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Special Review

Effectiveness and Monitoring of Martin Treatment Center for Sexually Violent Predators

Report No. 00-12 September 2000



***Office of Program Policy Analysis
and Government Accountability***

an office of the Florida Legislature

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The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



John W. Turcotte, Director

September 2000

The President of the Senate,
the Speaker of the House of Representatives,
and the Joint Legislative Auditing Committee

The Joint Legislative Auditing Committee of the Florida Legislature directed that a review be made of treatment at the Martin Treatment Center for Sexually Violent Predators. The results of this review are presented to you in this report. Marti Harkness, Richard Dolan, and Kathy McGuire prepared the report.

We wish to express our appreciation to the staff of the Department of Children and Families and Liberty Behavioral Health Care, Inc., for their assistance.

Sincerely,

John W. Turcotte
Director

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Special Review of the Effectiveness and Monitoring of Martin Treatment Center for Sexually Violent Predators

General Conclusions ---

This report assesses the performance of Liberty Behavioral Healthcare, Inc., the contractor the Department of Children and Families hired to operate the Martin Treatment Center for Sexually Violent Predators, and examines the department's monitoring of the Liberty contract. The United States Supreme Court has held that civil commitment programs such as Florida's are constitutional if they provide bona fide treatment in a non-punitive environment.

Our review found that Liberty's treatment team leaders had appropriate education and experience, though the department and Liberty should establish standards for continuing education for staff.

The physical space at Martin Treatment Center is not conducive to treatment and restricts the routine provision of vocational and recreation services. However, Liberty has taken steps to improve the living and treatment environment and some of the constraints should be addressed when the program is moved to a specially renovated facility at DeSoto Correctional Institution in November 2000. Nevertheless, the program should develop a vocational education plan to prioritize use of vocational resources.

Liberty's treatment model has evolved over the course of the first year, and treatment planning is improving. However, treatment progress has not been well documented. The program needs to develop and implement a data collection plan to better track resident progress. The Legislature needs to revise the Jimmy Ryce Act to address the need to supervise and treat committed individuals in the community as the final stage before release from the program. One person has already been released from the program without transition.

Residents at the facility have sexual impulse problems and sexual activity does occur between residents. The program should continue to monitor such activity and, from a therapeutic perspective, take necessary steps to address such behavior. In addition, the department should investigate an after-hours, off-site event at which sexual misconduct of Liberty employees was alleged to have taken place.

While meeting its contract obligations, the Department of Children and Families has not taken an aggressive approach to ensuring the quality of Liberty's treatment services. We recommend that the department evaluate the program prior to its relocation to address current problems, and again after the move to resolve any new issues that develop as a result of changes in staff and location. The department should also promulgate administration rules for the operation of a sexually violent predator program to ensure that state standards are clearly articulated.

Agency Responses

Liberty Behavioral Health Corporation

The vice president of operations for Liberty Behavioral Health Corporation provided a written response to OPPAGA's draft report. The vice president described actions Liberty is taking to address OPPAGA's concerns. The response is reprinted herein beginning on page 23.

Department of Children and Families

The Department of Children and Families was unable to provide OPPAGA its response in time to be included in this report. OPPAGA will post the department's response on its website as soon as the response is available.

Special Review of the Effectiveness and Monitoring of Martin Treatment Center for Sexually Violent Predators

Purpose

This report assesses the performance of Liberty Behavioral Health Care, Inc., the contractor the Department of Children and Families has hired to provide treatment to sexually violent predators at the Martin Treatment Center for Sexually Violent Predators, examines the department's monitoring of the Liberty contract, and provides recommendations for improvement.

To assess the treatment provided by Liberty, we traveled to Martin Treatment Center. We interviewed staff and residents and reviewed documents concerning staff qualifications, company policies, and treatment provided to groups and individuals. We interviewed and obtained information from staff of the Department of Children and Families. We visited prisons and a mental hospital to provide context for what we observed at Martin and inspected the facilities being renovated at DeSoto Correctional Institution that will house the sexually violent predators later this year.

OPPAGA considered results of treatment evaluations by two consultants. In December 1999 the Department of Children and Families hired William M. Mercer, Inc., to study the program and facility needs at Martin Treatment Center and in June 2000 Liberty contracted with Dr. Richard Kishur to assess its treatment program.

OPPAGA has issued two related reports this year. Report No. [99-36](#) reviews the process for assessing who should be detained under the Jimmy Ryce Act, and Report No. [99-58](#) reviews the June 5, 2000, helicopter escape of a detainee from the Martin Treatment Center.¹

¹ *The Sexually Violent Predator Program's Assessment Process Continues to Evolve*, [Report No. 99-36](#), February 2000. *Special Review: The Escape from Martin Treatment Center for Sexually Violent Predators*, [Report No. 99-58](#), June 2000.

Background

The Jimmy Ryce Act

As defined by statute, sexually violent predators are persons who have been convicted of a sexually violent offense and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

*The act is an
involuntary civil
commitment process*

To address the treatment needs of these offenders, the Florida Legislature passed the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act, which became effective January 1, 1999.² The Jimmy Ryce Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures to involuntarily commit and treat mentally ill persons.

*Treatment must be
provided in a non-
punitive environment*

The Legislature modeled Florida's sexually violent predator program on one operating in Kansas that had been upheld by the United States Supreme Court.³ The Kansas program had been legally challenged as double jeopardy because inmates who had already served their criminal sentences were subsequently involuntarily detained for treatment. Among the issues raised was whether individuals were being held for further punishment or were actually being treated. The Court held that if a program provides bona fide treatment in a non-correctional, non-punitive environment, it is constitutional.

This decision was instrumental in Florida's policy because it emphasized that the program must provide viable treatment while at the same time assuring adequate public safety. This is why the program was placed in the Department of Children and Families, the state agency responsible for mental health services, rather than the Department of Corrections. The challenge of Florida's Sexually Violent Predator Treatment Program is to assure that treatment is provided in a manner that makes it clear that residents are not in prison, even though they are in a secured environment.

² Sections 394.910 through 394.931, *F.S.*

³ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

Program administration

The Department of Children and Families is responsible for the assessment, custody, and treatment of individuals detained or committed pursuant to the Jimmy Ryce Act. Detainees are individuals that have completed their criminal sentences and are awaiting processing by the courts to determine if they will be committed to the program.⁴ Offenders that are committed by the court remain in the program until it is determined that they are no longer likely to commit acts of sexual violence.

Liberty operates the Martin Treatment Center

The department contracts with Liberty Behavioral Health Care, Inc., to operate the Martin Treatment Center for Sexually Violent Predators and provide treatment to committed offenders and to detainees who volunteer to participate. Liberty was chosen, in part, because it operates a similar program for sexually violent predators in Illinois. As of September 14, 2000, Martin housed 103 detainees and 16 committed sexually violent predators.

In addition, the department contracts with Wackenhut Corporation to supervise detainees who choose not to participate in treatment. These detainees are housed at a special unit at South Bay Correctional Institution, a private prison located in Palm Beach County. As of September 14, 2000, 102 detainees and one committed individual were housed at South Bay.⁵

In 2000, the Legislature made available \$6 million to the Department of Children and Families to contract with the Department of Corrections to renovate several buildings at the DeSoto Correctional Institution to replace Martin Treatment Center and the special unit at South Bay. The DeSoto Correctional Institution compound will provide a highly secure environment, but the individuals detained and committed under the Jimmy Ryce Act will be located in an area separate from the inmates sent to the correctional facility. Moving the program to DeSoto will consolidate detainees and predators in one location and provide more appropriate living and treatment space. Renovations began in July 2000. The director of the Department of Children and Families' Sexually Violent Predator Program anticipates relocating residents from the Martin

⁴ Criminal sentences are served under the supervision of the Department of Corrections or the Department of Juvenile Justice. Persons found not guilty by reason of insanity have been committed to the Department of Children and Families for treatment and have been released by hearing.

⁵ One committed individual is currently housed at South Bay for medical reasons.

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Treatment Center in December 2000 and completing the move of South Bay detainees no later than June 30, 2001. The department plans to continue contracting with Liberty to operate the renovated DeSoto facility.

In addition, the Correctional Privatization Commission is currently in the process of developing a request for proposals for the construction of a permanent 450-bed treatment center, adjacent to the DeSoto facility, for the Sexually Violent Predator Program. While the renovated buildings at DeSoto will constitute an improvement over current conditions, the permanent facility will be able to meet the specific needs of the program and house the projected increase in population over the next several years. When the permanent facility is opened in July 2002, the renovated buildings at DeSoto that temporary housed the program will be turned back over to the Department of Corrections.

Liberty's Performance ---

Our review of Liberty's performance evaluates

- staffing,
- living environment for inmates,
- treatment programs, and
- issues regarding sexual behavior

at the Martin Treatment Center for Sexually Violent Predators. We found that treatment team leaders had appropriate education, though the department and Liberty need to establish staff standards for continuing education. In addition, the physical space at Martin Treatment Center is not conducive to treatment and restricts the provision of vocational and recreational services. Although it is premature to assess the effectiveness of the program, the treatment planning process has been improved. The documentation of resident progress, however, needs to be enhanced. The treatment program needs to include provisions for community supervision, as one committed predator has already been released. Finally, the department inspector general should conduct an investigation of allegations concerning an occurrence of sexual misbehavior by Liberty staff away from the treatment center.

Staffing

Team leaders have adequate education and experience

One of the keys to a successful treatment program is qualified and competent staff. The Association for Treatment of Sexual Abusers (ATSA), the major professional organization concerned with the treatment of sexual deviancy, has developed these guidelines for the education and experience of treatment providers:

- an advanced degree in psychology, sociology, human sexuality, social work, criminology, counseling, psychiatry OR a bachelor's degree in the social sciences, demonstrated competence in specialized professional experience and work under the supervision of a licensed mental health professional;
- relevant work experience; and

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- demonstrated competence in providing a minimum of 2000 hours of face-to-face contact with residents who have perpetrated sexual abuse.

Treatment leaders meet ATSA standards

To treat the sexually violent predators at Martin Treatment Center, Liberty has created three clinical treatment groups; each includes at least two staff: a team leader and a co-facilitator. The clinical team leaders appear to have appropriate education and experience in the sex offender treatment field. All three have doctoral degrees in psychology, over 10 years of professional experience, and at least three years of experience in the field of sexual deviancy. Two of the three have qualified through education and experience to become members of ATSA and the other is in the process of applying for membership. Hopefully when the program relocates from Palm Beach to DeSoto County later this year Liberty will retain this level of expertise in its lead clinical staff.

The co-facilitators have less experience and education in the field of sexual deviancy. Two of the eight co-facilitators had prior clinical experience in the treatment of sexual offenders when hired. In addition, while most of these staff have acquired experience and training while employed at Martin Treatment Center, their primary educational training was in other fields, including vocational training and recreational therapy. Liberty explained that co-facilitators are not required to meet ATSA standards, as long as they provide treatment under the supervision of a team leader.

Liberty staff would benefit from further training

The program has not established a curriculum with training goals and objectives for continuing education for staff. All new staff are trained in the areas of treatment, security, and program administration. According to ATSA standards, providers are expected to continually update their education and professional training in order to remain familiar with current treatment techniques. Liberty has not established formal requirements to ensure that clinical staff meet this ATSA standard. The program's goal is to provide 40 hours of training a year. However, Liberty managers indicated that they are unsure how many hours clinical staff receive in a year and have no "tickler system" to track and ensure staff complete training. The 1999 review by Mercer also identified the lack of formalized training requirements and provisions for continuing education credits as a concern.

*Security staff also
need treatment-related
training*

We believe that, in addition to clinical staff requirements, the program should develop formal training requirements for therapeutic assistants. Therapeutic assistants enhance security through supervision, custody, care, and control of residents within the facility. One of the main responsibilities of the therapeutic assistants is to monitor resident behavior outside the treatment setting. Residents may behave appropriately during treatment, but their behavior in the dorm and recreation areas after hours is perhaps the best indicator of resident improvement. The clinical director and clinical staff emphasized the importance of the therapeutic assistants' role in assessing the success of treatment. Dr. Richard Kishur's report also noted that behavioral observation, particularly in the evening hours, is the most objective way to evaluate resident behavior over time and that therapeutic assistants should be involved as much as possible in the program. Although the therapeutic assistants typically have sufficient security experience, the clinical director and the clinical staff emphasized the need for more treatment-related training for the aides. We believe that the program therefore should develop formal training requirements, with emphasis on treatment and behavioral observation.

We recommend that the department and Liberty jointly develop a formal continuing education curriculum for all Liberty employees, specifying the type of training and number of hours necessary for each position.

Living environment

The courts have found that the living environment of residents in sexually violent predator programs should be treatment-oriented rather than punitive in nature. For example, the United States District Court ruled that the treatment environment should have adequate space for living, treatment, and other activities and the program should afford reasonable opportunities to all residents for educational, religious, vocational, and recreational activities.⁶ In the state of Washington, these were among elements missing from its program which threatened the constitutionality of the program and will cost the state \$5,000 a day in fines if improvements are not made.

⁶ U.S. District Court – Western District of Washington at Seattle: Hall vs. Quasim, et. al., (Case No. C96-415WD). *Findings of Fact, Conclusions of Law, and Order Re Injunctive Relief*, November 25, 1998.

The program's physical plant has been a constraint

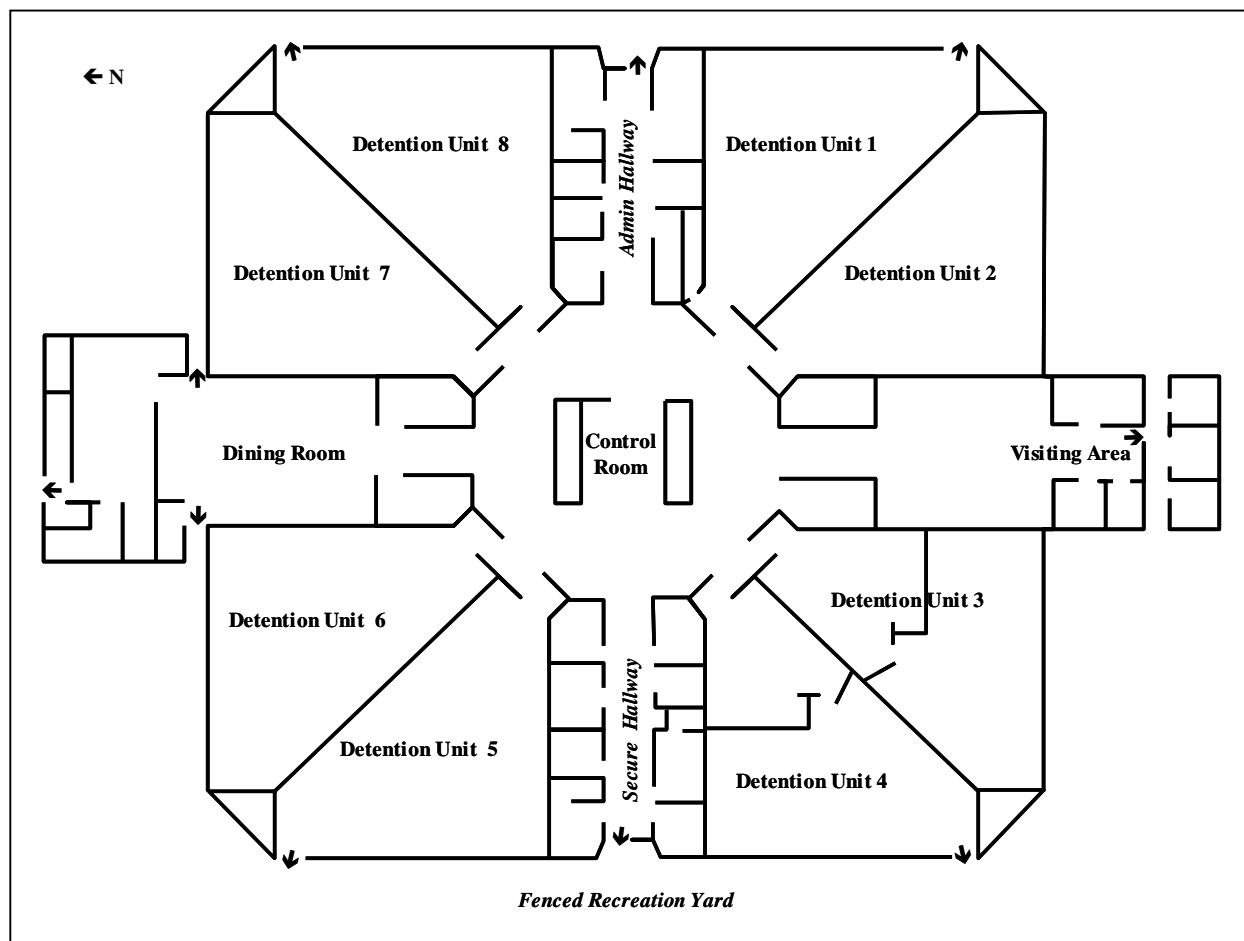
The decision to use the Martin facility was made by the Department of Children and Families when it had immediate need of a secure facility to house detainees for the Sexually Violent Predator Program. The physical layout at the treatment center is not conducive to treatment or the provision of routine vocational opportunities. However, Liberty has implemented procedures to improve the living and treatment environment, and some of the constraints should be addressed by the move to DeSoto.

The center was originally a jail

Because Martin Treatment Center was originally built as a jail, there are several physical design limitations that affect the provision of treatment (see Exhibit 1). For example, the center does not have appropriate space for group therapy. Only one room is available for group meetings and it is limited to seating 8-10 people. Although the visiting area can accommodate about 25-30 people, it is not viable as a treatment meeting room because traffic from other activities and poor acoustics make group interaction difficult. Currently, most group counseling sessions, which include 17-18 participants, are conducted in the resident living areas. Program staff assert that this is problematic because the acoustics of an open dormitory are not conducive to group discussions and interactions and group therapy sessions should be conducted in an area separate from living areas. In addition, Martin's dorms are like prison bays; they are large rooms that are filled to capacity with bunks and do not allow private space for personal items or private reflection. Concerns about Martin's physical plant were also raised in the 1999 William M. Mercer report.

Liberty has implemented policies to make the living environment different from a prison. For example, residents can wear their own clothes instead of prison clothes, receive unopened mail, and make unmonitored phone calls for limited amounts of time. Unlike prison, residents generally have access to the recreation yard when not in treatment or other scheduled activity. Visitation policies are also more liberal than in a prison setting. For instance, visitors are not regularly pat searched prior to or after visits. These policies are similar to those in Florida's mental hospitals.

Exhibit 1
Martin Treatment Center Is Configured Like a Jail



Source: Martin Treatment Center.

***More space needed
for programs***

However, primarily due to space constraints, Liberty has limited vocational and recreational services to complement treatment. In contrast, programs such as vocational education, music, art, and recreation are routinely provided as part of the therapeutic environment at state mental health hospitals and sexual predator programs in other states.

At Martin Treatment Center, residents have little opportunity for self-improvement outside of the therapy groups. Liberty provides adult basic literacy and GED classes, but vocational classes are limited to computer education, horticulture, and sewing. Vocational opportunities within the facility are also limited to skills learned in maintaining the facility, such as working in the kitchen, laundry, or canteen. There is no program for

training residents in marketable vocational skills. Outdoor recreational programs are limited to weights, volleyball, and basketball. The small recreation yard restricts the types of activities available and precludes activities such as softball, soccer and other team sports that require additional space.

Vocational and recreational activities are also limited because the department has not funded Liberty's requests for recreational and vocational equipment, such as games, tools, and musical equipment. According to the program director, last year the department was unable to revise budget allocations to provide this equipment, but has requested funding in the 2001-02 budget for this purpose.

DeSoto will have more room, but opportunities will still be limited

In December 2000, the department plans to move all Martin residents to the renovated DeSoto facility. The new facility's design will address some of the problems relating to space. At DeSoto, there will be sufficient room to partition the dorms into smaller sleeping cubicles that can be personalized, like the sleeping areas in a state mental health hospital. Like Florida's state mental health hospitals, DeSoto will have separate treatment and living areas and will be air-conditioned. Additional classroom and outdoor space should also allow for the expansion of some vocational and recreational activities that are not feasible at Martin. Although DeSoto will not have sufficient space for a large multi-purpose athletic field, it will have two volleyball/basketball areas, a large outdoor visitation park, and areas for horticulture. The department has also secured recreational equipment for DeSoto from South Florida State Hospital.⁷

Vocational and recreational opportunities at DeSoto will still be limited by lack of funding. Although the staffing plan for DeSoto will allow for the expansion of vocational programs, there is limited space and funding for vocational tools and equipment necessary for programs such as automobile repair or carpentry.

To provide sufficient support for therapeutic treatment, we recommend that Liberty develop a formal plan for the expansion of vocational classes at DeSoto, including the estimated cost of providing these classes and the marketability of the vocational skills that would be provided. Combining this information with the program's vocational needs assessment

⁷ South Florida State Hospital, a mental health facility, will become privatized, so the department is reallocating its resources to other facilities.

information would allow the department to make the most efficient use of vocational resources.

Treatment

The real demonstration of successful treatment of sexually violent predators will be to have individuals complete treatment and rejoin society without committing new offenses. Experts agree that it will probably take most program participants several years to complete treatment. Therefore, other measures must be used to assess Liberty's first 15 months of treatment. Accordingly, we reviewed Liberty's treatment model, treatment plans, methods for tracking treatment progress, and transition planning.

Liberty's treatment model evolved over the course of the first year

Although Liberty was chosen to operate Florida's sexual predator program because of its experience in operating a similar facility in Illinois, the first year of treatment got off to a slow start. Liberty originally implemented an eight-stage treatment program under executive director Mike Rivera and clinical director Kurt Bumby. Four months after start-up, in October 1999, Rivera and Bumby left. Dr. Robert Briody, the assistant director, took over as executive director, but the program was without a full-time clinical director for the next six months (half of the program's first year). By late 1999, Dr. Briody developed a new counseling model (the rational self-counseling model) and began training staff in this model during April and May 2000. In April, Liberty hired a new clinical director, Dr. Michael Lipscomb, who began to modify the assessment process and treatment plans. Staff began using the new treatment model with program participants in June, a year after the program opened.

Treatment teaches impulse control

Liberty provides treatment based on a cognitive-behavioral approach, first introduced to residents in a class called rational self-counseling. Rational self-counseling is designed to help residents think rationally, control their emotions, and improve their impulse control. Like alcoholics, sexual predators are not cured by treatment, but learn to control their impulses.

In the current program, treatment is divided into four stages: reception, introduction, intermediate treatment, and advanced treatment. Participants attend group and individual sessions. Along with the

*Now is the time to
prepare for relocation
to DeSoto*

rational self-counseling therapy, residents receive anger management therapy, sex education, and relapse prevention as they progress through the program. A more detailed description of the model is provided in Appendix A.

The provision of adequate treatment is dependent upon having staff positions filled with appropriately trained personnel. To ensure treatment continuity when the center relocates to the other side of the state in a few months, it is critical that the program identify whether key staff will be relocating with the program. Liberty should have a plan to hire and train replacements, particularly key clinical positions, before the move occurs. This will ensure that new staff receive training and learn from current staff and are ready to assume responsibilities when the move occurs. We recommend that Liberty fill key clinical positions in a timely manner to ensure appropriate oversight, guidance, and treatment continuity so that treatment will not be disrupted.

Treatment planning is improving

Since the hiring of the clinical director in April and the restructuring of the program, Liberty has made improvements to treatment planning. As the Mercer review states, “[treatment] plans should be individualized with specific goals that vary in time for completion.” In the past, treatment plans were long, overly detailed documents that were not very individualized, and the treatment goals within a resident’s plan had the same completion date. The new treatment plans developed in May 2000 are highly individualized and provide information on the participant’s diagnoses, strengths, and problems. The plans also set out long and short-term goals. Whereas most of the old treatment plans looked identical, the new plans concisely address each resident’s specific treatment problems. In his review, Dr. Kishur noted that the new plans are more functional than the original design.

During the time the treatment plans were modified, the program also began to administer a battery of 19 sex-offender specific assessments. These include the Wilson Sex Fantasy Questionnaire, Denial and Minimization Scales (DAMS), and Responsibility for Offending Checklist. Up until this time, these assessments were frequently not administered because residents under advice of counsel were convinced that assessment results would be used against them in court. These tests provide a thorough assessment of residents’ sex-related problems and are useful for developing appropriate treatment plans.

Treatment progress is not well documented

The most significant problem we identified was that treatment progress has not been well documented. When reviewing the residents' files, it was difficult to determine where residents were in their treatment progress and what they had to do to improve or advance to the next treatment level. Daily progress notes were seldom summarized in any meaningful way to describe how well treatment was progressing, and these notes were not clearly linked to changes in the treatment plans or to residents' advancement in program levels.

Initially, Liberty staff used two subjective tests, the client resistance scale and the Sex Offender Treatment Rating Scale (SOTRS), to measure resident improvement. Because the scoring of these instruments is based on the clinician's subjective perceptions of the resident's progress, clinical staff told us that these subjective assessments are not the best way to assess client progress. Since March 2000, staff have begun to use three objective measurement tools of client progress - the polygraph, the Abel screen, and penile plethysmograph. While these tools have been used to develop baselines and guide treatment for selected residents, Liberty has not yet formalized when or how these tests will be used in the assessment and treatment processes for the remaining residents.

***Treatment progress
should be routinely
tracked***

ATSA standards mandate that "[p]rogress in treatment, or the lack thereof, should be clearly identified and documented in the treatment records and progress reports." And Dr. Kishur's review noted that "regular individual evaluation of progress by clinical staff is essential." Methodical periodic analysis of treatment records is critical not only for internal management of the cases but also for the annual assessments required by law to evaluate each resident's readiness for release. In one of these annual reviews completed in February, the psychologist conducting the evaluation noted that "it certainly would be helpful for annual reviews to have more specific and concrete information available."

To better document client progress, Liberty has recently developed two summary forms—the Review Board Report and the Treatment Plan Review Form—that, when fully implemented, should improve progress documentation. The Review Board Report summarizes a resident's treatment course when the resident's program status is changing, e.g., the resident is advancing to a higher treatment stage. The Treatment Plan Review Form provides a summary of the resident's last three months of treatment progress. This form was not being used during our August

*Client data should be
computerized*

field visit but in the future should provide succinct information on client progress in achieving treatment plan goals.

In addition to these efforts, Liberty needs to develop processes to assess client improvement in a more systematic manner. For example, Liberty is not yet computerizing client data for later analysis. Client data, such as progress on standard tests, the number of incident reports, and occurrences of behavioral problems, are not being collected electronically but are currently maintained in paper files. Recording these data in electronic form would enable staff to more easily compare results across clients or over time to assess improvement. The importance of this type of longitudinal progress analysis was stressed in Dr. Kishur's review. The program's executive director indicated that staff are now using spreadsheets to compile incident report information from monthly incident logs. According to the executive director, Liberty plans to use more scientific evaluation methods in the future, such as comparing the progress over time of residents in treatment to a control group of residents who are not in treatment.

We recommend that Liberty develop and implement a data collection and evaluation plan to ensure that data is available at a later time for those purposes. This plan should include identifying which clinical indicators are significant measures of treatment success and setting up electronic data systems to capture that information. For example, the program may determine that behavioral observations, currently recorded manually by therapeutic assistants, are significant indicators of program success and need to be collected electronically in a systematic way. When the program moves to DeSoto, it will have access to additional computer equipment that will be transferred from South Florida State Hospital, which may help the program in its efforts to computerize data.⁸

*The Treatment Program needs to include
provisions for community supervision*

The Legislature should revise the Jimmy Ryce Act to address the need for supervision in the community. Persons committed under the Jimmy Ryce Act remain in state custody until the court determines that they are no longer likely to commit acts of sexual violence. All persons committed under the act are entitled to an examination of their mental condition for

⁸ South Florida State Hospital will become privatized through a contract with Wackenhut Corporation; this contract funds all new recreational and vocational equipment.

this purpose at least once every year. However, once a decision is made to release an individual, there are no provisions in the act for supervision in the community. The Mercer report concluded that it was a major concern that the Jimmy Ryce Act does not include provisions for transition back into the community.

Experts believe a transition phase is essential for success

As previously discussed, mental health experts cannot at this time “cure” violent sexual predators, but can only work with them to teach them to control their impulses. While individuals can work hard to learn to manage their impulses in a controlled environment such as the treatment center, it will take more work to exert self-discipline in the community where there are greater temptations. For this reason, mental health experts believe that it would be best to support committed persons by supervising and treating them in the community as the final phase of commitment before release from the program.

The question of how to facilitate the reintegration of committed persons back into the community is timely because the courts have already released one individual from the Martin Treatment Center. Stanley Ridgeway, one of the first persons committed under the act, was also the first released, in July 2000. Because there are currently no provisions for spending a period in a less restrictive environment prior to release or for any follow-up once a committed person is released, Ridgeway went from residing at the Martin Treatment Center to complete freedom without any mandatory treatment or supervision.

The Mercer report notes that most state statutes, with the exception of Florida, Iowa, and Missouri, provide for the conditional release of committed individuals into a less restrictive placement. In Arizona, New Jersey, and Washington, specific conditions, such as prohibition of contact with potential victims or participation in outpatient treatment, may be imposed. Many states also specify treatment plans or programs as a requirement of release. In California, committed persons must be placed in a forensic conditional release program for one year, and then a hearing determines if the person will be unconditionally released.

We recommend that the department develop and submit to the Legislature suggested statutory language providing for transitional services during custody for individuals committed under the Jimmy Ryce Act. These provisions should include designation of who will provide monitoring, treatment, and supervision of individuals in transition and criteria for the length of such treatment and supervision.

Issues regarding sexual behavior

Sexual activity occurs at Martin Treatment Center

The media has expressed concern about sexual activity occurring among residents at the facility. Program staff confirmed that such sexual activity does occur. By virtue of their status as sexual predators, these residents are a group of people who have repeatedly exhibited a lack of control over their sexual behavior. Liberty has a policy forbidding any sexual activity among residents. When sexual activity does occur, Liberty staff fill out incident reports detailing the behavior. Staff, however, have limited disincentives to impose upon non-compliant residents. For example, residents who engage in consensual sex are separated from each other and housed in separate living areas. Residents have been civilly committed to a mental health program, and state policy for other civil mental health treatment facilities protects patients' rights to engage in consensual sex. Because Martin is a treatment center for sexual predators, sexual activity is addressed through treatment, rather than from a punitive perspective.

Although staff report that consensual sex is not a widespread problem, there is no readily available information to confirm this assertion. As mentioned previously, such data is not yet available electronically and would require a manual review of monthly incident logs. The issue of accurately monitoring sexual activity is essential because a sexual assault is alleged to have taken place within the facility in July 2000. The Martin County Sheriff's Office investigated the alleged assault but found insufficient evidence to warrant filing charges. Later in July, Liberty staff documented that the resident alleging the assault was exchanging sexual favors for food and indicated that he needed help for his sexual problems. This underscores the importance of ensuring that all sexual activity is reported, documented in treatment files, and summarized for review by management. We recommend that the program continue to monitor such activity and take necessary therapeutic steps to address such behavior.

Allegations of sexual misconduct of Liberty staff should have been investigated

A second issue reported by the media involved alleged inappropriate sexual behavior by Liberty staff at an employee going-away party in

October 1999. The event occurred at a local restaurant on the evening of October 26, 1999, to honor departing clinical director Kurt Bumby. A former Liberty employee alleged that Liberty staff engaged in inappropriate behavior of a sexual nature involving the use of sex toys at the party. The employee alleges staff were directed to report to the party at which some Liberty staff became intoxicated. He further contends that a drunken staff member was touching other staff with a sex toy and that one staff member threatened, in the presence of the group, to file a sexual harassment suit. According to the account, neither the Associate Director Robert Briody nor a Liberty corporate manager took appropriate steps to halt the staff member's actions. The department's program director stated that Dr. Briody provided him with his account of the event weeks later. The department's program director took no formal steps to reprimand Liberty staff for their behavior and stated that Liberty Behavioral Health Care, as the contractor, has the responsibility to formally address staff conduct.

Former Associate Director Robert Briody, now executive director, refutes many of the allegations made by the employee. For example, he states that no one was ordered to attend the party and that he, as associate director, felt that the employee's actions were inappropriate. Dr. Briody reported that he spoke to the individual suspected of engaging in the inappropriate behavior about the incident, although no formal action was taken by Liberty. OPPAGA spoke to the staff member, who was alleged to have been harassed, about the incident. She said that she had been very uncomfortable with the situation, but that the behavior ended when she declared her intention to file a sexual harassment suit. She also added that she did not discuss the incident with Liberty management the following week and that no one from Liberty approached her to discuss it. Dr. Briody contends that no one on the staff complained to him about the inappropriate behavior after the event.

*The inspector general
should investigate
allegations*

The department's program director did not investigate the veracity of the former employee's charges or report them to the inspector general's office. We recommend that the inspector general's office conduct a thorough investigation to determine whether the alleged incident took place and recommend appropriate action.

Monitoring the Treatment Contract————

The Department of Children and Families is responsible for the treatment of sexually violent predators. The department's responsibility to oversee its contract for this service is particularly significant because the Martin Treatment Center for Sexually Violent Predators is not subject to licensing as a hospital or medical facility. Consequently, oversight is challenging because there are no standards that establish minimum staffing levels, space or safety requirements, treatment approaches, or length of stay. The Mercer study recommended that the department address this issue by adopting a rule to provide program standards.

To verify that adequate treatment is provided, the department's contract with Liberty Behavioral Healthcare, Inc., stipulates that the department monitor Liberty's performance within 120 days after the treatment facility is fully staffed. In addition, the department is to collect a monthly performance report and may conduct scheduled and unscheduled on-site monitoring.

DCF monitored Liberty's initial compliance with the contract, but now needs to revisit the program

While meeting its contract obligations, the department has not taken an aggressive approach to ensuring the quality of Liberty's treatment services. In October 1999, Department of Children and Families staff performed its only on-site monitoring review of Liberty and contracted with an evaluator to do a comprehensive review of the program. The department's review team concluded that Liberty fully complied with the contract, with the exception of management of patient grievances, which they found to be "conditionally acceptable."⁹

During the October review the team was unable to assess the quality of treatment because Liberty had only been in operation for four months, with much of that time spent in start-up activities. During that initial period Liberty trained staff, assessed residents, and organized its operations. Although Liberty began providing treatment to residents in

⁹ According to department officials, since the review Liberty has developed a grievance form. While the form is sufficient to document resident complaints, the information reported in the forms needs to be more thorough.

July 1999, an October assessment of treatment quality would have been premature since successful completion of treatment takes several years.

Although the department does collect monthly reports from Liberty, it has not conducted any other scheduled or unscheduled monitoring visits. According to Greg Venz, the program director, the October review was the only review required for the contract period and evaluation resources would be better spent after the program moves to DeSoto. Venz stated that Spring 2001 would be a feasible target for the next review.

However, since the department's October assessment, other reviewers have identified limitations with the program's performance. In October 1999, the department hired William M. Mercer, Inc., to conduct a formal study of the programmatic and facility needs of the Martin Treatment Center.¹⁰ In its review, Mercer identified several shortcomings with the treatment records and assessment processes. For example, Mercer noted that records, particularly psychiatric evaluations, needed to be more comprehensive. In June 2000, Dr. Richard Kishur, the consultant hired by Liberty, also pointed out similar problems, such as the need for current, individualized treatment plans, and identified a number of clinical issues that could be improved. In addition, one detainee escaped from the Martin Treatment Center in June 2000, and others have filed legal challenges to the validity of the treatment being offered by the program. A former employee has also alleged that Liberty staff engaged in inappropriate behavior at a public restaurant during a going-away party in October 1999.

Department needs to aggressively monitor program

We believe that, given the early date of the initial review and these repeated indications that improvement or additional monitoring is needed, the department should take a more active role in managing the Liberty contract. It is especially important that the department ensure that the program is working well before the move, as the move itself is likely to be disruptive. That way after the move, the department and Liberty can take steps to ascertain that the previous problems remain fixed and to address any new issues that develop as a result of changes in staff and location.

¹⁰ William M. Mercer, Inc., *Study of the Programmatic and Facility Needs of the Florida Sexually Violent Predator Program, Final Report*, December 20, 1999.

Special Review

We recommend that the department evaluate Liberty's performance in two stages.

- Staff should evaluate the program prior to the center's relocation to DeSoto. This review should determine the extent to which Liberty has addressed treatment concerns cited by Mercer, Kishur, and OPPAGA, including the adequacy of treatment progress documentation.
- The department should hire an outside consultant to conduct a comprehensive review of Liberty's program, including security and the provision of educational and vocational services, in the spring of 2001 at the new DeSoto location.

We also recommend that the department promulgate administrative rules for the operation of a sexually violent predator treatment facility to ensure that state standards for custody and treatment of sexually violent predators are clearly articulated. Such standards will be of particular use when the contract for the program is re-bid.

Liberty's Treatment Program at Martin Treatment Center

Implementation Date: July 1, 2000

The program is divided into four stages: reception, introduction, intermediate treatment, and advanced treatment. Each participant's length of stay in any stage of custody or treatment is determined on an individual basis depending upon willful participation, measurable performance, and observable progress.

Stage I: Reception and Custody

This stage consists of the arrival and initial reception into the Martin Treatment Center. Experiences include assessment for suicide potential, mental health status exam, psychiatric examination, overview of the rules and policies, general orientation to the facility and treatment program, explanation of legal status, and opportunity to consent to treatment. Residents refusing to consent to and participate in treatment remain in this stage.

Stage II: Introduction to Treatment

This stage involves the resident's consent to treatment and the completion of assessments and basic treatment activities. Experiences and achievements include comprehensive multidisciplinary evaluation; assessment of sexual history and disordered arousal patterns; development of the individualized treatment plan; resolution of the "I'm a victim of the system" issues; completing a journal and sexual autobiography, with an oral presentation in a treatment group; and understanding the Sexually Violent Predator Program, including the relapse prevention model, the master treatment plan (identifying target behaviors), and the cognitive restructuring model (Rational Self-Counseling).

Stage III: Intermediate Treatment

This stage consists of four phases of active and continuous participation in treatment. Stage III, the longest stage of treatment, consists of several sequences of individually prescribed process groups, psycho-educational groups, structured activities, psychological assessments.

- Phase I focuses on accountability; meaningful participation in intensive psychotherapy groups, and introduction to anger management, communication skills, sex education, and relapse prevention.
- Phase II focuses on developing an in-depth insight into one's own sexual abuse cycle.
- Phase III helps the resident address how newly gained insights are consolidated and incorporated into observable changes in personal values systems and patterns of behaviors that generalize to all aspects of social and personal life.
- Phase IV affords structure, time, and activities for residents to plan for and demonstrate their readiness for transition (Stage IV).

Stage IV: Advanced Treatment

This stage is the transitional stage. During Stage IV, residents demonstrate increased responsibility through supervised work assignments and passes on the ground. (Hopefully, this stage will ultimately include a gradual progression through supervised community visits, unsupervised community visits, supervised community residence with limited unsupervised community activities, and unsupervised community residence with structured and scheduled community release.)

Appendix B

Response from Liberty Behavioral Health Care, Inc.

Date: September 26, 2000

Marti W. Harkness
Senior Legislative Analyst
111 West Madison Street
Room 312
Claude Pepper Building
Tallahassee, FL 32399-1475

Dear Mr. Harkness:

Liberty Behavioral Health Corporation appreciates the efforts of the OPPAGA reviewers to evaluate the Martin Treatment Center for Sexually Violent Predators. However, before responding to the OPPAGA critique, we believe it is important to consider the report and its recommendations in the proper context.

OPPAGA Report in Context

Under tremendous time pressure and physical plant limitations, Liberty Behavioral Health Corporation and the Department of Children and Families have collaborated closely in establishing a civil commitment treatment program that fulfills the intent of the Jimmy Ryce Act. The Florida SVP program has been more successful in implementing a civil commitment program than other states, who have passed and implemented similar statutes. Most noteworthy in the limited tenure of the SVP program are the level of services provided, the magnitude of participation by the residents, and the minimal amount of litigation in comparison to other states. Liberty has fully committed its company resources and experience to ensure a successful program. Obviously, there are challenges and areas for improvement that Liberty and the Department continue to address on a daily basis. Moreover, the Department and Liberty have invested huge amounts of time in planning for the move to the DeSoto facility, where more adequate space and resources will facilitate improved treatment capacities, including expanded ancillary services such as vocational/educational services.

The OPPAGA report follows three previous reviews of the program at Martin Treatment Center. These reviews consisted of (1) the William Mercer "Study of the Programmatic and Facility Needs of the Florida Sexually Violent Predator Program" (December 1999); (2) the review by the Jimmy Ryce Act Enforcement Task Force (January 2000); and (3) the review by Dr. Richard Kishur (June 2000).

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- ✓ The *Mercer Study* asserted that Liberty's treatment program was consistent with other nationally-recognized programs of its kind, using "state-of-the-art" methods, and attempting to follow ATSA guidelines. It concluded that "the program has a number of strengths, the primary one being that it has been able to develop very quickly." It affirmed that the professional staff were well-qualified, respectful to clients, and responsive to the recommendations of the Mercer experts.
- ✓ The *Jimmy Ryce Act Enforcement Task Force* completed a systematic analysis of the Florida SVP program as a whole and focused on the question of program placement. The Task Force concluded that Liberty's "state of the art treatment" program at Martin Treatment Center "has performed very well in designing and implementing the treatment program" despite the acknowledged limitations of the physical plant.
- ✓ *Expert consultant, Dr. Kishur* affirmed Liberty's effort and success in establishing an excellent treatment program, praising the quality of its clinical staff; the use of the Abel Screen and comprehensive evaluation of psychosexual needs; and the priority of implementing functional, current, individualized treatment plans.

Exceptional rates of treatment participation: The Mercer Study was lead by Dr. Judith Becker, one of the foremost authorities in the field of sex offender treatment. Dr. Becker was quite pleased with the progress that Liberty had achieved in establishing the new treatment program in a short period of time. In particular, Dr. Becker was very impressed with the high level of participation in treatment by the "probable cause detainees" (about 50% at that time). Since then, Liberty has further increased the percentage of residents who have consented to treatment prior to formal commitment. National experts in SVP civil commitment programs, such as Dr. Janis Markus, continue to marvel at the extraordinary rates of participation by detainees that Liberty has achieved for Florida's civil commitment program.

The unprecedented level of resident participation in treatment at Martin is an enormously important fact whose significance needs to be highlighted. First, participation by detainees is a strong indicator that, despite the severe limitations of the physical plant, the residents recognize Liberty's preeminent concern with treatment and are "buying into" the benefits of treatment. It is also a indicator of general stability and interpersonal tolerance within the facility despite its cramped dormitory living arrangement. Finally, greater rates of treatment participation will invariably result in lower rates of costly litigation and legal challenges to the Jimmy Ryce Act.

Areas To Be Addressed

The OPPAGA report of Liberty's performance focused on four areas in the following order: staffing; living environment; treatment programs; and issues regarding sexual behavior.

1. STAFFING

"Team leaders have adequate education and experience." Liberty is nationally recognized for its recruitment of professionals for social treatment programs for challenging populations, such as the sexual predators treatment program in Florida. Again, given the short time span and extremely limited number of professionals nationwide with the necessary expertise in this narrow field, Liberty succeeded in identifying and securing a highly skilled clinical team along with other ancillary support staff. It is our experience that only a quality treatment program can possibly attract and retain a core team of hard-to-find clinical specialists. We are confident that this fact will be demonstrated when Liberty's treatment team moves with the program to the remote and less culturally attractive location at DeSoto.

"Staff could benefit from further training." Liberty's clinical staff are required to comply with the Continuing Education requirements of their respective disciplines/licensures (e.g., minimum CE credits per year). This requirement is documented in the Martin Treatment Center PROGRAM MANUAL. Moreover, clinical staff are encouraged to maintain affiliations with their respective professional associations. Liberty's staff are also expected to participate in Martin's on-site inservice training pursuant to the program's "Annual Training Matrix." Nonetheless, Liberty concurs with the OPPAGA recommendation to better clarify our Continuing Education requirements in terms of curriculum, goals and hours.

"Security staff also need treatment related training." The OPPAGA team has accurately portrayed Liberty's appreciation for the vital role of the Treatment Aides in making on-going behavioral observations of the residents. This data is crucial to assessing whether residents are truly incorporating and "living" the prosocial attitudes and behavior changes that are promoted in the treatment program. Consistent with the recommendations of the OPPAGA team, we will continue to emphasize the importance of treatment-related training for the paraprofessional staff. This is evident in several regards:

First, in May 1999, Liberty created a comprehensive 18-page training manual for new paraprofessional staff, which details the characteristics and issues of sexual offenders and how to identify and respond to "grooming" and manipulations. Second, we have used a number of outside consultants in various areas to assist with the development of training programs for our staff. Third, in the past week, two Liberty executives have directly observed a comprehensive 40-hour training (and annual retraining) program used in Colorado for paraprofessionals working with sexual offenders. There are excellent features in this program, which can be immediately incorporated to enhance our training curriculum for the Florida SVP Program. Fourth, in anticipation of the staff expansion for the impending DeSoto move, Liberty is already developing a comprehensive orientation and training program for use in November 2000. Fifth, Liberty is in the process of hiring a full-time Human Resources Manager and Training Coordinator to spearhead the augmented training program. Finally, the expanded physical space and resources at DeSoto will support and enhance Liberty's capacity for continuous on-site training of staff.

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2. LIVING ENVIRONMENT

"The program's physical plant has been a constraint." As noted in the OPPAGA report, vocational, educational and recreational opportunities have been hindered by space limitations and by the delay in an allocation for needed tools, instruments, and equipment. Adequate space for group therapy has been a particular challenge. Treatment is primarily provided in group formats, however, it is inaccurate to state that most groups include 25 to 30 participants. Group size varies, but all treatment "process" groups are generally limited to 12 residents, while psychoeducational groups typically do not exceed 20.

Given the limits of the facility, the OPPAGA report credits Liberty with implementing a variety of policies to make the living environment as "therapeutic" as possible and less prison-like. We agree that the move to DeSoto will surely provide vast improvements in both treatment facilities and living quarters that will promote better treatment.

3. TREATMENT PROGRAM

"Liberty's treatment model evolved over the course of the first year." While it is true that Liberty continues to strengthen and fine-tune our treatment program, we wish to point out that the fundamental principles and model have always been cognitive-behavioral and stage-progressive. Thus, for example, Rational Self-Counseling is the particular version of cognitive-behavioral therapy that we use, while changes in the "number" of program stages has not altered the stage-progressive concept.

"Treatment planning is improving." The report confirms that prior concerns about treatment planning have been resolved.

"Treatment progress is not well documented." Given that sexual predators are extremely slow to make progress in sex offender-specific treatment, it takes a long time to gather demonstrable evidence of enduring individual progress. As noted in the OPPAGA report, Liberty has instituted two summary forms that will improve documentation of treatment progress: the Treatment Plan Review Form, a progress summary that is completed quarterly, and the Annual Review Board report. Further, the increasing use of objective physiological measures of progress in the program - the polygraph, plethysmograph, and Abel Assessment - provides another strong indicator of treatment progress (or lack of). Actually, given the expanded space resources at the DeSoto site, Liberty has already specified an "assessment unit" with an objective psychosexual assessment lab that will be staffed by full-time assessment professionals. We are confident that this will greatly strengthen the assessment of progress and its documentation. Likewise, the addition of data management equipment/capacity at DeSoto will facilitate more efficient tracking and monitoring of behavioral observations and other indicators of meaningful progress in treatment.

"Client data should be computerized." Accurate information management is important in all facets of service delivery. Unfortunately, given its temporary location, the Martin Treatment Center facility could not support the cabling technology necessary for a Local Area Network and viable computerized data system. This has been addressed and is well-planned for in the move to the DeSoto location. In particular, data management staff positions have been added to the staffing plan for DeSoto, which will better formalize the tracking of noteworthy program events, treatment attendance, treatment progress, and resident behavioral observations, including inappropriate conduct between residents.

4. ISSUES REGARDING SEXUAL BEHAVIOR

"Sexual activity occurs at Martin Treatment Center. " As noted in the report, Liberty has a clear policy forbidding sexual activity among residents. It specifies that staff must complete an incident report detailing the behavior. The OPPAGA reviewers assert that staff have limited disincentives to impose upon non-compliant residents (e.g., separate housing). This situation is partly dictated by the limitations of the current physical plant. Nevertheless, Liberty remains committed to its policy of documenting forbidden sexual activity between residents by filing Incident Reports, which are always reviewed by the Executive Director/management team for systematic response.

"Alleged sexual misconduct of Liberty staff should have been investigated." It is important to note that this incident occurred at a private party that was not sponsored by Liberty. This party was held off-site after working hours and the staff attended at their own will. Following the event, Liberty's contract manager and the Associate Director counseled the individual about his unbecoming conduct at the party. Although the individual was not an employee, Liberty Healthcare recognizes its responsibility for the behavior of its consultants. As a company, Liberty Healthcare Corporation expressly condemns inappropriate behavior by any of its employees or staff no matter where the venue. Such behavior is a violation of our company policy and ethics and it will not be tolerated.

In closing, Liberty appreciates the findings of the OPPAGA report and we will strive to include its recommendations in our continuing commitment to enhance the Florida treatment program for sexually violent predators.

Sincerely.

/s/

Marie N. Labesky, M.A.

Vice President of Operations
Liberty Behavioral Health Corporation

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October 6, 2000

Mr. John W. Turcotte, Director
Office of Program Policy Analysis and
Government Accountability
Post Office Box 1735
Tallahassee, Florida 32302

Dear Mr. Turcotte:

Thank you for your recent copy of the preliminary findings and recommendations of your special review of the "Effectiveness and Monitoring of Martin Treatment Center for Sexually Violent Predators."

Enclosed are responses to the discussion and recommendations found in your review. I trust this information will assist in finalizing your report. If I may be of further assistance, please let me know.

Very truly yours,


Judge Kathleen A. Kearney
Secretary

Enclosure

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

I. LIBERTY'S PERFORMANCE

Response:

Staffing

The Department agrees with The Office of Program Policy & Government Accountability (OPPAGA) that Liberty staff are qualified by education and experience. The Department also agrees that it would be beneficial for the staff training process to be formalized. The Department will direct Liberty to develop a written staff-training plan for Department approval.

Living Environment

Response:

The Department and Liberty have long recognized the physical plant shortcomings of the Martin Treatment Center (MTC) and have been working since late 1999 to resolve this issue. The Department has worked closely with the Legislature, Liberty, and the Department of Corrections (DOC) to develop and fund a proposal to provide better short-term space for the program. Since June 2000, the Department, DOC and Liberty have located space, prepared and executed a contract, and made great progress toward completing renovation and construction of temporary space that can accommodate the program until a permanent facility can be constructed.

At the same time, the Department has been working closely with the Legislature and the Correctional Privatization Commission to develop a Request for Proposal (RFP) to finance, design, construct, and operate a 600-bed permanent Sexually Violent Predator (SVP) facility to be located in DeSoto County. This is a very large and complex project that has consumed significant staff resources.

Liberty and the Department have been preparing for the transfer to DeSoto for some time. Liberty has devoted additional staff resources from its corporate office to work exclusively on the relocation project. Liberty has been working with existing staff to retain as many of them as possible. Most of the key clinical staff intends to transition to the new facility. Liberty has been extensively recruiting for the additional staff that will be required for the DeSoto facility. Interviews commenced in early September 2000.

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

The Department agrees to request that Liberty develop a vocational therapy plan, with a cost analysis for the program, which will be practicable at DeSoto.

Treatment Programs

Response:

The Department does not disagree in concept with any of the findings or recommendations in this section of the OPPAGA report. The Department believes, however, that the OPPAGA report actually underscores the commitment of the Department and Liberty to continuous quality improvement in the treatment program. OPPAGA's findings clearly indicate that outside clinical professionals have been brought in to review the treatment program on two occasions within the last nine months and that Liberty has acted upon recommendations for improvement.

The Department has long been an advocate for the addition of a post-commitment supervision component to the treatment process. The Department raised the issue with the Jimmy Ryce Act Enforcement Task Force in December 1999, and the Task Force supported the concept.

The Department agrees that the clinical file of each resident should clearly and concisely document treatment progress, behaviors and incidents that reflect on treatment progress or the lack thereof. OPPAGA has a distinct preference for electronic record keeping and analysis. The Department is not, however, convinced that the creation of an electronic database that would track daily staff observation notes, treatment progress notes and incident reports for all residents on a routine basis is cost beneficial at this time. This system would require huge data entry resources or would require every Liberty staff member, from treatment aides to the clinical professionals, to spend a great deal of time entering data. The Department's SVP program has worked very hard to create a smaller and less complex database for tracking essential information concerning the risk assessment and evaluation of referrals to the program.

The Department's experience has been that the hardware and software needs of large, flexible databases continue to be considerable and costly. The staff time and training required to accurately maintain such databases are enormous. These issues would be multiplied several times over if the time necessary to develop and maintain a system to accomplish what the OPPAGA report suggests for the treatment program at the SVP facility was dedicated. The Department and Liberty's resource priorities, in the near term, are directed toward providing

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

the essential components of the treatment plan in a noncorrectional environment that affords maximum protection for the community.

Issues Regarding Sexual Behavior

Response:

OPPAGA's report contains no criticism of Liberty's handling of the issue of resident sexual activity generally, or the alleged assault. No recommendation was made in this area, other than a generalized reference to the importance of documenting incidents of sexual activity. The Department notes that the incident, which resulted in a law enforcement sexual assault investigation, was thoroughly investigated by Liberty staff and was, in fact, very well documented.

The Department does not condone sexually inappropriate behavior by Liberty employees or consultants, wherever it may occur. The description of the event reported by OPPAGA, if assumed to be accurate, certainly constitutes behavior that was in very poor taste that should have been curbed immediately, even considering that the event was an after-hours party away from the facility. It does not appear however, that the actions by the alleged "drunken staff member" impacted Liberty's provision of services or any of its obligations under the contract. Also, it is not apparent that any criminal misconduct was involved.

The OPPAGA report also implies that the employee who threatened a sexual harassment suit never filed a complaint of any sort. The Department never received and has no knowledge of any such complaint. The Department's Sexually Violent Predator Program (SVPP) Director discussed the incident with Liberty officials and explained the importance of maintaining a professional and positive public image while operating such a high-profile program on behalf of the State. In the intervening 11 months, there have been no further public incidents of this sort. Nevertheless, the Department will refer the matter to the Office of Inspector General, for whatever action is deemed appropriate.

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

II. MONITORING THE TREATMENT CONTRACT

Response:

Monitoring Conclusions/Recommendations

The Department disagrees with the OPPAGA inference that the Department is neglecting its oversight duties with regard to the Liberty contract and the operation of the treatment program and facility.

The Department agrees with the OPPAGA recommendation that the Department conduct a formal monitoring of the program at Martin Treatment Center, but it is not feasible in terms of timing and, the Department believes, would not be fiscally possible to conduct a formal monitoring of the facility immediately prior to its closure. The Department's present contract with Liberty for the operation of the Martin Treatment Center will expire on October 31, 2000. Shortly thereafter, the Department will execute a new contract with Liberty for the operation of the DeSoto facility. The Department will conduct a contract monitoring at DeSoto as soon as reasonably possible in 2001.

The Department intends to contract with the Mercer team for an independent review of the program in Spring 2001. Mercer, with its prior study of the program, should be able to most efficiently assess program progress since late 1999. The extent of the review may be limited by available funding, because the SVP program anticipates that relocating to and operating the DeSoto facility will consume the 2000-2001 appropriation, which did not include any funding for such a review.

Intensive Program Scrutiny Since Inception

Contrary to the OPPAGA finding, the Department believes that the program has been highly scrutinized to date. There have been no fewer than seven formal reviews of the program and facility since Liberty arrived at MTC in July 1999. These reviews were as follows:

- October 1999 - Department contract monitoring visit;
- November to December 1999 - Mercer program review;
- November 1999 to January 2000 - Jimmy Ryce Act Enforcement Task Force Review;

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

- June 2000 - Dr. Richard Kishur treatment program review;
- June 2000 - OPPAGA escape investigation;
- June 2000 - DOC security review related to the escape;
- July to September 2000 - OPPAGA special review (current review).

It is certainly true that the Department did not initiate all of these reviews, although the Mercer report, relied extensively upon by OPPAGA, was a Department project utilizing funds specifically appropriated by the Legislature for that purpose. The Department, however, fully participated in each assessment and considered the findings and conclusions in each case. As a result of each review, the Department and Liberty have acted to make improvements. The fact that the Department has relied on information compiled by these processes rather than repeated contract monitorings should not be viewed as mismanagement of the contract. Indeed, each of these reviews included site visits, extensive staff and/or resident interviews, and substantial document production. Such projects cause substantial disruption for the entire facility and consume a great deal of limited staff resources, for the provider and the Department. The Department does not believe that additional formal monitoring within the past 16 months has been indicated.

OPPAGA underscores its recommendation for increased monitoring by noting that the Mercer and Kishur reviews "have identified limitations with the program's performance." These reports did make recommendations for improvement in the treatment program and facility operations. Any thorough and objective review should do precisely that. It is important to note, however, that these reviews did not find the treatment program or Liberty's performance to be inadequate. The Jimmy Ryce Act Enforcement Task Force likewise concluded that:

Liberty Behavioral Health Care Corp. (Liberty), DCF's contracted provider that assumed operation of the treatment center in July 1999, has performed very well in designing and implementing the treatment program to date. Residents and detainees are afforded the opportunity for substantial and meaningful treatment and therapeutic activities. Martin Treatment Center has well-qualified professional staff.

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

The identification of areas for improvement in the various program reviews should not be considered indicative of either an underperforming provider or an inattentive Department failing to actively manage the program. Even the OPPAGA findings in the instant report are more reflective of a well-functioning treatment program that should continue to be fine-tuned.

Interpretation of Escape and Legal Challenges

The Department also disagrees with OPPAGA's conclusion that the June 2000 escape from MTC and MTC residents' legal challenges to the validity of treatment are indicative of inadequate Department contract management.

The issues surrounding the escape incident were fully addressed in the prior OPPAGA report on that incident and the Department will not discuss them here.

A brand new program that has as a central tenet the deprivation of personal liberty will always generate the full panoply of possible legal challenges to the program's validity. Even if the State afforded an army of lawyers and clinicians to closely monitor the Liberty's treatment program and facility operation on a daily basis, the legal filings by residents and their counsel would still occur. What is far more telling is that none of the challenges to the validity of the treatment program have been successful. The SVPP Director has also anecdotally noted that challenges to the treatment program at MTC have actually declined over the last several months. One trial court in February 2000 found that the Department and Liberty had implemented a full mental health treatment program for sex offenders at MTC.

Department Receives Frequent Informal Program Feedback

The Department also notes that, in addition to the formal reports addressing MTC treatment and operations, it frequently receives informal input from outside clinicians, state attorneys and public defenders. While this input is not generally formalized, Department and Liberty staff confer, on a daily basis, on specific treatment and operational issues that are raised by these collateral stakeholders and make improvements where it is determined to be needed. Since arriving at the facility last July, the trend of this informal input is that Liberty has significantly improved treatment and its ability to address general resident needs. For example, after a recent visit to the facility, Dr. Ted Shaw, the Department's contractor for evaluation services, praised the progress in the treatment program.

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

Administrative Rules for Facility Operations Not Authorized

The Department does not agree with OPPAGA's recommendation that the Department promulgate administrative rules for the operation of the treatment facility. The Department does not have the authority to promulgate such rules.

The Legislature has, in no uncertain terms, limited agency rulemaking authority to subjects clearly provided for in the Florida Statutes. According to §120.536(1), F.S. (1999),

"A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling legislation. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conveyed by the same statute."

The Jimmy Ryce Act, § 394.930, F.S. (1999), as amended by Chapter 2000-139, Laws of Florida, specifically authorizes the Department to adopt rules for:

- (1) Procedures for the multidisciplinary team to follow when conducting the pre-petition risk assessments;
- (2) Criteria for commitment;
- (3) Designation of secure facilities for civil commitment;
- (4) Components of the basic treatment plan;
- (5) Informed consent protocols for the risk assessment interviews; and,
- (6) Continuing education requirements for risk assessment evaluators.

The Department has no authority to adopt rules that address the operation of the sexually violent predator treatment facility.

RESPONSE TO OPPAGA'S SPECIAL REVIEW OF EFFECTIVENESS AND MONITORING OF MARTIN TREATMENT CENTER FOR SEXUALLY VIOLENT PREDATORS

Conclusion:

The Department appreciates the hard work and detailed attention that OPPAGA staff devoted to reviewing the operation of the Martin Treatment Center and the Department's supervision of its contract with Liberty. Any serious review of a program this size and complexity will identify areas where everyone involved can make improvement. Indeed, the mere process of the OPPAGA investigation, even prior to the issuance of the report, has helped focus the Department on process management issues that can and should be addressed.

The Department is unable to agree, however, with the implied OPPAGA conclusion that Liberty is not performing satisfactorily, and the stated conclusion that the Department's oversight of the program is lacking. Several reviews of the program, and OPPAGA's findings, better support the conclusion that the Department and Liberty are performing well, under less than ideal conditions, and are committed to assessing and improving performance on a continuing basis.

The Department continues, as it has since program inception, to prioritize issues to be addressed so its limited staff and funding resources can be directed toward ensuring the provision of a bona fide treatment program within an appropriately secure environment that satisfies the dual purposes of the Jimmy Ryce Act: protection of the community, and non-punitive sex-offender treatment for facility residents. While the Department and Liberty are involved in difficult macro-level program transformations, such as the renovation of the DeSoto prison facility and the relocation of the entire program, formal contract monitoring or similar reviews are not feasible allocations of scarce resources.

The Department agrees with the OPPAGA recommendation that the Department conduct a formal contract monitoring, but believes that it is not feasible to meaningfully monitor the program immediately prior to the December 2000 closure of the current facility and the relocation to the new temporary facility at DeSoto Correctional Institution. The Department will perform a contract monitoring as early as possible in 2001. The Department also intends to bring the Mercer consultants back to review the program in Spring 2001.