

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. 2:90-cv-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

Pursuant to court order, this matter came on for evidentiary hearing on October 4, 2010. Amy Whelan, Esq., Jane Kahn, Esq., and Michael Bien, Esq. appeared as counsel for plaintiffs. Debbie Vorous, Deputy Attorney General, appeared as counsel for defendants. Caryn Craig, Esq. appeared as counsel for Supervising Deputy Fire Marshal John Guhl.

At the time of the hearing there were over 400 seriously mentally ill inmates waiting for inpatient hospital care due to the severe shortage of such beds that continues to plague the department. In May 2009, defendants proposed, inter alia, to create 116 hospital beds for high custody inmates to be run by the Department of Mental Health (DMH) in the C-5 and C-6 units at Salinas Valley State Prison. The hearing centered on delays in opening and filling those beds. Two issues raised affect the timely opening and filling of those units: the requirement, imposed by the State Fire Marshal, that the fire suppression systems in the C-5 and

1 C-6 units at Salinas Valley be replaced, and DMH's plan to admit a maximum of five inmates
2 per week to those units.

3 After hearing, the court finds that defendants have a plan to complete the required
4 permanent replacement of the fire suppression system and gain full occupancy of both units by
5 January 14, 2011. Defendants will be ordered to comply with the deadlines they have presented
6 to the court, see Declaration of William Westin filed September 16, 2010, at ¶ 13, and to
7 accelerate those timelines where possible. Prior orders of the court notwithstanding, no further
8 delays to completion of this project will be permitted.

9 At the hearing, Victor Brewer, an employee of DMH who is the Executive
10 Director of the Salinas Valley Psychiatric Program (SVPP) and the Vacaville Psychiatric
11 Program (VPP) at California Medical Facility testified in part that limiting admissions to the new
12 C-5 and C-6 units to five per week is necessary to permit defendants to comply with the timelines
13 for inmate patient assessments and reviews required by state law. He also opined that the
14 assessments and reviews could be completed, although not within the required time frames if
15 they admit more than five inmate patients per week. The number of inmates on the wait list for
16 inpatient care constitutes an emergency, and admissions to the new C-5 and C-6 units at SVPP
17 must be expedited. “[O]therwise valid state laws . . . cannot stand in the way of a federal court’s
18 remedial scheme if the action is essential to enforce the scheme.” Stone v. City and County of
19 San Francisco, 968 F.2d 850, 862 (9th Cir. 1992) (quoting North Carolina State Bd. of Educ. v.
20 Swann, 402 U.S. 43, 45 (1971).) Accordingly, the court intends to waive those requirements of
21 state law that, in defendants’ view, preclude them from admitting ten inmate patients per week to
22 the C-5 and C-6 ICF units. Within five days from the date of this order, defendants shall file a
23 statement identifying those provisions of state law referred to by Mr. Brewer. Defendants shall
24 also take all steps necessary to admit not less than ten inmate patients per week, starting on
25 October 12, 2010, to the C-5 unit until it is filled. The same requirement shall apply to that unit
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1 in January 2011, when admissions to that unit re-commence on January 18, 2011 following
2 completion of the permanent replacement to the fire suppression system.

3 The court also heard testimony at the hearing that there are no Coleman class
4 members presently housed in the 50 beds dedicated for Coleman class members at Coalinga State
5 Hospital (CSH) and that there are vacancies at Atascadero State Hospital (ASH) and in the Level
6 III program at VPP. The California Department of Corrections and Rehabilitation (CDCR)
7 defendants have undertaken a pilot program, the DMH-ICF Pilot Program administered by the
8 Health Care Placement Oversight Program (HC-POP). Initial reports from that pilot program are
9 encouraging in that CDCR has found a significant number inmate patients on the Level IV wait
10 list who are eligible for placement at Level III hospital facilities. Given the size of the Level IV
11 ICF wait list and the number of vacant hospital beds, defendants will be required to evaluate
12 inmates presently housed in all DMH Level IV hospital programs to determine whether there are
13 inmates in such programs who could be transferred to CSH or ASH or the Level III program at
14 VPP. To that end, CDCR and DMH defendants will be directed to meet once with the special
15 master to develop a review program modeled on the DMH-ICF Pilot Program. Within sixty days
16 thereafter defendants shall complete the review and evaluation of inmates in Level IV DMH
17 inpatient hospital facilities and shall report to the special master on the outcome of those
18 evaluations. The court expects that any inmate patients found suitable for transfer to a Level III
19 hospital will be so transferred as soon as practicable and that Level IV beds thereby opened will
20 be promptly filled with inmate patients from the Level IV wait list.

21 After hearing, and good cause appearing, IT IS HEREBY ORDERED that:

22 1. Defendants shall complete permanent replacement of the fire suppression
23 system in C-6 and gain occupancy of that unit from the State Fire Marshal not later than
24 November 19, 2010, and shall complete permanent replacement of the fire suppression system in
25 C-5 and gain occupancy of that unit from the State Fire Marshal not later than January 14, 2011.
26 To the extent those deadlines can be accelerated they shall be, but they shall not be delayed.

1 2. Beginning on October 12, 2010, defendants shall admit inmate patients to the
2 C-5 Unit at a rate of not less than ten inmate patients per week until that unit is filled.

3 3. Following the transfer of inmate patients from the C-5 Unit to the C-6 Unit and
4 completion of the permanent replacement of the fire suppression system, defendants shall begin
5 admitting inmate patients to the C-5 Unit on January 18, 2011 and shall admit inmate patients to
6 that unit at a rate of not less than ten inmate patients per week until both the C-5 and C-6 Units
7 are filled.

8 4. The court intends to waive the provisions of state law referred to in the
9 testimony of Victor Brewer to the extent required to comply with paragraphs 2 and 3 of this
10 order. Within five days from the date of this order, defendants shall file a statement identifying
11 those provisions of state law.

12 5. Within seven days from the date of this order, CDCR and DMH defendants
13 shall meet with the special master to develop a review program modeled on the DMH-ICF Pilot
14 Program for evaluation of inmates presently housed in Level IV inpatient hospital facilities to
15 determine whether any of those inmates can be transferred to another ICF facility. Within sixty
16 days thereafter defendants shall complete the review and evaluation of inmates in Level IV DMH
17 inpatient hospital facilities and shall report to the special master on the outcome of those
18 evaluations.

19 DATED: October 5, 2010.

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22 LAWRENCE K. KARLTON
23 SENIOR JUDGE
24 UNITED STATES DISTRICT COURT
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