

JOHN R. KROGER  
Attorney General



MARY H. WILLIAMS  
Deputy Attorney General

DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

May 15, 2009

**VIA E-MAIL AND FIRST CLASS MAIL**

David Deutsch  
Civil Rights Division  
Special Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Re: CRIPA Investigation of the Oregon State Hospital  
DOJ Matter No. 100-804-GH1444-06

Dear Mr. Deutsch:

I write on behalf of the State of Oregon (Oregon), acting by and through its Department of Human Services (DHS) on behalf of the Oregon State Hospital (OSH), to respond to your office's most recent offer to resolve the CRIPA investigation of OSH. While Oregon does not believe that OSH is in violation of CRIPA, Oregon just as firmly believes that there are no substantive differences between your office and Oregon regarding the actions that Oregon should be and is taking to improve care at OSH.

This letter sets forth your proposal, and Oregon's counter-proposal. Oregon's counter-proposal includes discussion regarding the few issues about which the USDOJ and Oregon disagree. Rather than summarize once again the numerous issues upon which Oregon and the USDOJ agree, my October 31, 2008, letter to you is attached and incorporated herein.

This letter also outlines the significant improvements and accomplishments made by Oregon and OSH since your office conducted its on-site visit in November 2006.

**I. USDOJ's most recent proposal.**

On April 8, 2009, you orally proposed that:

- Oregon and the USDOJ enter into a Memorandum of Understanding (MOU) which would require specific outcomes within a two-year time-frame.
- During the two years of the MOU, Oregon would pay for an Independent Monitor to determine if Oregon is in substantial compliance with the MOU.
- The USDOJ would get reports from the Independent Monitor and could accompany the Independent Monitor on his/her visits.

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- If at the end of two years, the Independent Monitor determines that Oregon is in substantial compliance, the matter would be finished.
- If at the end of two years, the Independent Monitor determines that Oregon is not in substantial compliance, the MOU would be submitted to the federal court and automatically entered as a consent decree.

## II. Oregon's counter-proposal.

### A. Time-Frame.

If the time-frame of the MOU was four years, Oregon would enter into an MOU with the USDOJ. Given that the construction of new OSH facilities will not be completed in two years, it is not realistic for OSH improvements to be completed in two years. Oregon intends to continue to improve OSH, and hopes to have one of the best psychiatric hospitals in the nation by 2013.

### B. Consent decree.

As you know, throughout this case Oregon has been clear that it would never agree to the filing of a complaint or consent decree. Our reasons were succinctly stated in our October 31, 2008, letter to you:

As we have consistently explained from the beginning of this matter, Oregon will not agree to the filing of a complaint and a settlement agreement in court. Moreover, in light of Oregon's ongoing commitment to a continuous improvement plan at the OSH, its considerable efforts and accomplishments since your November 2006 visit (described [on pages 12-18 of the attached October 31, 2008, letter]), and its willingness to enter into a settlement agreement with USDOJ that addresses all of the USDOJ's substantive concerns at OSH as outlined [on pages 12-18 of the attached October 31, 2008, letter], **we respectfully do not believe that the USDOJ Attorney General could certify to the court that it is his opinion "that reasonable efforts at voluntary correction have not succeeded."** See 42 USC §1997b(a)(2)(B). **Indeed, Oregon declines to be complicit in what would appear to be a false representation to the court that Oregon is not amenable to voluntary correction efforts.**

October 31, 2008, letter to David Deutsch, page 10 (emphasis added).

Rather than providing for an automatic consent decree, the MOU should be structured so that if the USDOJ believes that Oregon is not complying with the terms of the MOU, the USDOJ may pursue CRIPA remedies or specific enforcement of the MOU.

### C. Monitoring.

While Oregon recognizes that your office must obtain information regarding Oregon's efforts at voluntary correction, Oregon is unwilling to pay the costs of your office's monitoring efforts. We believe that the following proposal includes a reasonable method for your office to obtain the information that it needs:

- Oregon and the USDOJ enter into a MOU with a four year time-frame.
- Oregon will implement all reforms necessary to effectuate the MOU.
- Oregon will add time-frames to the commitments it has already made (see pages 12-18 of the attached October 31, 2008, letter).
- Oregon will submit OSH's continuous improvement plan to USDOJ along with an agreed upon data set.
- At each quarter, Oregon will submit its updated data to the USDOJ.
- Dr. Geller and Dr. McLoughlin will write status reports for the OSH Superintendent and the Superintendent will submit those reports to the USDOJ.
- The USDOJ may have conference calls with the Oregon attorneys and the Superintendent and Dr. Geller and Dr. McLoughlin related to the status reports.
- Each status report will describe the actions OSH has taken during the reporting period to implement the MOU and will make specific reference to the MOU provisions being implemented.
- OSH will make its records or other documents available to the USDOJ to verify that OSH has taken the actions described in the status reports and will provide copies of all documents reasonably requested by the USDOJ without charge.
- OSH will notify the USDOJ within 24 hours of the death of any OSH patient and any incidents resulting in severe injury to a patient.
- OSH will forward to the USDOJ reports related to patient deaths, autopsies, or severe injuries, as well as a summary of final reports of investigations conducted by the Office of Investigations and Training, when they become available to OSH.
- The USDOJ and its expert consultants and agents may tour OSH to assess compliance with the MOU. Such visits may include attorneys, and those who assist them, and expert consultants.
- If Oregon feels OSH has satisfied the MOU before the four years is up, Oregon will ask the USDOJ to come back for a final tour.
- If the USDOJ believes that Oregon has failed to carry out any term of the MOU, it will notify Oregon in writing of any instance(s) in which it maintains that Oregon has failed to carry out the requirements of the MOU.
- Within 30 days of receipt of written questions from the USDOJ concerning Oregon's compliance with the requirements of the MOU, Oregon will provide the USDOJ with written answers and any requested documents.

- With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of OSH patient(s), Oregon will take substantial steps to correct non-compliance within 30 days of receipt of a notice of non-compliance from the USDOJ.
- If Oregon and the USDOJ disagree regarding Oregon's compliance, they shall coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. If an agreement is reached resolving the outstanding differences, Oregon shall, within 90 days, take substantial steps to comply with the agreement resolving the dispute and will fully correct the claim(s) of non-compliance within a reasonable time.
- If the USDOJ and Oregon are unable to reach agreement after the above steps have been taken the parties shall submit the dispute to mediation. The parties shall attempt in good faith to mediate the dispute for a minimum of 30 days prior to initiating any court action.
- In case of an emergency posing an immediate threat to the life, health or of safety of a patient at OSH, and if the USDOJ and Oregon are unable to reach a mutually satisfactory resolution, the USDOJ is not limited in any fashion in pursuing enforcement of the MOU without participating in mediation and without further notice.
- The USDOJ may terminate the MOU and seek CRIPA remedies or specific enforcement of the MOU if Oregon fails to cure a claim of non-compliance within a reasonable time.
- Each party shall bear the cost of their fees and expenses incurred in connection with the MOU.
- Any claim, action, suit or proceeding that arises from or relates to the MOU shall be brought solely and exclusively within the USDOJ District Court for the State of Oregon.

### III. Oregon's OSH-related efforts and accomplishments since November 2006.

You have stated several times since we met that the USDOJ believes that organizations such as the OSH are most-effectively fixed from the inside rather than from the outside. Oregon has taken your advice to heart, and has dramatically and voluntarily improved itself:

A. In 2007, DHS received approval for \$458.1 million in Certificate of Participation funding from the Oregon Legislative Assembly to replace OSH with **new, state-of-the-art psychiatric facilities**. Many of the recommendations in the USDOJ report will be addressed with the opening of these new facilities.

1. Since September 2008, when the OSH Groundbreaking Ceremony and public tours of OSH's J Building occurred, Oregon has continued to move forward with the development of these two new treatment facilities that will replace the

existing OSH. Holding true to the Recovery Model for mental health, the new facility design has patient-first, patient-driven and patient-focus at its core, with **a centralized treatment space design that supports a minimum of 20 hours of active treatment per person.** The living environment provides large areas of secure internal green space and naturally lit living units, which will greatly enhance the quality of life for individuals under the State's care.

2. The replacement project is now beyond the design phase of facility development, and construction documents are being prepared. During this process, **Oregon has taken the service delivery model along, with the related support services, and developed detailed layouts that OSH staff and consultants have evaluated for function.** This has now become the floor plan for the new facility. From this, Oregon has developed room layouts confirming both size and function while creating a detailed list of the fixtures, furniture and equipment needed.
3. During this process every component of the operation of the new facility has been considered as it relates to the design of the buildings and internal green space. For example, the elements of internal and external security for the new facility will be enhanced as part of the building design. Working with the design team, the consultants are **focusing on a comprehensive and cohesive approach that reduces risk to patients, staff and the community.**
4. Significant work is now under way on the Salem campus with immediate improvements having a positive impact on the quality of life for OSH patients. Milestones along this development path include:
  - i. October 2008: Preparation for demolition of the old buildings.
  - ii. November 2008: Demolition of the first building on the Salem campus.
  - iii. February 2009: Public tours of transitional patient cottage.
  - iv. February 2009: Oldest building on the campus vacated by patients.
  - v. February 2009: Patients moved into transitional cottages.
  - vi. March 2009: Building 40 temporary treatment mall opened.
  - vii. April 6, 2009: Dismantling began on Building 46, part of the south wing of the Kirkbride J Building.
5. The transitional cottages are a permanent part of the new hospital and are a major step toward creating the least restrictive environment for patients who are successful in their treatment.

**B.** In January, 2008, with bipartisan support, the leaders of both houses of the **Oregon Legislative Assembly created a Joint Committee for Oversight of the State.** That committee has held several hearings since its formation. In addition to the committee's intense interest in OSH's continuous improvement and new facilities, OSH and the legislature are working together on several conceptual statutory changes to improve the governance and operations of OSH, such as the creation with Senate Bill 25 of an **OSH Advisory Committee.**

C. The new data system for the hospital, the **Behavioral Health Integrated Project (BHIP)**, continues in development simultaneously with the new facility. To date, BHIP has:

- collected, validated and prioritized 700-plus functional requirements of the system;
- identified, measured, recorded and identified a plan to reduce all the paper that exists on the OSH campus;
- hired the Quality Assurance and Quality Control contractors for project oversight;
- conducted a readiness assessment;
- provided basic computer training to staff to prepare them for the BHIP solution;
- managed and implemented the new Treatment Mall Scheduling Software;
- installed additional computers on the wards;
- developed and released the BHIP Design Development and Implementation Request For Proposal; and
- developed Process Maps of critical hospital functions.

D. As you know, OSH created and began implementing its own **continuous improvement plan (CIP)** in early 2007. But you may not know that OSH incorporated USDOJ's January 2008 recommendations into that plan after the issuance of the findings letter. Many of the USDOJ's recommendations are similar to the goals that OSH already had incorporated into its CIP. On pages 13-18 of the attached October 31, 2008, letter, I outlined the improvements OSH had made up to that point. Since my letter, OSH has continued to improve. Recent improvements include:

- **The Joint Commission (TJC)**
  - 1) Received Full Accreditation from The Joint Commission in April 2009. Two surveys were conducted in February and March 2009 for the hospital and clinical lab.
  - 2) Implemented the 2009 National Patient Safety Goals.
  - 3) Completed three Sentinel Event/Root Cause Analyses.
  - 4) Continued preparation to adopt the national ORYX Behavioral Health Core Measures.
- **Treatment Mall**
  - 5) Opened third mall location, the transition Treatment Mall in the 40 building, providing active treatment to 74 patients.
  - 6) Remodeled and received approval for occupancy for a fourth mall location in the 50 building. Currently OSH is defining staff roles and will begin hiring staff in late summer with a planned opening of November 1, 2009. The 50 building mall will provide active treatment to approximately 200 patients.

- 7) Continued curricula development, and increased the number of options for providing evidence-based practices.

- **Recovery and Rehabilitation**

- 8) Surveyed 507 direct care staff with the Recovery Self-Assessment (RSA) tool that gauges how recovery-oriented practices are provided.
- 9) Held 30 focus groups to assess patient perceptions of recovery.
- 10) Created a recovery workgroup to lead OSH's efforts to better define recovery hospital-wide and implement recovery-oriented rehabilitation programming.
- 11) Implemented Peer Bridgers Program and hired three consumers to assist patients in transition to the community.

- **Leadership**

- 12) Created Superintendent's Cabinet, a weekly meeting of the OSH senior leadership, to improve communications and facilitate decision-making.
- 13) Hired a Chief Nursing Officer.
- 14) Interviewed several Chief Medical Officer Candidates and preparing a job offer for one of them.
- 15) Hired Chief Psychiatrist under the OHSU contract.
- 16) Restructured the Quality Council to make it a more hospital-wide clinically-driven decision-making body.

- **Staffing**

- 17) Hired 312 new staff in calendar year 2008. Lost 98 staff to resignation and retirement (turnover rate of 7.99%), resulting in 214 new employees. 122 of these new employees were the result of the February 2008 special appropriation for the Continuous Improvement Plan. Physician staffing continues to increase. With current commitments, OSH will have 20 staff physicians, 2 locums, 10 OHSU physicians, and 3 supervising physicians dedicated to treatment teams by September 2009.
- 18) Conducted Nurse Hiring Rapid Process Improvement (RPI). Reduced RN vacancy rate from 24% to 6%.
- 19) Created 2009-2011 Policy Option Package (POP) to be presented to legislature. POP contains request for 438 additional staff.
- 20) Trained six OSH CNA staff to become RNs in the N2K Program. All six are now registered and providing services at OSH.
- 21) Implemented scheduling and attendance software to support all mall locations.

- **Census/Community Re-integration**

- 22) Defined Ready-to-Discharge process that enables patients to be ready for transition to the community.

- 23) Reduced daily census from an average of 686 in the third quarter of 2008 to 671 in the 4<sup>th</sup> quarter of 2008 to 627 in the 1<sup>st</sup> quarter of 2009.

- **Admissions and Assessments**

- 24) Implemented the Short Term Assessment of Risk and Treatability (START) to improve assessment of risk. Trained staff and PSRB in use of START.
- 25) Established regular meetings with community mental health providers regarding appropriateness of civil admissions.
- 26) With assistance from the Governor's Special Master, educated local courts, attorneys, and law enforcement regarding information required prior to admission to OSH.
- 27) Assessment workgroup reviewed all assessments and requirements for timely completion. Initial psychiatric assessment redesigned to include diagnoses on all five DSM-IV-TR axes.
- 28) Initial assessments in 2008 were completed on-time 92% of the time.
- 29) Revised the requirements for elements of psychosocial histories to expand information about substance abuse history

- **Treatment Care Planning**

- 30) Redesignated treatment planning including:
  - a. Structure
  - b. Content
  - c. Process
- 31) Conducted treatment planning training for clinical staff, including physicians.
- 32) Gathered functional requirements for an electronic Treatment Care Plan. Plan is now being developed by the Office of Information Systems and scheduled for implementation in September 2009.
- 33) Core treatment team membership defined.
- 34) 17 additional computer workstations provided on units to assist treatment teams in having access to Treatment Care Plans.
- 35) Standardized agenda created for treatment teams.
- 36) Mentoring system established to support treatment teams.
- 37) Established a Treatment Care Planning Advisory Group.
- 38) Prepared a treatment manual to be used to train staff on treatment planning processes.
- 39) Implemented a post-10-day comprehensive chart audit tool to monitor medical record completeness.
- 40) Established a Highly Aggressive Patient Workgroup and a Patient Care Consulting process to assist treatment teams in planning for complex patients.
- 41) Created standardized hospital-wide schedule to facilitate patients participation in malls and treatment team meetings.



- 42) Created a Social Work Monthly Progress Note format that will become an addendum to each patient's Master Treatment Care Plan, to better document discharge planning activities
- 43) Provided training to Interdisciplinary Treatment Teams (IDTs) which now include patients.

- **Active Treatment**

- 44) Increased percentage of evidence-based groups offered at OSH to 64%.
- 45) Established mall operations group to plan and implement both Transition Mall, opened in April 2009, and Psychosocial Rehabilitation Mall scheduled to open in November 2009.
- 46) Developed plan to increase group offerings in all mall locations, and implemented Plan in Transition Mall.
- 47) Established key mall leadership positions and defined roles. Hired additional staff to provide leadership to Transition Mall.
- 48) Developed system of patient transport to ensure patients are supervised as they go from their cottage or ward to and from the treatment mall.
- 49) Implemented medication reconciliation hospital-wide.
- 50) Hired physician to lead Metabolic Disorders Program.
- 51) Began tracking and evaluating patient use of two or more psychotropic medications.
- 52) Trained additional staff to become Certified Alcohol and Drug Counselors.
- 53) Increased Behavior Psychology Services to 3 psychologists and 12 mental health specialists. Ten more mental health specialists will soon be hired.
- 54) The additional three psychologists and the mental health specialists were appropriated to initiate the behavioral management component highlighted in the USDOJ findings. Behavioral management with behavioral support planning is their focus.

- **Transition and Discharge**

- 54) Opened 4 transitional cottages housing 26 patients. Two additional cottages will open later in 2009. Moved patients from 41B and 41C and closed those units.
- 55) Implemented use of Wellness Recovery Action Plans.
- 56) Standardized Physician Discharge Summary.
- 57) Created social work progress note templates to better document discharge planning activities.
- 58) Social work staff trained on Exceptional Barriers Process.

- **Physical Health Care**

- 59) Conducted Dietary Rapid Process Improvement (RPI) to reduce the time between ordering a dietary consult and providing the consult. As a result of the RPI, OSH increased by 100% the number of consults given. In

2009, all new patients will receive a dietary consult shortly after admission.

- 60) Hired Nurse Practitioner to provide additional physical health care services.
- 61) Appointed a new Chief Dietitian and reassigned clinical dietitians to establish better hospital-wide coverage.
- 62) Educated all nursing staff on pain management in 2008.
- 63) Contracted with a hospital equipment company to maintain and repair hospital equipment.

- **Protection from Harm**

- 64) Reduced the rate of restraint (hours of restraint per 1,000 hours of patient care) in the 1<sup>st</sup> Quarter of 2009 from .48 to .32 in the 1<sup>st</sup> Quarter of 2008. National average is .52.
- 65) Reduced the rate of seclusion (hours of seclusion per 1,000 hours of patient care) in the 1<sup>st</sup> Quarter of 2009 to .50 from 1.26 in the 1<sup>st</sup> Quarter of 2008. National average is .31.
- 66) Continued to monitor patient incidents through weekly meetings of the Critical Incident Review Panel led by the Superintendent.
- 67) Reviewed and revised the Behavioral Precautions Policy.
- 68) Reviewed and revised the Incident Reporting Policy.
- 69) With the implementation of START, risk assessment information is being incorporated in treatment team planning.
- 70) Reviewed and revised Seclusion and Restraint Policy.
- 71) Remodeled patient care unit to provide intensive treatment to five difficult to treat women patients.
- 72) Added three community members to the Seclusion and Restraint Committee.
- 73) Educating all nursing staff on suicide prevention in 2009.
- 74) Conducted a hospital-wide hand hygiene campaign, including a hand sanitizer product fair.
- 75) Completed analyses of incidents related to escapes from the hospital and self-harm behaviors. Based on analyses, assigned follow-up to appropriate hospital committees.

- **Medical Records**

- 76) Reduced delinquency rate to 6%.

#### **IV. Conclusion**

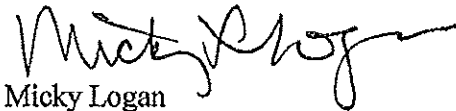
In addition to the above improvements, including OSH's receipt in April 2009 of Full Accreditation from The Joint Commission, I should note that a team of Centers for Medicare and Medicaid Services (CMS) surveyors in June 2008 found OSH to be in full compliance with federal requirements for hospitals participating in Medicare or Medicaid programs, or both.

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I should also note that Oregon continues to draw on the experience, insights, and recommendations of two nationally recognized mental health consultants, Dr. Jeffrey Geller and Dr. Kris McLoughlin. Specifically, both Dr. Geller and Dr. McLoughlin have been working, and will continue to work, at OSH for at least three (usually more) days every month.

In short, Oregon has radically improved since November 2006. Given that both sides recognize that Oregon has made significant progress in addressing the concerns identified by the USDOJ, we believe that further progress will not be facilitated by the current offer from DOJ. With that in mind, Oregon urges the USDOJ to accept Oregon's counter-proposal.

Sincerely,



Micky Logan  
Senior Assistant Attorney General  
Human Services and Education Section

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Enclosure

cc: Dr. Bruce Goldberg, Director of Oregon DHS  
Claudia Black, Governor's Health Care Policy Advisor  
Roy Orr, Superintendent