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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ASHOOR RASHO, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 07-1298**
	)	
ROGER E. WALKER, *et al*.,	)	
	)	
Defendants.	)	

ORDER

On October 30, 2018, this Court granted Plaintiffs'[1] Motion for Permanent injunction and entered an Order finding Defendants John Baldwin, Acting Director of the Illinois Department of Corrections ("IDOC"), and Dr. Melvin Hinton, Chief of Mental Health Services and Addiction Recovery Services of the Illinois Department of Corrections (Baldwin and Dr. Hinton are referred to herein as "Defendants"), have been deliberately indifferent to the mental health needs of mentally ill inmates in the custody of the Illinois Department of Corrections in violation of the Eighth Amendment to the United States Constitution. (ECF No. 2460). The Court deferred entering specific injunctive relief, instead allowing Defendants an opportunity to submit a proposal to address their constitutional deficiencies. *Id*. On November 13, 2018, Defendants submitted their proposed remedy order. (ECF No. 2473). On November 20, 2018, Plaintiffs submitted their memorandum in support of their proposed remedy order. (ECF No. 2481). On December 4, 2018,

[1] Plaintiffs have been defined as "[p]ersons now or in the future in the custody of the Illinois Department of Corrections ("IDOC") [who] are identified or should have been identified by the IDOC's mental health professionals as in need of mental health treatment as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. A diagnosis of alcoholism or drug addiction, developmental disorder, or any form of sexual disorder shall not, by itself, render an individual mentally ill for the purpose of this class definition." (ECF No. 252 at 7).

Defendants submitted their Reply. (ECF No. 2496, Defendants' Opposition to Plaintiffs' Proposed Injunctive Relief).

In addition, Plaintiffs filed a Motion to Order Payment of Deferred Attorneys' Fees or for Contempt. (ECF No. 2487). Defendants filed their Opposition to Plaintiffs' Motion to Order Payment of Deferred Fees. (ECF No. 2501).

On December 13, 2018, the above motions and proposed orders came before the Court for oral argument. This Order follows.

DISCUSSION

Defendants correctly provide that the Court issued its Order as contemplated under §XXIX(g) of the Parties' Settlement Agreement. (*See* ECF No. 2460 at 8; ECF No. 711-1, Settlement Agreement). Section XXIX(g) of the Settlement Agreement provides:

> If the Court finds that Defendants are not in substantial compliance with a provision or provisions of this Settlement Agreement, it may enter an order consistent with equitable and legal principles, but not an order of contempt, that is designed to achieve compliance.

(ECF No. 711-1 at 30). This Court also recognizes the restraints for injunctive relief specifically enumerated in the Prison Litigation Reform Act ("PLRA"). In that regard, the PLRA provides:

> The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

18 U.S.C. § 3626(a)(1)(A). This Court is also fully aware that "judicial restraint is especially called for in dealing with the complex and intractable problems of prison administration." *Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982). Defendants suggest the Seventh Circuit requires the Court "to order IDOC officials to do so in general terms and to verify that the plan they submit

satisfies the relevant constitutional standards." *See Westefer v. Neal*, 682 F.3d 679, 686 (7th Cir. 2012). In *Westefe*r, the Seventh Circuit reviewed a district court's injunctive order addressing the Illinois Department of Correction's procedures when assigning inmates to the supermax prison. The district court incorporated the supermax-transfer regime used in Ohio. In vacating the district court's Order, the Seventh Circuit explained:

> The district court's injunction goes well beyond this, locking in highly specific formal requirements controlling the timing and content of the notice and hearing that each transferred inmate must receive, and even going so far as to impose a right to appeal. An injunction of this scope and specificity is inconsistent with the "informal, nonadversary" model set forth in *Wilkinson, Hewitt*, and *Greenholtz*, and cannot be reconciled with the PLRA's requirement that injunctions in prison-conditions cases must be narrowly drawn and use the least intrusive means of correcting the violation of the federal right.

Id. at 684. Defendants' reliance on *Westefe*r is misplaced for two reasons. First, the record here demonstrates a long history of the Defendants' non-compliance with various terms they had agreed upon. Second, given this history of non-compliance, Defendants' proposal is wholly deficient in addressing their constitutional violations.

The Settlement Agreement was the result of significant negotiations between the Parties over a period of years. Indeed, in October of 2010, the Parties announced in open court that they were working toward a class settlement. The Parties worked with a panel of experts to assist in their settlement efforts. (ECF No. 117, Joint Status Report dated May 7, 2012). A comprehensive settlement conference was held between April 16, 2013, and April 18, 2013. An Agreed Order that provided additional working structure resulted from the settlement efforts. (*See* ECF No. 132). After additional unsuccessful settlement efforts by the Parties, on March 20, 2015, the matter was set for trial. (Minute Entry dated 3/20/2015; *see also* Minute Entry dated 9/17/2015). On December 17, 2015, the Parties again announced to the Court that a settlement agreement had been reached. (Minute Entry dated 12/17/2015). On May 23, 2016, the last signature was acquired on

the Settlement Agreement resolving the decade-long dispute between the Parties. (ECF No. 711-1 at 33).

Since the agreement was finalized, Defendants have failed to comply with many of its material terms. (*See e.g.* ECF No. 1373, First Annual Report dated May 22, 2017; ECF No. 1646, Mid-Year Report dated November 22, 2017; ECF No. 2122, Second Annual Report dated June 8, 2018). While the Monitor has memorialized Defendants' non-compliance, the Defendants themselves have recognized their deficiencies. During the preliminary injunction hearing, Dr. Hinton testified that a significant number of mentally ill inmates were in dangerous situations because there was inadequate staffing at the Illinois Department of Corrections. (ECF No. 1758 at 53). The danger associated with the inadequate staffing applied to every aspect of mental health treatment examined during the preliminary and permanent injunction hearing. (*See e.g.* ECF No. 1758 at 319-20, Dr. Hinton acknowledged that it is dangerous to not monitor an individual on psychotropic medication.). In its Orders, this Court specifically found that the Defendants' efforts to comply with the Settlement Agreement (or its own general directives) only came at the time of, or after, the filing of the Plaintiffs' initial Motion. (*See id*., *see also* ECF No. 1559, filed on 10/10/2017). Simply put, the Defendants' actions have been largely reactionary.

Additionally, based on this Court's review, Defendants' proposal falls far short of addressing their constitutional violations. The record is clear that the Defendants know what needs to be done. When presented with yet another opportunity to establish a reasonable proposal to address their constitutional deficiencies, they instead provided a document containing simple generalities. (*See* ECF No. 2473-1). The Defendants' most egregious attempt to cure their constitutional deficiencies is set forth in their proposal regarding mental heath staffing. Defendants propose adopting the vague requirement that they have "a staffing plan and achieve a

level of staffing that provides sufficient number of mental health staff of varying types to provide class members with adequate and timely evaluations, treatment and follow-up consistent with contemporary standards of care." (ECF No. 2473-1 at 4). Yet, Defendants know they are understaffed, and they also know the staffing levels which are necessary to provide adequate care. In fact, Defendants are fully aware of all these deficiencies, as they have both acknowledged the staffing problems at the Illinois Department of Corrections.

Moreover, the record contains ample evidence to demonstrate the Illinois Department of Corrections is understaffed. (ECF No. 2460 at 13-28). The following exchange at the preliminary injunction hearing puts it in simplest terms:

> Q. You know today you can't deliver the care—the psychiatric care that is required for the 12,000 patients because you don't have enough psychiatrists?
>
> A. [Dr. Hinton] Correct.

(ECF No. 1758 at 50). For his part, Baldwin testified that the IDOC continues to ask Wexford for additional staff. (ECF No. 2354 at 9). Despite the Defendants' recognition of their staffing shortage, not enough is being done. As fully detailed in this Court's Order dated October 30, 2018, the Defendants' failure to adequately staff their facilities has led to a number of areas where they have failed to meet the constitutional requirements with respect to the mental health needs of the inmates.

When there is a "concrete showing of a valid claim and constitutionally mandated directives for relief," a court should and must act. *Rogers*, 676 F.2d at 1214; s*ee also Hutto v. Finney*, 437 U.S. 678, 687, n. 9 (1978). "A federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'" *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977). Here, it is clear constitutional violations have already occurred (*see* ECF No. 2460, *ad passim*), and given the general history of Defendants' non-

compliance with the Settlement Agreement, their own directives, and the law, their constitutional violations will continue unless this Court acts.

As such, the Court FINDS for the reasons stated herein and its Order dated October 30, 2018, that the following relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right:

1. Staffing requirements at the Illinois Department of Corrections

a. Within 90 days of this order, Defendants must employ additional staff sufficient to meet the staffing requirements of their 2014 Remedial Staffing Plan;

b. Within 120 days of this order, Defendants shall evaluate whether their staffing plan is sufficient to provide mental health treatment consistent with constitutional law in the areas of treatment planning, medication management, mental health care on crisis watches, mental health care in segregation, and mental health evaluations;

c. Within 180 days of this order, Defendants shall report their findings and submit a proposed amended staffing plan to the Court, the monitor and Plaintiffs' counsel; and

d. After the report, the Court will consider if any modification to the Defendants' staffing is necessary.

In addition to the reasons outlined in this Court's Order dated October 30, 2018, the Court specifically notes that the record is clear additional staffing is needed to provide the constitutionally required mental health services at the Illinois Department of Corrections. Almost universally, every witness who appeared during the hearings, at some point during their testimony, stated that there was insufficient staff to provide the needed mental health care for inmates. (*See e.g.* ECF No. 1757 at 139, Dr. Stewart testified about the reason for lack of group activities; ECF No. 1757 at 197, Dr. Michael Dempsey testified that there were not enough psychiatrists to treat patients; ECF No. 1758 at 82, Dr. Hinton explained the IDOC did not have the right staffing requirements; ECF No. 2354 at 71-76, Baldwin acknowledged that the IDOC needed to work on

staffing; ECF No. 2376 at 356, Kelly Ann Renzi, Ph.D., Psychologist Administrator at Pontiac Correctional Center; ECF No. Dr. Melissa Stromberger, Psychologist Administrator at Hill Correctional Center; *but see* ECF No. 2373 at 822, Dr. William Elliott, Wexford Health Sources' Regional Mental Health Director for Illinois, who testified that Wexford had the right staffing requirements).

The Court recognizes the amount of staff necessary may not ever be identified with exact precision. Nonetheless, the Court finds that immediate action must be taken by the Defendants to address the dangerous situation that exists in the correctional facilities. As such, in order to mitigate the current dangerous situation that exists, the Court directs the Defendants to meet the staffing requirements of their 2014 Remedial Staffing Plan within 90 days of this Order. The Court finds the 2014 Remedial Staffing Plan is the best starting point to address the staffing deficiencies within the IDOC. Notably, the Illinois Department of Corrections found the staffing contained therein was sufficient to satisfy its constitutional violations. (ECF No. 1716, Exhibit and Witness List, Ex. 9, IDOC Proposed Remedial Plan dated April 17, 2014, "Pursuant to its September 20, 2013 Facility and Staffing Plan, the Illinois Department of Corrections ("Department" or "IDOC") is pleased to present this proposal for staffing levels and bed and treatment space allocations that satisfy its constitutional duty to provide mental health care to seriously mentally ill ("SMI") offenders.").

The Court recognizes this may not be enough. (*See* ECF No. 2122 at 10, Second Annual Report of Monitor, Pablo Stewart, MD, "It has become painfully clear to the monitoring team over the first two years of the Settlement Agreement that the staffing levels of the Approved Remedial Plan are totally inadequate to meet the mental health and psychiatric needs of the mentally ill offender population of the Department." *See also* ECF No. 1373 at 35, First Annual Report of the

Monitor Pablo Stewart, MD, "Understaffing is very evident at all but one IDOC facility monitored and this was identified as a key reason a number of other Settlement provisions have not been met. Turnover is reported as high."). As such, the Court also directs Defendants to evaluate whether their current staffing plan meets their constitutional obligation. This action, in conjunction with the requirement to immediately increase staff, will allow the Defendants the opportunity to assess their staffing needs while immediately addressing the glaring staffing deficiencies that currently place the class members in danger.

The Court finds that this directive, based on the evidence, is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

2. ***Class members who are placed on mental health crisis watch***:

    a. Crisis watches should only be used for patients exhibiting behavior dangerous to self or others as a result of mental illness and may only be ordered upon a finding by an appropriately trained and licensed mental health professional that no other less restrictive treatment is appropriate. When used, crisis watches are to be employed for the shortest duration possible;

    b. IDOC shall provide appropriate mental health treatment to stabilize the symptoms and protect against decompensation;

    c. Reevaluations of treatment and medication will occur as needed and mental health treatment shall be determined and any necessary interventions to stabilize individuals shall occur;

    d. Daily assessment in a confidential setting of the patient's progress to determine if the patient is moving towards stability, whether other or additional treatments are indicated, or if transfer to a higher level of care is required;

    e. Prior to discharge from crisis watch, a multidisciplinary team (with the patient) shall review and update the treatment plan;

    f. Prior to discharge from crisis watch, an appropriate mental health professional (with the patient) shall review and update the treatment plan which will apply after discharge from crisis watch. The updated treatment plan will address causes which led to the deterioration and the plan for risk management to prevent relapse;

g. For anyone who does not stabilize sufficiently to be discharged from crisis watch, the treatment team must establish a plan to provide a higher level of care, which may include transfer to a higher level of care facility, or explain in writing why establishing such a plan is not appropriate; and

h. Out of cell time for confidential counseling and groups, psychiatric care, therapeutic activities, and recreational or leisure activities.

In addition to the reasons outlined in this Court's Order dated October 30, 2018, given the Defendants' general failure to address their deficiencies in the care of mentally ill inmates on crisis watch, it is necessary to require the above action. The record demonstrates that crisis watch is often being used in a manner that is detrimental to the inmates. Inmates are initially screened for suicidal tendencies, but are not always re-accessed thereafter. (ECF No. 1757 at 232; ECF No. 1903 at 198-99, Dr. Stewart testifying that "there's no specialized treatment that occurs for people in crisis."). As such, Dr. Hinton acknowledged that "the primary focus [of crisis watch] is ensuring [inmates'] safety, ensuring that [inmates] are okay and getting [them] off of a state of crisis [ ]." (ECF No. 2371 at 34). Dr. Hinton's own testimony highlights the requirement that crisis watch should be used for the shortest duration possible.

Dr. Stewart also opined that the Defendants' failure to conduct necessary evaluations and assessments of inmates who are discharged from crisis watch results in unnecessary harm and suffering, especially as those failures combine with inadequate treatment planning and psychopharmacology. (ECF No. 1757 at 231). The Court finds that the directives related to inmates on crisis watch are narrowly drawn, extend no further than necessary to correct the violation of the Federal right, and are the least intrusive means necessary to correct the violation of the Federal right. The Court has fashioned these requirements being mindful to allow as much operational discretion and flexibility to prison administrators as possible given the record in this case.

3. ***Class members who are placed in segregation***[2]

a. Promptly after placement into segregation, a mental health professional shall assess the class member to establish a baseline against which any future decompensation can be measured. Such review shall be documented in the patient's mental health records in a manner that facilitates access and review by subsequent treatment staff;

b. A mental health professional shall review and recommend any clinically necessary modifications to the prisoner's individual treatment plan;

c. Rounds shall be conducted by appropriate mental health staff, which may include behavioral health technicians;

d. Class members who are in a Control Unit for periods of sixteen days or more shall receive care that includes, at a minimum:

i. Continuation of their mental health treatment plan with such treatment as necessary to protect from any decompensation;

ii. Rounds in every section of each Control Unit at least every seven days by appropriate mental health staff;

iii. Pharmacological treatment (if applicable);

iv. Meeting with MHP or multidisciplinary team meetings to the extent necessary;

v. MHP or mental health treatment team recommendations to post-segregation housing; and

vi. Structured and unstructured out of cell time sufficient to protect against decompensation. Structured out of cell time includes therapeutic, educational and recreational activities that involve active engagement by their participants for the duration of the activity.

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[2] Dr. Stewart has explained that inmates in segregation are:

> [S]ome of the sickest individuals psychiatrically that I've seen in my career, and I've only worked with seriously mentally ill. And these people are just suffering immensely.
>
> And so -- you know, and they get nothing. Couple little things thrown at them. But they really don't get any sort of regular treatment.
>
> And so this is a real serious issue, you know. I don't want to put a number on it. It's, it's -- it's as serious as I've seen.

(ECF No. 1905 at 182-83).

e. Class members in any Control Unit for periods longer than sixty days shall be provided with structured and unstructured out of cell time sufficient to protect against decompensation unless clinically contraindicated. If an inmate refuses out of cell time, a MHP shall follow-up with the inmate to determine whether or not there is a risk of further decompensation;

f. Mental health staff shall assess class members in Control Units to determine if a higher level of care is necessary and if so, to make proper recommendations to facility authority; and

g. Continued treatment by mental health professional and/or psychiatric provider to the extent clinically indicated.

In addition to the reasons outlined in the Court's Order dated October 30, 2018, Defendants themselves have recognized that some of the aforementioned directives are necessary. (*See* ECF NO. 2473-1 at 3-4). In addition, three critical points were made during the hearings. First, Dr. Hinton testified that the requirements related to inmates who are in segregation are not being met. Dr. Hinton also testified that, in his view, "there's nothing that is a good thing about being in segregation." (ECF No. 1758 at 82). Second, Dr. Stewart testified that the IDOC's medication management for those in segregation is worse than for Class Members elsewhere in the system. Dr. Stewart specifically noted there is a significant problem in ensuring those in segregation who are prescribed psychotropic medication actually take the medication. (ECF No. 1757 at 123). And third, Dr. Stewart explained the consequences of failing to allow mentally ill inmates out of cell time as follows:

> [ ] psychiatric decompensation. And then we run into that whole line, you know, acting out, writing up, more segregation time and/or going to crisis, coming out. It's -- the fact that (vi)(A), which is continuation of the initial treatment plan with enhanced therapy, if necessary, to protect from decompensation that may be associated with segregation, that's not being done. People are getting worse in segregation.

(ECF No. 1905 at 174). Given the testimony at the hearing, the Court finds that its directives related to inmates in segregation are narrowly drawn, extend no further than necessary to correct

the violation of the Federal right, and are the least intrusive means necessary to correct the violation of the Federal right. The Court has fashioned the requirements being mindful to allow the most operational discretion and flexibility to prison administrators as possible given the record in this case.

4. ***Class members who are prescribed psychotropic medication***

    a. Class members who are prescribed psychotropic medication shall be evaluated by a psychiatric provider at regular intervals consistent with constitutional standards;

    b. IDOC shall accomplish the following in psychiatric services:

        i. Administer medications to all class members in a manner that provides reasonable assurance that prescribed psychotropic medications are actually being delivered to, and taken by, the offenders as prescribed;

        ii. The regular charting of medication efficacy and side effects;

        iii. Take necessary steps to ascertain side effects;

        iv. The timely performance of lab work for these side effects and timely reporting on results;

        v. The class members for whom psychotropic drugs are prescribed receive timely explanations from appropriate medical staff about what the medication is expected to do, what alternative treatments are available, and what in general are the side effects of the medication; and have an opportunity to ask questions about this information before they begin taking the medication; and

        vi. That class members, including offenders in a Control Unit who experience medication noncompliance, as defined herein, are visited by an MHP. If, after discussing the reasons for the offender's medication noncompliance said noncompliance remains unresolved, the MHP shall refer the offender to a psychiatric provider.

In addition to the reasons outlined in this Court's Order dated October 30, 2018, the Court notes that the danger of prescribed psychotropic medications was detailed during the hearings. Some of the medication used to treat psychiatric conditions have harsh side effects. (ECF No. 1757 at 241). Because of these side effects, monitoring is required. *Id.* One of the biggest

revelations in the hearings was Dr. Stewart's testimony that "[i]t's rare when someone [on psychiatric medication] is being seen every 30 days [I've] [f]ound examples of people being seen -- of medications being routinely written for anywhere from two to six months." (ECF No. 1757 at 243). This is a significant problem and one that must be addressed immediately. Given the testimony at the hearing, the Court finds that the directives related to inmates on psychiatric medication are narrowly drawn, extend no further than necessary to correct the violation of the Federal right, and are the least intrusive means necessary to correct the violation of the Federal right.

5. ***Treatment plans***

   a. All class members shall have a treatment plan that is individualized and particularized based on the patient's specific needs, including long and short term objectives, updated and reviewed with the collaboration of the patient to the fullest extent possible.

   b. Mental health evaluations shall be conducted in a timely manner to ensure that individuals in need of treatment, or re-evaluation of existing treatment, are evaluated without undue delay.

   c. Treatment plans shall be reviewed and updated at regular intervals as clinically necessary to assess the progress of the documented treatment goal and update the plan accordingly.

In addition to the reasons outlined in this Court's Order dated October 30, 2018, the Court emphasizes that it found the Defendants failed, in a systemic way, to properly create, update, and monitor the treatment plans. (ECF No. 2460 at 37-38; ECF No. 1905 at 80, Dr. Stewart found that in a majority of medical files he reviewed, the treatment plan used boilerplate language and did "not address the treatment needs of a particular mentally ill offender."). Again, this problem has been caused, in large part, by the Defendants' failure to address its staffing needs. The record is clear that treatment plans and evaluations are critical to the mental health care of inmates. As such, the Court finds that the directives related to treatment plans and evaluations are narrowly drawn,

extend no further than necessary to correct the violation of the Federal right, and are the least intrusive means necessary to correct the violation of the Federal right.

6. Compliance Requirements

a. A quarterly report created by IDOC shall certify each facility's compliance with the above requirements.

b. On a regular basis (no less than every 90 days), Defendants shall provide the results of their own quality assurance audit. These results shall include an accompanying certification of Defendants' CQI Manager of whether compliance has been reached with Defendants' quality assurance audit requirements.

c. The appointed independent monitor, Dr. Pablo Stewart, will monitor the Defendants' compliance with this Order consistent with the monitor's existing duties and functions.

d. Nothing in this Order relieves the Defendants of their obligations under the Settlement Agreement.

7. Timing

The terms of this permanent injunction shall remain in place for a period of two years from the date of this Order. *See supra* p. 16; *see also e.g.* 711-1 at 30.

FINAL COMMENTS ON REMEDY

During the preliminary injunction hearing, Defendants did not generally dispute their deficiencies in mental health care to inmates. (*See* ECF Nos. 2070, Order dated 5/25/2018, *see also* ECF Nos. 1757, 1758, 1903, 1904, 1905, and 1906, transcripts of preliminary injunction hearing). During the permanent injunction proceeding, Defendants' evidence was focused on changes that had occurred between the issuance of this Court's Preliminary Injunction Order and the permanent injunction hearing. (*See* ECF No. 2460, Order dated 10/30/2018; ECF Nos. 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, and 2378, transcripts of the permanent injunction hearing). However, Defendants also assert they are doing the best they can considering the market for mental health professionals. These positions are contradictory and problematic. The former

highlights the fact that Defendants fail to act urgently without the Court's intervention. As noted in this Court's Order dated October 30, 2018, the Defendants have made some strides since the preliminary injunction hearing. In fact, during the permanent injunction hearing, Baldwin boasted about new avenues for staffing, including working with universities. Yet, exploring these opportunities has only recently occurred. The latter is a problem because the Defendants have far too often relied on their outside vendor for their staffing needs. Baldwin made this point clear during the hearing when he testified:

> Q. And so in January you knew that you were not providing the level of care desperately needed and to which these people are entitled?
>
> A. We knew we had a problem, and we were working on a broad front to help address it. And we still are and will continue.
>
> Q. But you can't tell me how it came to be that you had such a terrible problem in January of 2018 when you had made promises in May of '16 that, if they had been kept, wouldn't let you be in that situation, right?
>
> A. Yes. We need to do -- we depended on our partner for filling vacancies.
>
> Q. You depended on your partner -- Wexford -- to deliver care that you had promised? Is that what you're saying?
>
> A. That's part of it. We also trained staff. We also hired our own behavioral health people in good numbers. And we have made, in my opinion, a reasonable effort to comply in most areas of the treatment for the mentally ill under our care.

(ECF No. 2354 at 76-77)(emphasis added).

In the end, it was the Defendants' decision to rely on Wexford to solve their problem. As this Court noted previously, the Defendants cannot shirk their constitutional obligations by delegating them to another. (ECF No. 2460 at 44). And now the Court must impose the directives above to avoid the continuance of the constitutional violations.

Parenthetically, several times in their briefs and associated oral arguments, Defendants have noted that this Court has left the Settlement Agreement in place. While it is true the Court

has found the Settlement Agreement remains, the reason for such is simple - the Parties agreed to do so. (*See e.g.* 711-1 at 30, "If the Court determines that Defendants are not in substantial compliance, with any provision of this Settlement Agreement at any time during the three (3) year period of the Settlement Agreement, the Court's jurisdiction with respect to such provision shall continue for the remainder of the three (3) year period or for a period to be ordered by the Court of not more than two (2) years from the date of the Court's finding that Defendants are not in substantial compliance."). The Parties agreed to litigate certain portions of their dispute if compliance with the agreement did not occur – and only those portions were litigated. With respect to those areas, the Court has found Defendants were not in substantial compliance. The requirements imposed herein are those the Court finds are narrowly drawn, extend no further than necessary to correct the violation of the Federal right, and are the least intrusive means necessary to correct the violation of the Federal right.

ATTORNEY FEES

The Parties disagree on the payment of deferred attorneys' fees provided for in the Settlement Agreement. Section XXXIII of the Settlement Agreement provides:

> The parties agree that an award of fees is appropriate in this matter. The Court shall determine the amount of the fees and costs due to Plaintiffs' counsel. Fees are to be determined as if the Plaintiffs are the prevailing party. One half of this sum shall be payable one hundred twenty (120) days after the Court determines that amount. The remaining half of the fees will become immediately due if the Court enters an order pursuant to Section XXIX(g). In no event will the award be more than six million dollars.

(ECF No. 711-1 at 32). The Parties ultimately reached a resolution on the initial award of fees and the deferred amount left open under the terms of the Settlement Agreement. The Parties' agreement on the attorneys' fees specifically provides:

> In consideration for the full and complete settlement of the claim for attorney fees and costs, the parties agree that the sum of $3,800,000.00 (Three million, eight

> hundred thousand, and 00/100 dollars) shall be considered to be a reasonable amount due pursuant to the plaintiffs' attorneys and the parties will so represent that to the Court pursuant to this Agreement. The Parties further agree that the sum of $1,900,000.00 (One million, nine hundred thousand, and 00/100 dollars) shall be paid to Equip for Equality [ ] to be distributed to Plaintiffs' counsel under Section XXXIII of Document 711-1. In the event the Court enters an order under Section XXIX(g) of the Document, another payment of $1,900,000.00 (One million, nine hundred thousand, and 00/100 dollars) shall become due and owing under the terms of Section XXXIII of Document 711-1. The parties understand that the entire amount payable under this Agreement is subject to state law governing the State Comptroller's obligation to withhold funds that Plaintiffs' counsel may owe to other persons or to state agencies. The validity of these claims may be contested through applicable state procedure.

(ECF No. 1091 at 2-3). The Court approved the Parties' agreement on attorneys' fees. (ECF No. 1211).

Defendants first argue this "contractual obligation" by the State can only be enforced in the Court of Claims and this Court's authority is limited by the Prison Litigation Reform Act. The difficulty with Defendants' position is the award of attorneys' fees in this case is entangled not only in the Settlement Agreement but also in this Court's Order dated February 10, 2017. At the time the Parties entered into the Settlement Agreement, there was no dispute Plaintiffs were a prevailing party for purposes of 42 U.S.C. § 1988. (ECF No. 1091 at 2). Moreover, the Parties recognized this Court ultimately had to approve any award of attorneys' fees. *Id*. And the Parties left it for this Court to decide.

The Parties also left it for the Court to decide whether the Defendants were in substantial compliance. The Court has found the Defendants are in violation of the Settlement Agreement that triggers the payment of the deferred attorneys' fees. The payment is not only required under the Settlement Agreement, but is also required by this Court's Order dated February 10, 2017. Defendants' attempt to relitigate this issue in another forum is simply unconscionable, thwarts

judicial economy, undermines the purpose of attorneys' fees, and is violative of this Court's Order. This is an award of attorneys' fees by this Court, plain and simple.

Defendants' second argument is that an award of the deferred fees is "premature" and should only be made "after the Court enters an appealable order with the required finding with respect to relief." (ECF No. 2501 at 1). This argument, of course, is moot given the entry of this Order. Finally, the Court finds no reason to defer the entry of the fees as requested by the Defendants. All conditions have been met for the award of fees. The remaining half of the fees ($1,900,000) are immediately due. Defendants shall make payment within 30 days of this Order.

Entered this 20th day of December 2018.

/s/ Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge