiencies remained.
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17 13. On November 18, 2015, the Department received an unannounced
18 substantiated complaint and full survey report from the Center for Medicare and Medicaid
19 Services (CMS) detailing deficiencies regarding the conditions of participation at WSH.
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21 14. On December 2, 2015, the Department received a complaint follow-up survey
22 from CMS detailing deficiencies regarding the conditions of participation at Western State
23 Hospital.

24 15. On December 4, 2015, CMS issued an enforcement letter to the Department
25 indicating that “condition level deficiencies remained” and “[u]nless [the hospital] corrects its
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1 deficiencies and CMS can verify a return to compliance by 11:59 pm on March 1, 2016, the
2 Secretary of the Department of Health and Human Services will terminate its provider
3 agreement with Western.”

4 16. On March 1, 2016 CMS issued a notice extending WSH’s termination date to
5 April 1, 2016.
6

7 17. Follow up surveys were conducted in March 2016 to determine whether the
8 facility had made all necessary corrections. Findings included two additional immediate
9 jeopardies, which were abated, but WSH remained out of compliance with the CoPs.

10 18. On April 28, 2016 CMS issued an extension of the termination date to June 3,
11 2016 to allow time to implement a structured Systems Improvement Agreement (SIA)
12 because it “is apparent that WSH needs a systematic and long term approach for diligently
13 correcting its problems.” An SIA allows hospitals to continue receiving CMS funding while a
14 third-party monitors its policies, facilities, and patient care until the serious problems that
15 caused them to fall out of compliance are fixed. The agreement grants the hospital additional
16 time to make sustainable improvements in complex quality, cultural, policy, and procedural
17 deficiencies. An SIA includes an organization-wide assessment, gap analysis, corrective plan, and
18 implementation, only resulting in a new official survey afterward. There is the time, space, and
19 external support to address concerns, design better systems, and develop staff to meet or exceed the
20 CMS Conditions of Participation.
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23 19. On June 2, 2016, CMS and the Department entered into an SIA. The SIA
24 requires the Department to do a number of things, including hiring outside consultants to
25 provide a root cause analysis and a gap analysis regarding the operation of WSH. In
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1 anticipation of the work required in an SIA, the Department hired an independent consulting
2 firm, Clinical Services Management, P.C. to begin the root cause analysis process. A team
3 from Clinical Services Management arrived on site-at WSH on June 2, 2016 and is conducting
4 on-site review through June 10, 2016 with a full report due by July 31, 2016. CMS is
5 currently reviewing the credentials for Clinical Services Management's team to consider the
6 Department's request to approve them as the consultants under the terms of the SIA.
7

8 20. The SIA rescinds the pending termination of WSH's provider agreement and
9 gives the Department thirteen months to bring WSH into substantial compliance with CMS's
10 CoPs. If the Department, at any time in the next thirteen months, does not meet the CoPs or is
11 otherwise in breach of the SIA, CMS can resume termination proceedings against WSH.
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13 21. As I stated above, it has been repeatedly suggested that expanding capacity at
14 WSH is as simple as hiring the staff and filling the 30 beds originally slated for ward F3. This
15 suggestion disregards the reality that WSH has systemic, long-term deficiencies in the
16 provision of safe, quality care that will require systemic, long-term solutions beyond simply
17 the addition of staff. The Root Cause Analysis will identify the depth and breadth of actions
18 necessary to ensure safe, quality care is provided at WSH. In the meantime, expansion of bed
19 capacity at this time is not only ill-advised but dangerous—posing a significant risk to the
20 health and welfare of all patients and staff at WSH. This is a risk the Department cannot and
21 will not take. As such, when it became clear that the risks posed by expanding capacity at
22 WSH were too great, the Department moved forward with contingency planning at a second
23 alternate restoration facility at Maple Lane. With this additional capacity, further expansion
24 for forensic capacity at WSH is not anticipated to occur until WSH has fulfilled its
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1 commitment to meet the CoPs and to ensure the safe provision of quality care. Once this
2 standard has been met, the Department will consider a plan for expansion of forensic bed
3 capacity at WSH.

4 22. Attached is a true and correct copy of the triage plan as of March 1, 2016. The
5 plan currently utilized by the Department has been changed to reflect comments by the Court,
6 particularly as it relates to defense counsel involvement. The triage memo sent to
7 stakeholders (see Attachment D) reflects this change. Attachment B.

9 23. Attached is a true and correct copy of the work plan for the Department's two-
10 phase triage program. Attachment C.

11 24. Attached is a true and correct copy of the triage memo provided to stakeholder
12 partners. Attachment D

13 25. Attached is a true and correct copy of the May 2016 monthly report to Court
14 Monitor. Attachment E.

15 26. Attached is a true and correct copy of the March 2016 monthly report to Court
16 Monitor. Attachment F.

17 27. Attached is a true and correct copy of the February 2016 monthly report to
18 Court Monitor. Attachment G.

19 28. Attached is a true and correct copy of the January 2016 monthly report to
20 Court Monitor. Attachment H.

21 29. Attached is a true and correct copy of the April 20, 2016 communication to our
22 jail partners regarding the Yakima facility. Some of the information regarding medications
23 has been updated since the date this communication was sent. Attachment I.
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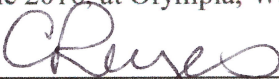
30. Attached is a true and correct copy of the memo sent to criminal defenders on February 26, 2016 regarding the use of standardized court orders. Attachment J

31. Attached is a true and correct copy of the information sheet regarding the two alternate facilities at Yakima and Maple Lane. Some of the policies regarding medications have been updated since the publication of this sheet. Attachment K.

32. Attached is a true and correct copy of the letter sent to criminal defenders on March 17, 2016 regarding the Yakima facility. Attachment L.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct to the best of my knowledge.

Signed this 6th day of June 2016, at Olympia, Washington.



CARLA REYES
Assistant Secretary
Behavioral Health Administration
Department of Social and Health Services