THE AMHI CONSENT DECREE

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PART I: HISTORY, PRINCIPLES, AND GOALS

1. Introduction

On August 2, 1990, now retired Superior Court Justice Bruce Chandler approved an agreement settling a class action lawsuit that was brought on behalf of residents of the Augusta Mental Health Institute (AMHI). The case was then named Bates v. Glover and is now named Bates v. DHHS. The lawsuit was brought to correct problems at AMHI and in the community mental health service system after the death of 10 patients in the summer of 1989.

The terms of the agreement are part of a consent decree signed by the Court. The consent decree is legally binding and enforceable by the court.[1] Since 1990 there have been several Court orders enforcing the settlement agreement entered by the Superior Court Justices overseeing the agreement (a timeline is provided). The Consent Decree requires the Office of Substance Abuse and Mental Health Services (SAMHS) (formerly the Department of Mental Health and Mental Retardation and then the Department of Behavioral and Developmental Services) and the Department of Health and Human Services to establish and maintain a comprehensive mental health system. The system must be responsive to the individual needs of consumers of mental health services. The actions of the Department in developing this system are monitored by the Court through a “special master”, retired Maine Supreme Judicial Court Chief Justice Daniel Wathen, who is appointed by the court as part of the settlement agreement.

A master was needed because the actions required by the Consent Decree were designed to take place over time. The Consent Decree originally estimated that the necessary actions would be completed by September 1, 1995, but that time has since been extended by the Court and the Decree is still in force through today subject to modifications, certifications, Court decisions, and recommendations of the Court Master.

Disability Rights Maine represents the class members. Attorneys Mark Joyce, Peter Rice, and Kevin Voyvodich, continue to actively work towards assuring that all the terms of the Consent Decree are met. The Attorney General’s Office represents the State in this agreement.

[1] A Consent Decree is a court decree that all parties agree to. The settlement agreement of the parties is incorporated into the Decree signed by the Court. The Maine Superior Court retains jurisdiction of this agreement until all the provisions of the settlement are implemented.

2. Persons Covered by The Consent Decree

Any patient at AMHI on or after January 1, 1988 is a "class member". A person admitted to AMHI in the future, while the Consent Decree is being implemented, will also become a "class member" at that time. To be a class member is to be a person protected by the Consent Decree and entitled to its specific benefits.

Many of the changes required by the Consent Decree are broad and will benefit consumers of mental health services, even though they may not be members of the class.

The Consent Decree also states: "non-class members shall not be deprived of services solely because they are not members of the plaintiff class." This was upheld by the Maine Supreme Judicial Court in 2004. Further clarification was provided by the Court Master in 2008 stating that clinically eligible consumers of mental health services should be eligible for certain services even if they are over income eligibility for Maine Care.

Covered individuals who are receiving services, or who are eligible to receive services by reason other than the Consent Decree, cannot have the services taken away or denied just because they are not class members (hereinafter all individuals receiving services will be referred to as consumers of mental health services).

3. Principles of The Consent Decree

The Consent Decree sets out several basic principles. These principles must guide the comprehensive mental health system in all its operations. The Consent Decree's principles are:

- A quality system requires less reliance on institutionalization, and funds spent on AMHI/Riverview Psychiatric Center must be redistributed to the community.
- You cannot tell what a person's personality, abilities, needs, and aspirations are on the basis of a psychiatric label.
- Consumers of mental health services are entitled to respect.
- Personal needs change or vary in intensity over time according to the individual's circumstances. Community mental health services must be flexible in order to meet changing needs so that, to the extent possible, consumers of mental health services will not have to change their living arrangements when their needs change.
- Hospitalization separates people from their friends and family. Hospitalization…uproots

many people from their home communities. The mental health system must be oriented toward helping people to avoid hospitalization. If hospitalization is needed, it should occur as close to home as possible, for as short a time as possible. All necessary community supports must be provided upon discharge.

- Services must be provided in the least restrictive available setting and by the least restrictive means appropriate to each individual's needs.

- The system must be designed and delivered on the basis of identified individual needs. The consumer of mental health services should not be forced to fit the service, rather the service should be made to fit the consumer.

- A consumer of mental health services has the same rights as do all other citizens, including the right to live in the community of their choice without limitations on their independence, except those limitations to which all citizens are subject.

- Consumers of mental health services have the right to refuse all or some of the services available to them under the Consent Decree, subject to exceptions. Consumers of mental health services cannot be denied the services they want solely because they refuse services they don't want. The only exceptions to a person's right to refuse treatment services are enumerated fully in the decree, regulations, and statutes.

4. Overall Goals of The Consent Decree

In addition to the goal of having the mental health system be one that honors the principles listed above, the Consent Decree has the following overall general goals:

- *To ensure that consumers of mental health services are the driving forces in their own treatment planning and programs.*

- *To improve the quality, comprehensiveness, and availability of mental health services.*

- *To maximize the use of "non-mental health system" services whenever possible.*

As consumers of mental health services, they too often do not have the same access that other people have to non-mental health resources and services. The doctors, counselors, educational institutions, dentists, recreational facilities and housing that others use could meet the needs of consumers ***if*** they were accessible.

5. Client's Rights Regulations

A. Rights Regulations

The "Rights of Recipients of Mental Health Services" and the "Rights of Recipients of Mental Health Services who are Children in Need of Treatment" are regulations covering mental health consumers in Maine. These regulations apply to all facilities licensed, contracted or funded by the Department and to all in-patient psychiatric facilities. The Department revised these regulations to incorporate the terms of the Consent Decree. They currently provide the regulatory and procedural framework for protecting the rights of mental health consumers in Maine.

PART II: RIVERVIEW PSYCHIATRIC CENTER (RPC)

6. AMHI/RPC

There were 295 patients at AMHI when the Consent Decree was signed on August 2, 1990. The agreement requires the Department to reduce this census to 70, not counting individuals who are admitted to the forensic unit through the criminal justice system or from jails or prisons. In 2004 the Augusta Mental Health Institute was closed and the current facility, Riverview Psychiatric Center (RPC) was open. The Consent Decree now applies to this facility.

The Consent Decree required the Department to establish admission criteria for AMHI so that only persons in need of acute psychiatric care are admitted. AMHI used to admit individuals at times who needed services because of conditions other than acute mental illness. The Consent Decree requires that the Departments refer these individuals, (persons with traumatic brain injuries, Developmental/Intellectual Disabilities, Alzheimer's Disease, for example) to other appropriate resources.

The Department is also required to develop community hospitalization alternatives so that individuals who do have the need for acute hospital care can receive it near their homes. Other community resources that the Department is required to develop – housing, crisis intervention, residential support services and treatment options – should assist consumers of mental health services in avoiding hospitalization.

When discharging individuals from AMHI/RPC, the Department is required to develop detailed discharge plans **AND** to assure that the services are available to the individuals when leaving the hospital.

The Consent Decree recognizes that individuals who have been institutionalized for a long period of time and individuals who have other health conditions may require highly specialized support services in the community. A section of the Consent Decree requires the Department to develop community services specifically designed to meet the needs of these individuals.

The Consent Decree does not focus only on RPC's size. It also requires that the Department improve the quality of AMHI/RPC's services and environment. It sets out standards and procedures for operation of RPC which cover the following areas:

- Basic patient rights;
- information provided to patients about their rights;
- treatment necessary to meet patient needs, including individual counseling;
- opportunities for leisure, recreational and rehabilitative activities;
- a healthy, safe and accommodating environment;
- use of psychoactive medications;
- emergency procedures;
- quality health and dental care, including access to community providers;
- use of seclusion, restraints and protective devices;
- a system for reporting and investigating patient abuse, neglect, exploitation, other rights violations, injuries and death;
- staff/patient ratios;
- staff qualifications and evaluations;
- treatment of nursing home patients and adolescents (Both units were eliminated during the era before RPC was opened);
- review of patients whose admissions are characterized as voluntary to be sure that the patients understand what that means;
- treatment of forensic patients; and
- organization and content of patient charts.

PART III: COMMUNITY RESOURCES AND SYSTEM BUDGETING

7. Community Resources, Services and Programs

The Consent Decree requires the Department to fund, develop, recruit and support a variety of community services. Areas include:

- Community hospitalization;
- Housing;
- Residential support services;
- Crisis intervention and resolution services;
- Vocational opportunities and training;
- Treatment options;
- Recreational, social, and avocational opportunities;
- Transportation; and
- Family support.

The Consent Decree also requires the Department to make sure that existing and newly developed mental health services meet operating standards, including standards covering quality of services.

Agencies are required to provide specialized training to all staff including training by mental health consumers about consumers' perspectives and values.
In making housing, residential support and treatment services available to individual consumers of mental health services, special consideration must be given to:

- Individuals who are hospitalized and who could leave the hospital if they had these services; and
- Individuals who are at imminent risk of hospitalization due to the lack of these services.

8. Planning, Budgeting, and Resource Development

The Consent Decree also includes the following:

- The Department is required to develop a centralized system for planning, budgeting and developing resources. The system must use the information from consumers individualized service plans which report real needs of current consumers of mental health services.

- The Department is required to set up systems for monitoring the quality of services.

- The Department must enforce licensing standards and contract requirements to assure it is in line with the Consent Decree.

- The Department must prepare budget requests which are calculated to meet the terms of the settlement agreement and further must take all necessary steps and exert good faith efforts to obtain adequate funding from the Legislature

PART IV: 2006 CONSENT DECREE PLAN TO PRESENT

9. 2006 Consent Decree Plan and Standards for Substantial Compliance

In 2006 the Department released a new plan designed to set forth specific goals and timelines for the State to come into compliance with the terms of the decree. The goals as stated in that plan are:

> "The Department of Health and Human Services (DHHS) recognizes that the Adult Mental Health System is fragmented and can be difficult to navigate. Major change in the way the state, providers, and consumer organizations do business is required to move to a system that truly promotes recovery, provides good continuity of care, and gives consumers assurance that the mental health system is delivering on its commitments. The overarching goal of this plan for adult mental health services is to deliver in a coordinated way the individualized services that are needed to support recovery of adults with mental illness. DHHS seeks to achieve its goal through:
>
> - Providing defined roles and financial support for consumer voice as an integral part of the mental health system;
>
> - Implementing a system of managing behavioral health care; and
>
> - Creating a reliable information system that can provide accurate, timely data to guide decision-making."

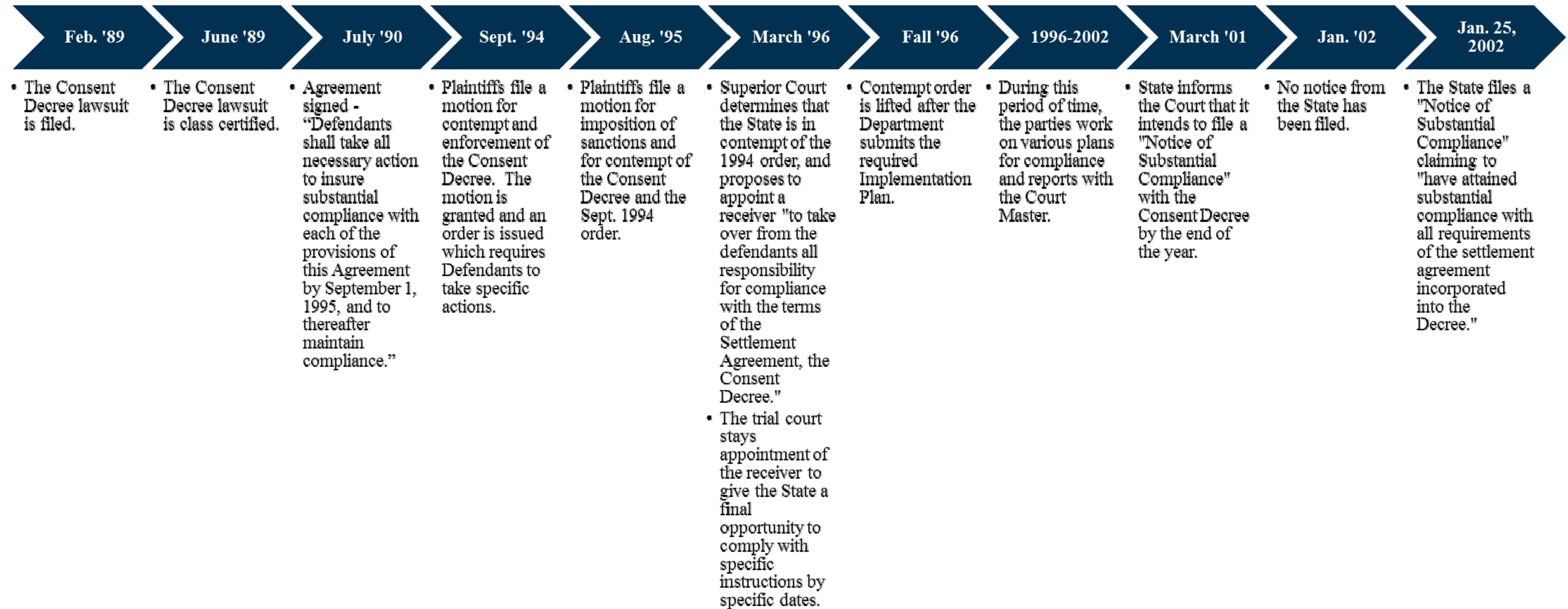
In response to this plan, the Court Master filed Standards for Substantial Compliance with the Court. To date, the State has not filed a notice for Substantial Compliance.

10. Current Status

Currently, as stated in the most recent progress report from the Court Master, the parties have worked to identify key areas in need of further action in order to move the State towards compliance with the Decree. Those four areas are: (1) housing (2) timely access to services (3) improving client employment opportunities, and (4) contract management for contracted mental health services. The hope from the Plaintiff's counsel perspective is to work with the Court Master and the Department to implement concrete, permanent reforms that will create the comprehensive mental health system that the Decree envisions. Additionally, focus on patients' rights and treatment at Riverview psychiatric center continues to be an ongoing focus for Plaintiffs counsel. Areas of concern at Riverview have continued to be consistent staffing, seclusion and restraint, and availability of community resources when a patient is identified as ready for return to the community. Currently the trends seem to show improvement. Plaintiff's counsel meets monthly with the Superintendent and RPC based advocates to discuss any specific issues of concern.

APPENDIX I: TIMELINE

February 1989 – January 2002



May 2003 – Present