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July 3, 2012

To: Michelle Parker, Esq.
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Marlysha Myrthil, Esq.
U.S. Department of Justice
P.O. Box 66400
Washington, DC 20035-6400

From: Jeffrey L. Metzner, M.D.

Re: *USA v Erie County et al.*

As you are aware, from June 4-7, 2012 I site visited the Erie County Holding Center (EHC). During the morning of June 6, 2012, I also site visited the Erie County Correctional Facility (ECCF). Michael Ranney (Director of Forensic Health Services) accompanied me throughout this site visit.

Sources of information utilized in compiling this report included review of the following documents:

1. the 2/9/12 EHC quarterly performance review (CCNY),
2. the 2011 Constant Observation Annual Report,
3. the Forensic Mental Health Constant Observation Review (first quarter 2012) Report,
4. the New York Commission on Correction's position and staffing analysis re: EHC and ECCF,
5. the "Overview of FMH Overall Mental Health Charts (March –April 2012)" report,
6. updated policies and procedures (drafts and final approved policies and procedures),
7. minutes and agendas of the suicide prevention leadership group meetings
8. minutes of the mental health workgroup, and
9. minutes of the medical review committee.

During the site visits, I had the opportunity to meet with the following persons:

1. Michael Reardon (First Deputy Superintendent/Compliance),

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2. Philip Endress, LCSW (Commissioner, DMH),
3. Michael Ranney, M.S., CRC (Director of Forensic Health Services),
4. Tom Diina (Superintendent, ECCF),
5. Ed Heidelberger, M.D. (Medical Director),
6. Mick Kubick,
7. Michael Cummings, M.D.,
8. Heidi Milch and other staff from the Community Corrections of New York,
9. Evelyn Coggins, M.D. (Chief Forensic Psychiatrist),
10. Daniel Antonius, Ph.D.,
11. nursing staff in the reception (intake) unit,
12. correctional officers in various housing units, and
1. most of the line mental health staff.

Overview

Please refer to my January 2012 site assessment report for an overview of the Eric County Correctional Center (ECCF) and the Erie County Holding Center (ECHC). Both facilities are under the authority of Erie County Sheriff and are managed by the Superintendent of the County's Jail Management Division (JMD).

During June 5, 2012 the inmate count at ECHC was 560 inmates and the inmate count at ECCF was 842 inmates.

During June 6, 2012, there were 13 inmates on constant observation status at ECHC. The census in the Delta North and Delta East units was 25 inmates. There were 56 inmates in the other mental health housing units.

The number of inmates receiving mental health treatment during 2012 was as follows:

2012	ECHC	ECCF
January	176	243
February	230	242
March	258	244
April	302	238
May	274	257

The average caseload per QMHP at ECHC was 24 inmates and at the average caseload per QMHP at ECCF was 65 inmates.

Staffing

Appendix I provides relevant staffing information for ECHC and ECCF. ECHC has 15.0 FTE mental health clinicians and 2.75 FTE psychiatrists or nurse practitioners. During the site visit, ~10.0 FTE mental health clinicians were assigned to provide services at ECHC in addition to a

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1.0 FTE discharge planner. There was no clerical staff within ECHC assigned to the mental health services, which continues to be very problematic. As a result, the QMHPs' duties included a significant amount of clerical functions.

The Intake Healthcare Screening Process

My January 2012 report included the following:

Related to a change in a contract with the City of Buffalo that will be effective reportedly around April 2012, the number of daily intakes will be decreased by at least 50% beginning in April. Currently, daily intakes ranged for 60 to 70 inmates per day, with most of them occurring between 7 a.m. - 6 p.m. After April 2012, the QMHP staff within the reception area can be reduced and re-directed to the outpatient and residential level of mental health care services as will be described elsewhere in this report. The anticipated infrequent booking that will occur after 6 p.m. will receive suicide risk assessments in a process that will be soon described by policy and procedure that will be consistent with the Stipulated Order of Dismissal.

The above referenced change in the contract took place in May 2012. Although the number of daily intakes has significantly decreased, the percentage of referrals to mental health as a result of the intake screening process has increased, which means that the workload for mental health services has not decreased related to the decrease in daily intakes. The reason for the increase in mental health referrals was unclear but likely related to the use of registry nurses for healthcare screening purposes.

Related to the change in a contract with the City of Buffalo, the intake health care screening process will be changed to eliminate the Nurse A screening process for male detainees.

The Stipulated Agreements

The following appendices are attached to this report:

- Appendix II provides a summary of my findings re: the Stipulated Order of Dismissal.
- Appendix III provides a summary of my findings re: the Stipulated Settlement Agreement and Order Concerning Suicide Prevention and Related Mental Health Issues (i.e., the Suicide Prevention Stipulation).
- Appendix IV summarizes my findings re: provisions of the Suicide Prevention Stipulation that were previously found to be in substantial compliance.
- Appendix V lists duplicative provisions of the Suicide Prevention Stipulation or provisions superceded by the Stipulated Order of Dismissal.
- Appendix VI lists the provisions of the Suicide Prevention Stipulation to be monitored by Ronald Shansky, M.D.
- Appendix VII reference an excerpt of the Stipulated Agreement re: Sexual Abuse

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- Appendix VIII is the document request for the next site visit.
- Appendix A is the ECHC Quarterly Performance Review (2/9/12).
- Appendix B is the Stipulated Order of Dismissal provision by level of compliance.
- Appendix C is the Forensic Mental Health: Overall Chart Review findings.

Executive Summary

The Stipulated Settlement Agreement and Order Concerning Suicide Prevention and Related Mental Health Issues

As compared to my January 2012 assessment, all of the provisions previously assessed to be in substantial compliance have remained in substantial compliance except for one provision that was not assessed during this site assessment. Two additional provisions have been found to be in substantial compliance.

All but one of the rest of the provisions previously determined to be in partial compliance have remained in partial compliance although many of these provisions are now significantly closer to being in substantial compliance. One provision is now in noncompliance.

By agreement of the parties and with approval from Ronald Shansky, M.D., all provisions of this Agreement directly referencing detox services are now monitored by Ronald Shansky, M.D. because it will be a more efficient and effective process in the context of his other TCC responsibilities.

Many of the provisions of the Suicide Prevention Stipulation are now monitored via the Stipulated Order of Dismissal, although specific provisions of the former still apply.

The Stipulated Order of Dismissal

The most significant progress re: the provisions of the Stipulated Order of Dismissal has been in the development of written policies and procedures that reflect the specific requirements in the various provisions of this Stipulated Order.

Four of the five provisions of the Stipulated Order of Dismissal that were assessed to be in substantial compliance during the previous site visit have all remained in substantial compliance. One of these provisions was not assessed during this site visit. An additional 12 provisions have been found to be in compliance during this site assessment. One provision is now in noncompliance.

The lack of medical record availability during weekends related to staffing issues is very problematic and should be remedied prior to the long-term fix summarized in Appendix II.

My January 2012 report included the following:

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One of the requirements of the Stipulated Order that is essential to eventually achieving substantial compliance with many of the provisions of this Order has to do with the quality improvement processes. It is very encouraging that DMH has contracted with the Community Connections of New York (CNNY) in addition to hiring Daniel Antonius, Ph.D., because this organization and Dr. Antonius are both skilled in developing an infrastructure for the QI process in addition to actually implementing the QI process.

It is also very encouraging that DMH has continued to develop their relationship with the University of Buffalo's Department of Psychiatry, which has facilitated recruitment of psychiatrists that will eventually contribute to achieving substantial compliance with the Stipulated Order.

The leadership demonstrated by Michael Ranney (Director of Forensic Health Services) along with the guidance and support from Philip Endress, LCSW (Commissioner, DMH) have been instrumental in the progress demonstrated by the mental health services. In addition, the leadership and corroborative actions demonstrated by First Deputy Superintendent/Compliance Michael Reardon have also been essential in this process.

My opinions re: the above have remained the same and have been reinforced by this site assessment.

The FMH services has been working with Community Connections of New York to develop a database for management and QI purposes as well as a web based electronic medical record (EMR). I attended a demonstration of the potential of this database/EMR, which was impressive. It is recommended that further information be obtained from a system or systems that are currently using the technology for similar purposes.

It is clear that the database that the FMH services want to develop is essential for implementing many provisions of the Stipulated Agreements, especially the quality management provisions.

Dr. Shansky and I met with the commissioners of DMH and DOH, Mick Kubick, Mr. Ranney and Dr. Heidelberger to express our concerns re: the apparent divergent course being undertaken by these two departments in the context of the EMR.

The Stipulated Order of Dismissal includes the following provision:

The reports will be provided to the Parties in draft form at least two (2) weeks prior to final issuance. The Parties may provide written comments, if necessary, copying the opposing Party. These reports will be written with due regard for the privacy interests of individual inmates and staff.

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This final report reflects some changes from my draft report that are based on comments received from both parties.

My next site visit will be from November 26-30, 2012. Appendix VIII provides a summary of my requests for pre-site information.

Please do not hesitate to contact me if I can answer any further questions.*

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey L. Metzner MD". The signature is written in a cursive style with a large initial "J" and "M".

Jeffrey L Metzner, M.D.
Clinical Professor of Psychiatry
University of Colorado School of Medicine

*This report was transcribed via the use of voice software, which may explain any typographical errors still present.