AUGUST 2011 The Insider: Outreach

Voices of California's Civil Detainees at Coalinga State Hospital

FRAUD IN PROGRAM FLEXIBILITY WAIVERS

William Hester, Editor

The Insider is bringing you this story based upon information that was recently brought to the attention of the CDAC Spokesmen. Coalinga State Hospital, under the leadership of its many Executive Directors, has been perpetrating fraud against the resident population of this hospital since its inception. While this is no surprise to most of you, the way this is being done and the rights that got scrapped will be.

Under the Title 22, many of our rights are laid out for us. However, there is a provision that allows for them to get changed. It is as follows:

TITLE 22. Division 5 – Licensing & Certification of Health Facilities

§73227. PROGRAM FLEXIBILITY

1. **All intermediate care facilities shall maintain continuous compliance with the licensing requirements. These requirements do not prohibit the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualification or the conducting of pilot projects, provided such exceptions are carried out with the provisions for safe and adequate care and with the prior written approval of the Department. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the Department.**
2. **Any approval of the Department granted under this section, or a true copy thereof, shall be posted immediately adjacent to the facility's license that is required to be posted by Section 73221.**

Simply put, this section allows a facility to request a modification of sections of the Title 22. This is done without our ability to give input, challenge errors, or defend our civil rights. It only requires that the facility give "substantiating evidence" to support its request. This evidence is not made available for challenge and the changes are made without our knowledge. Part (b) requires that the Program Flexibility waivers be posted next to the facility's license. It appears obvious that the facility had no intention of honoring its obligation to post this information. After all, they have only been getting them for six years now.

CDAC is in possession of numerous copies of Program Flexibility waivers that were granted by the California Department of Health Services. There are several issues that are raised by the information we have read. First, the fraudulent depiction of our population as being, "*correctional referrals requiring psychiatric services*" instead of civil detainees entitled to the least restrictive environment necessary to hold us. Next, the matter of responses being granted with the wording, "*consistent with other correctional facility security operations*," which indicates that the Department of Health Services sees us a prisoners and not patients. And lastly, there is the matter of the many rights that are being removed by Program Flexibility waivers.

To address the first matter, the use of the description, "*correctional referrals requiring psychiatric services*" to describe the residents of this institution, we need only look at the many instances of law where it has been determined that we are CIVIL DETAINEES to find that any application of a penal or correctional label changes our status to prisoners. Since we are not prisoners, it is not possible to use such descriptive terms when describing us or seeking modification of our conditions of confinement. While it is true that we are initially correctional referrals (if CDCR has done its job), as soon as the matter is forwarded to the courts, our status as civil is immediately applied.

What is even more disturbing, the Department of Health Services (the group who handles licensing) apparently doesn't know that we are not prisoners. In one of the responses given regarding our being able to wear our own clothing, the response was, "The facility director shall specify the types of clothing that are authorized to be worn by patients in the facility, *consistent with other correctional facility security operations.*" (Emphasis added by author.) As evidenced by the response given, they either are not aware of our status or don't care.

The issue of the Program Flexibility waivers being posted adjacent to the hospital license appears to be an obvious attempt to keep hidden from the residents here the fact that the administration has been rewriting our rights. The following are examples taken directly from the responses given to CSH by the Department of Health Services.

Item 1: Section 71223(e), Title 22, CCR, Psychiatric Rehabilitative Activities Service. "Signed progress notes shall be entered into the patient's medical record by the therapist at least weekly."

Response: Approved contingent upon the following conditions:

1. During the first sixty (60) days of treatment and stabilization, the therapist shall enter weekly progress notes into the patient's medical record.
2. After the initial sixty (60) day period, progress notes shall be recorded by the therapist at least monthly.
3. A comprehensive quality assurance monitoring system shall be instituted to ensure that appropriate therapist services are provided.

This approval shall remain in effect until revoked by the Department.

Item 2: Section 71659, Title 22, CCR, Screens. "To protect against flies and other insects, screens of six mesh per centimeter (16 mesh per inch) shall be provided on doors and openable windows. Screen doors shall be of a type approved by the State Fire Marshall."

This Acute Psychiatric Hospital is constructed to treat correctional inmates requiring psychiatric services, and thus must meet environmental security issues. The building is designed to prevent windows from opening and entry/exit doors have hardware to ensure closure.

Response: Approved contingent upon the following conditions:

Should flies or other insects enter the facility through entry/exit doors, wind screens or other devices will be installed to prevent such entry.

This approval shall remain in effect until revoked by the Department.

Item 3: Section 73523(a)(13), Title 22, CCR, Patients' Rights. "To associate and communicate privately with persons of the patient's choice, and to send and receive his personal mail unopened." AND Section 71507(a)(5), Title 22, CCR, Patients' Rights. "To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence."

The Acute Psychiatric Hospital is constructed to treat correctional referrals requiring psychiatric services, and thus must meet patient safety and security concerns.

Response: Approved contingent upon the following conditions (for both issues):

1. The right to confidential communications with an attorney, either through correspondence or through private consultation, during regularly scheduled visiting days and hours shall be honored.
2. All outgoing and incoming correspondence and packages shall be opened and inspected by designated facility employees for contraband.

This approval shall remain in effect until revoked by the Department.

Item 4: Section 71507(a)(1), Title 22, CCR, Patients' Rights. "To wear his own clothes, to keep and use his own personal possessions including his toilet articles; and to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases." AND Section 73523(a)(15), Title 22, CCR, Patients' Rights. "To retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the patient or other patients."

The Acute Psychiatric Hospital is constructed to treat correctional referrals requiring psychiatric services, and thus must meet patient safety and security concerns.

Response: Approved contingent upon the following conditions (for both issues):

1. The facility director shall specify the types of clothing that are authorized to be worn by patients in the facility, consistent with other correctional facility security operations.
2. Patients have the right to keep possessions as space permits, except items and materials that are listed as contraband by the facility for health, safety and security reasons.
3. Patients have the right to keep and spend a reasonable sum of money via the facility monetary replacement system.

This approval shall remain in effect until revoked by the Department.

Item 5: Section 73523(a)(16), Title 22, CCR, Patients' Rights. "If married, to be assured privacy for visits by the patient's his/her spouse and if both are patients in the facility, to be permitted to share a room."

The Acute Psychiatric Hospital is constructed to treat correctional referrals requiring psychiatric services, and thus must meet patient safety and security concerns.

Response: Approved contingent upon the following conditions:

1. Patients have a right to personal visits during regularly scheduled visiting days and hour. The right to have visits shall not be denied except as is necessary for reasonable security of the facility and the safety of persons.

This approval shall remain in effect until revoked by the Department.

Item 6: Section 73509(a)-(d), CCR, Title 22, Division 5, Chapter 4 (Intermediate Care Facilities), which allow residents/patients to smoke in designated areas. You (Pam Ahlin) have noted that the prevalence of information regarding smoking and individuals exposed to "second hand smoke" supports the position that the use of tobacco products is universally acknowledged to be a health hazard. The California Department of Public Health supports all interventions to individuals to cease the use of tobacco.

Response: Your request for a program flexibility to support Napa State Hospital's determination to be tobacco free is granted, with the following conditions:

1. Each new admission will be assessed for tobacco use and given a choice of multiple tobacco cessation programs.
2. The resident's / patient's choice will be documented as part of their Wellness Program and monitored with the other identified program components.
3. Strict monitoring of staff and visitors will include prohibiting tobacco products from becoming a "black market" item in the facility.

This approval shall remain in effect until revoked by the Department.

These are some of the more important revocations made to our rights. There are many more program flexibility waivers that cover matters from desk lamps in rooms to nurse calls in the rooms.

The Title 22 establishes what many of our rights are. The allowance for program flexibility is sensible **IF, and on IF,** it is properly applied to improve treatment or conditions. What we are seeing here is the administration using it as a tool to deny many of our most important right. Not only are they denying our right, they are doing it in a manner that is based on lies. The California Department of Health Services is equally at fault in not verifying the truth of CSH's claims regarding our commitment.

For all of you that have faith that the administration is here to help, take a real good look at what they are doing behind your backs. This has been going on for six years at CSH.

What else are they doing that we haven't yet discovered?

FRAUD

fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime. — Also termed intentional fraud.

2. A misrepresentation made recklessly without belief in its truth to induce another person to act.

Judge Denies Rapist Conditional Release

By Virginia Hennesey, Hearld Salinas Bureau, for the Monterey Star

After comparing Eldridge Chaney's crimes to a horror movie, a judge Thursday denied a request by the serial rapist to be released under supervision from the state's Sexually Violent Predator Program.

Judge Russell Scott said his questioning of Chaney in May and a review of his introspective "homework" while in Coalinga State Hospital showed he made progress in his therapy, but not enough.

"I think you are beginning to learn about (empathy and transparency), but your understanding is very superficial," Scott told Chaney. "Your proclivity, your core, is just below the surface."

The judge said Chaney acknowledged two "triggers" for his violent behavior were rejection and being told what to do. Citing the experience s of James Lamb, the only man released to Monterey County from the sexual predator program. Scott said Chaney would experience an overload of both if released to the community.

Chaney was convicted in the 1970's and 1980's of sexually assaulting three females and trying to rape a fourth, all during home invasions in Seaside. One victim was babysitting a sibling.

After serving more than a decade in prison, Chaney was committed to the state's sex-offender program in 2000.

Experts there say he has completed the first four phases of the program and they unanimously recommend he enter Phase 5, a transitional release into the community where he would be monitored while continuing treatment.

It is Chaney's first request for "conditional release." Scott acknowledged the state's experts believe Chaney is the poster child for the program's success, but said he wasn't convinces the former Seaside resident had control of his impulses for deviant sexual conduct.

"You are a danger to the community," he said. "It's too soon to let you out, even under supervised release."

Prosecutor Angela McNulty said Chaney has "convinced himself" that he is a changed man and has gained empathy for his victims, but initially denied on the witness stand in May that he had a mental disorder. She said experts are hopeful that he can control his compulsions, "but all it is,is a hope."

Defense attorney Don Landis argued that the voter-approved laws that created the Sexually Violent Predator Program laws that created the sentence without possibility of parole. They established a treatment system that ends with a supervised transition to society.

The experts whose opinions result in commitment to the program is saying Chaney is ready for conditional release, he said. They would not risk their reputations, the program and the public's safety by recommending release of a man who was likely to reoffend.

"He is their best student, their best example, their best effort for fulfillment of their vigorous program," he said. "If he isn't ready, then who is? And then the question becomes, "What more can be done by the staff?"

Scott should base his decision on who Chaney is now, Landis said, not what he did in the past.

The judge disagreed.

"How can we avoid that?" he said. "We have to know what we're dealing with . . . we have to know there's been a change."

Cataloguing Chaney's crimes, the judge described the terror a movie theater audience would feel if they watched the attacks on screen. Instead of that repulsion, he said, Chaney felt a thrill.

Scott said Chaney's sexual depravity dates to when he was a juvenile and groped strangers on the street. The conduct escalated in 1978 when, at age 19, he entered a military wife's home armed with a rifle, raped her as her\ baby slept nearby, marched her at gunpoint across the street and raped her again.

Scott said Thursday that Chaney drugged the woman and threatened that another man at her apartment would kill her baby unless she complied. When he was done, he took her to a field, where he loaded his rifle to shoot her before he was scared off.

He then went to the home of his girlfriend, whom he raped on the bed where two of her children were sleeping. After the children awoke, he forced the woman into her bathroom and raped her again.

Ten years later, he forced his way into a 46-year-old woman's home and tried to rape her. After she fought him off, he climbed through a window into the home of a 16-year-old acquaintance who was home baby-sitting her younger sibling. He used scissors to terrorize the girl into submission, sexually assaulted her and fled when her mother came home.

Scott, over Landis' objection, read voluminous journaling Chaney did as part of his therapy in 2004, detailing his crimes and motivations. On Thursday, the judge said Chaney wrote that he felt powerful and thrilled at the fear he saw in his victims' eyes.

His actions, the judge said, left a wake of destruction and permanent scars on the women, who internalized their shame, and in the case of his girlfriend, her children, who saw their mother being raped. The woman's 6 year-old son, he noted, eventually ended up in prison, where he ran into his mother's attacker. He forgave Chaney, Scott said because he had to for his own healing.

"It's like a piece of sand in oyster," the judge said of the damage Chaney

CIVIL-COMMITMENT STATUTE

civil-commitment statute. A law that provides for the confinement of a person who is mentally ill, incompetent, drug-addicted, or the like, often a sexually violent predator. • Unlike criminal incarceration, civil commitment is for an indefinite period.

The Insider (in all its forms) is being produced to present news related to the Sexually Violent Predator Act, conditions of confinement here at Coalinga State Hospital, and daily events. It is also here to give every member of this population (6600 or 2972) and a chance to have their voice heard somewhere other than in these halls. *We are inviting everyone to contribute something.*

The Insider is available monthly in JPEG format for viewing on your DVD players within the hospital. For your connections outside, ***The Insider Online*** is at www.defenseforsvp.com. There is also a four page edition, ***The Insider Outreach*** that is being produced and sent to other institutions with SVP Detainees.

GUIDELINES FOR PUBLICATION IN *THE INSIDER*

All submissions to ***The Insider*** are subject to editing for proper grammar, punctuation, length, language, and clarity. They may not include hate-speech, inciting or inflammatory language, or unnecessary profanity. Submissions may be returned to the individual author for revision or rejected outright.

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The Insider is produced at Coalinga State Hospital, in Coalinga, California. Material published in this electronic paper is written, edited, and published entirely by hospital residents without input or editing by staff.

The ideas and opinions expressed herein do not reflect the opinions of the hospital's staff or its administration, unless otherwise noted.

The Insider is dedicated to fair, unbiased and impartial reporting of information, current events and news that is of interest to civil detainees and others who are interested in finding out about the real people here. Any questions and correspondence can be submitted by mail to:

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CALIFORNIA STATE AUDITOR

Elaine M. Howle, State Auditor

FACT SHEET

Date: July 12, 2011 Report: 2010-116

The California State Auditor released the following report today:

Sex Offender Commitment Program

Streamlining the Process for Identifying Potential Sexually Violent Predators

Would Reduce Unnecessary or Duplicative Work

BACKGROUND

Sex offenders who are identified and designated, through the Sex Offender Commitment Program (program), as sexually violent predators (SVPs)—those that represent the highest risk to public safety due to mental disorders—may be committed by the courts to a state hospital for treatment rather than released from prison. The program consists of various key players. The Department of Corrections and Rehabilitation (Corrections) and its Board of Parole Hearings (Parole Board) review certain sex offenders scheduled for release or parole to determine whether the offenders meet the criteria for SVPs as defined by law. If Corrections and its Parole Board determine an offender meets the criteria, the law requires that they refer the offender to the Department of Mental Health (Mental Health). Mental Health assesses potential SVPs using administrative reviews, clinical screenings, and evaluations to determine whether to recommend an offender to the designated county counsel, who files a petition to commit the offender if the counsel agrees with the recommendation.

KEY FINDINGS

During our review of the program, we noted the following:

• Current inefficiencies in the program's process of evaluating potential SVPs are partly due to Corrections' interpretation of state law and were compounded by Jessica's Law—a proposition approved by voters in 2006.

. Corrections refers all offenders convicted of sexually violent offenses to Mental Health rather than assessing whether offenders' crimes were predatory and if the offenders meet other criteria before referring them as potential SVPs. Of the nearly 31,500 referrals Corrections made over a five-year period, less than 2 percent were ultimately recommended to designated counsel for commitment.

. Jessica's Law added more crimes to the list of sexually violent offenses and reduced the number of victims required for SVP designation, resulting in many more offenders becoming potentially eligible for commitment under the program—the number of Corrections' referrals to Mental Health ballooned from 1,850 in 2006 to 8,871 in 2007.

- Corrections does not consider whether Mental Health determined that an offender did not meet the criteria to be an SVP based on a prior referral and thus, re-refers the offender to Mental Health. Of the offenders Corrections referred between 2005 and 2010, 45 percent were referred at least twice and 8 percent of those were referred between five and 12 times.
- During a three-year period, Corrections failed to refer many offenders to Mental Health at least six months before their scheduled release as required by law—in one case, the referral came one day before the scheduled release.
- Because it has made limited progress in hiring and training more staff, Mental Health has used between 46 and 77 contractors each year to perform its evaluations and clinical screenings and has not reported to the Legislature about its efforts to hire state employees as evaluators or the effect of Jessica's Law.