

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DISABILITY RIGHTS OREGON et al.,

Plaintiffs,

v.

No. 3:02-cv-00339-MO (Lead Case)
No. 3:21-cv-01637-MO (Member Case)
No. 6:22-cv-01460-MO (Member Case)

**AMENDED ORDER TO
IMPLEMENT NEUTRAL EXPERT'S
RECOMMENDATIONS**

PATRICK ALLEN et al.,

Defendants,

and

LEGACY EMANUEL HOSPITAL et al.,

Intervenors.

JAROD BOWMAN et al.,

Plaintiffs,

v.

No. 3:21-cv-01637-MO (Member Case)

DOLORES MATTEUCCI et al.,

Defendants,

and

LEGACY EMANUEL HOSPITAL et al.,

Intervenors.

LEGACY EMANUEL HOSPITAL et al.,

Plaintiffs,

v.

No. 6:22-cv-01460-MO (Member Case)

PATRICK ALLEN,

Defendant.

MOSMAN, J.,

THIS MATTER comes before the Court on Plaintiffs' Unopposed Motion to Implement Neutral Expert's Recommendations. Having reviewed the papers filed in support of this motion, the Court finds that Defendants are not in compliance with this Court's permanent injunction in *Mink* and ORDERS the following which are necessary to move Defendants towards compliance with that injunction:

- (1) The Oregon State Hospital, the Oregon Health Authority, Disability Rights Oregon, and Metropolitan Public Defenders shall implement the recommendations in the Court's Neutral Expert's January and June 2022 reports. If necessary to comply with paragraph three (3) of this order, Dr. Pinal's may grant extensions of other deadlines in her recommendations after conferring with the parties. Any such extensions shall be documented in Defendants' monthly progress reports.
- (2) The Oregon State Hospital shall not admit patients except as provided for by the recommendations in the Neutral Expert's January and June 2022 reports or as otherwise provided by this Court. Namely, Aid and Assist ("A&A") and Guilty Except Insane ("GEI") persons shall be admitted according to their place on the admissions wait list or pursuant to the relevant expedited admissions policy.¹ In addition, the Oregon State Hospital:
 - a. may admit PSRB GEI revocations and persons pursuant to ORS 426.701 (extremely dangerous persons);
 - b. shall not admit persons civilly committed or admitted voluntarily by guardian unless they meet the criteria in the expedited admissions policy attached as Exhibit 1 to this Order.

¹ See OSH Forensic Expedited Admission Policy available at https://www.oregon.gov/oha/OSH/LEGAL/Documents/Expedited_Consultation_for_Patients_Under_FORENSIC_Commitments_revised_Jun_2022.pdf (last accessed August 5, 2022).

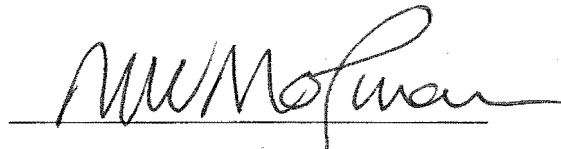
- c. shall not admit transfers from the Oregon Youth Authority except as provided by ORS 179.473(1)(c), OAR 309-120-0080 and OAR 416-425-0020; and
 - d. shall not admit transfers from the Oregon Department of Corrections unless they meet expedited admissions standards as articulated in the expedited admissions policy.²
- (3) The Oregon State Hospital shall immediately implement the maximum time for inpatient restoration in the Neutral Expert's June 2022 report as follows:
- a. For patients whose most serious charge is a misdemeanor, the maximum duration of commitment for restoration shall be the lesser of the maximum permissible sentence for the underlying offense or 90 days;
 - b. For patients whose most serious charge is a felony, the maximum duration of commitment for restoration shall be six (6) months, unless the felony is listed in ORS 137.700(2) in which case the maximum duration of commitment for restoration shall be one year.
 - c. For purposes of this Order, restoration across multiple charges shall be consolidated and contiguous consecutive periods of restoration should be eliminated unless there are new charges incurred after an initial period of restoration has ended.
 - d. Before a patient reaches this maximum duration of commitment for restoration under this Order and remains unfit to proceed, OSH shall notify the committing court of the patient's impending discharge 30 days before the date on which the hospital is required to discharge the patient pursuant to this Order.

² See OSH Forensic Expedited Admission Policy available at [https://www.oregon.gov/oha/OSH/LEGAL/Documents/Exoedited Consultation for Patients Under FORENSIC Commitments revised Jun 2022.pdf](https://www.oregon.gov/oha/OSH/LEGAL/Documents/Exoedited%20Consultation%20for%20Patients%20Under%20FORENSIC%20Commitments%20revised%20Jun%202022.pdf) (last accessed August 5, 2022).

- e. From the date of this Order, for patients who, at the time of this Order, are already past the maximum length of restoration set out herein, Defendants shall provide the 30-day notice to committing courts before discharging such patients pursuant to this Order; and
 - f. No later than March 15, 2023, patients currently admitted at OSH who have exceeded the length of restoration set forth in this Order shall be discharged from their restoration commitment and from the hospital.
 - g. Defendants shall consult with the Neutral Expert regarding operational and clinical aspects of implementing these limitations on the duration of inpatient restoration.
- (4) This order shall terminate upon the Neutral Expert reporting to this Court that OSH/OHA has timely admitted A&A and GEI patients for at least three consecutive months, and that the termination of this Order would not cause the Defendants to fall back out of compliance. For purposes of this Order “timely admission” means within seven days of a State Court order delivered to OSH ordering that the patient be admitted.
- (5) If this Order is not terminated pursuant to Paragraph (4), this Order will expire on September 1, 2023, unless renewed by the Court prior to that time.

IT IS SO ORDERED.

DATED: 5/10/2023


MICHAEL W. MOSMAN
Senior United States District Judge



OREGON STATE HOSPITAL
Office of the Superintendent

Tina Kotek, Governor

Oregon
Health
Authority

2600 Center Street NE
Salem, OR, 97301
Voice: 503-945-2852
TTY: 800-735-2900
Fax: 503-947-2900
osh.oregon.gov

May 5, 2023

Request for Oregon State Hospital Expedited Admission

PATIENTS ON THE OSH ADMISSION LIST UNDER CIVIL COMMITMENT OR VOLUNTARY BY GUARDIAN / HEALTH CARE REPRESENTATIVE STATUS

Purpose of this document:

This document sets forth protocols and processes for referral for expedited admission to Oregon State Hospital (OSH) of individuals hospitalized at an acute care facility under a civil commitment or admitted voluntarily by guardian or health care representative (henceforth "civil admission" status). OSH and OHA are working in partnership with stakeholders to increase timely access to OSH.

Overarching Principled Approach to Expedited OSH Admission of Patients under Civil Admission Status:

OSH must balance the need for OSH admission for patients under civil admission status with constitutional requirements for admission to OSH for patients under forensic commitments (pursuant to federal litigation pertaining to admission to OSH of patients under forensic commitments).

Patients meeting criteria for civil admission to OSH are placed on the OSH Civil Admission list and are scheduled for admission based on bed availability. To achieve equitable efficiencies and maximum timeliness for all admissions, only in limited circumstances would an expedited admission for a patient under civil admission status be approved.

Protocol:

Individuals eligible to refer a patient for civil expedited admission to OSH: Health care personnel involved in hospital management or provision of treatment to individuals in the categories listed below.



NOTE: a referral may be initiated prior to civil commitment if there is a high likelihood that the patient will meet criteria for both civil commitment and OSH admission, and the qualifying criteria for expedited admission are met. However, a patient may not be admitted to OSH under a civil expedited admission until all eligibility criteria below are met.

Patients eligible for civil expedited admission to OSH: An individual being treated at an acute care hospital is eligible if that patient:

1. Is civilly committed or admitted voluntarily by guardian or health care representative; and
2. Meets criteria for admission to OSH per OAR 309-091-0015 and has been placed on the OSH Civil Admission List; and
3. Meets the qualifying criteria below for Civil Expedited Admission and has been approved for expedited admission by the OSH Chief Medical Officer or designee.*

* Placement on the OSH Civil Admission list can be simultaneous with approval by the OSH Chief Medical Officer or designee.

Qualifying Criteria for Civil Expedited Admission: patients may be considered for civil expedited admission if, within the previous three weeks at the acute care hospital:

- they exhibit severe aggression directed toward other persons and/or property, or
 - they are unable to meet their own basic nutritional needs such that their immediate health and safety are at risk, or
 - they require biological therapies available to OSH but not to acute care hospitals;
- AND**
- they remain at ongoing high risk to themselves or others due to mental illness despite adequate treatment; **and**
 - acute care hospital leadership concurs with the treating clinical team that referral for expedited admission to OSH is appropriate and attests that all other avenues for treatment at the acute hospital or for discharge have been exhausted.

As evidenced by:

1. Hospital course documentation demonstrating that, due to symptoms of mental illness, at least two of the following are present:
 - a. The patient has engaged in physical aggression resulting in harm or injury to others or lost time at work for an employee;
 - b. The patient has engaged in substantial property destruction impacting patient care;
 - c. The patient has required 1:1 security staffing to prevent harm or injury to other patients or staff for longer than 72 hours;

- d. The patient has required recent frequent or prolonged seclusion** or restraint;
- e. Two or more acute psychiatric beds have been closed to reduce the risk of the patient causing harm or injury to other patients or staff;
- f. The patient cannot be safely treated on an acute psychiatric unit with available resources.

OR

- 2. Hospital course documentation demonstrating that, due to symptoms of mental illness, at least one of the following are present:
 - a. The patient is unable to meet their own basic nutritional needs such that medical intervention has been necessary or is highly likely to become necessary in the near future.
 - b. The patient requires a biological therapy (ex: court-ordered electroconvulsive therapy) that cannot be provided at the acute care hospital.

** Behavior management plans which require that a patient may leave their assigned room only following staff assessment are considered equivalent to seclusion. An individual who has received such interventions, which reduce incidents of aggression by limiting access to peers, may still be referred for civil expedited admission.

Disqualifying Criteria for Expedited Admission: An individual who meets the criteria above but who *has an active medical condition which requires stabilization or treatment at a primary medical center*. Referral and consultation may occur while the individual is being medically stabilized.

Process:

A referral for civil expedited admission is encouraged when a patient exhibits behavior and ongoing safety risk that meets the above criteria. Note that historical behavior, while pertinent to clinical risk assessment generally, is insufficient to justify civil expedited admission in the absence of present behavioral concerns.

The acute care hospital may refer the patient to OSH for consideration of civil expedited admission by making available **to the OSH Admissions Department** by fax, email or via electronic medical records access:

- Medical records up to the current date, including
 - current progress notes
 - documentation of any seclusion and/or restraint
 - documentation describing any current behavior management plan
 - medication administration records
- A written explanation by the unit medical director of

- the current clinical behaviors and/or concerns that may require expedited OSH admission; and
- an explanation of what need cannot be met by the acute care hospital; and
- a description of interventions and supports that have already been implemented or attempted (this may include a description of the physical structure of the unit or location where the individual is housed)
- Name and contact information for the attending and/or covering psychiatric practitioner
- An attestation by an administrative director at the acute care hospital of review and approval of the referral

Requests for consultation/expedited admission will be reviewed by the OSH Chief Medical Officer (CMO) or designee during business hours (0800-1700) Monday through Friday. The reviewer may contact the attending practitioner if additional information is needed.

Within 24 hours of receiving all necessary information, the CMO or designee will communicate back to the referring party related to consultation/admission considerations.

- If approved, OSH will admit the patient in a timeframe deemed appropriate to the circumstances and as soon as possible considering the expedited nature of the referral.
- If denied, the patient will maintain their current place on the OSH Civil Admission List.
 - In addition, OSH will participate in a patient care conference in collaboration with the acute care hospital and CMHP, including subsequent meetings as required and agreed upon, with the goal of identifying modifications to the care plan to promote the safety of the patient, other patients, and staff.
 - A patient may be referred again following a denial if additional safety considerations arise which meet the qualifying criteria.
 - All referrals, acceptances and denials, along with the rationale for such referrals, acceptances, and denials, shall be recorded in a de-identified tracking system kept by OSH and the private hospitals and reviewed on a quarterly basis in joint meetings with the private hospitals, OSH and OHA leadership representation and any other mutually agreed upon invitees to ascertain impact on compliance with federal court orders, impact on private hospitals, and any other factors of relevance to Oregon psychiatric hospital and community behavioral health system stakeholders. These quarterly reviews and lessons learned may result in further modifications of this protocol.

Admissions Department contact information:

Phone: 503-945-9265

FAX: 503-945-9839

Email: OSH.Admissions@odhsoha.oregon.gov

Hours of operation:

Monday through Friday

8:00 AM to 5:00 PM