SENATE FINANCE & CLAIMS
Exhibit No. 3
Date 3-11-15
Bill No. HB 191

Rights group says poor supervision, oversight led to Montana State Hospital rape by convicted sex offender

FEBRUARY 14, 2010 7:30 AM • BY TRISTAN SCOTT OF THE MISSOULIAN

A female patient at Montana's psychiatric hospital was reportedly raped by a convicted sex offender in March 2008, and the state recently paid a $375,000 settlement to avoid litigation in the case.

More glaring than the sexual assault on a mentally ill, newly committed patient, however, is the lax supervision and lack of oversight that allowed the rape to happen at a state-run hospital, according to a Montana civil rights group that investigated the claim.

Disability Rights Montana, a private nonprofit law firm required by the federal government to investigate allegations of abuse or neglect, not only found that hospital personnel failed to comply with their own policies - a lapse in procedure that gave a convicted rapist unfettered access to the hospital's general population - but that other patients notified staff of the rape while it was in progress, and yet still no steps were taken to investigate the claim.

According to a negligence claim filed with the Montana Department of Administration, the man locked himself and the then-27-year-old patient inside a hospital bathroom for 90 minutes without staff noticing, and on two consecutive nights was allowed to hold court in the general unit's "day room" while leading a group of mentally ill inpatients in a sexually charged game of "Truth or Dare" until 2 a.m., more than three hours after the hospital's mandatory lights-out policy.

"It was like putting a fox in the henhouse," said Charlie McCarthy, an advocacy specialist with DRM. "He was given campus privileges. He was walking around on campus."

"He obviously should never have been permitted unfettered access to female, involuntarily committed inpatients at the Warm Springs Hospital," McCarthy said. "This tragedy was entirely avoidable."

It was. But given the findings of DRM's investigation, it was also entirely predictable.

***

"It was not a question of 'if' but rather a question of 'when,' " said Terance Perry, a Missoula attorney who represented the victim in the case, a Superior woman who court papers identify only by the initials K.G., and whose name the Missoulian is witholding to protect her privacy.

The events that led to K.G.'s rape are described in a lengthy negligence claim that Perry filed with the Department of Administration in March of last year. In order to assert a state law claim such as negligence, Perry had to comply with the Montana Tort Claims Act, which says that notice of a lawsuit must be given within two years of the date of the alleged

event. The Department of Administration must then confirm or deny the claim, or make a settlement offer to avoid litigation, which is the course of action it took, resolving the claim on its merits on Nov. 6, 2009.

"This was such a glaring case of liability that I did send it to the department to get it resolved without litigation. I never filed suit in the case." Perry said. "I felt it was necessary to go through those steps because they had a Level 3 sex offender in the hospital's general population. It was at the height of recklessness to place that guy in the general population. These are our most vulnerable members of society that are in this hospital. It was completely avoidable."

***

K.G. was admitted to the Montana State Hospital at Warm Springs on March 24, 2008, for treatment of depression and attempted suicide. She had a history of post-traumatic stress disorder from sexual abuse suffered both as a child and in her early 20s.

Shortly before her admission to the state hospital, K.G. was admitted to Pathways Treatment Center in Kalispell after trying to overdose on 30 Klonopin, an anti-anxiety drug. She then tried to hang herself with a pair of pajama pants while at the treatment center's Special Care Unit, and was committed at Warm Springs.

For the better part of a decade, K.G. had been treated as an outpatient in various community settings, but due to her depression and propensity to hurt herself, she was also admitted to the state hospital several times between 2006 and 2008.

When she arrived in March on the hospital's Spratt Unit, which houses both male and female patients, K.G. did not know that violent sexual offenders and sexual predators were allowed to commingle with other patients in the general population.

Hospital staff, on the other hand, did know that Jason Marshall was a Level 3 sex offender who in 2002 was convicted in Missoula County of raping a 12-year-old girl. A Level 3 designation on Montana's three-tier sex offender registry means the person is at high risk of re-offending.

A parole violation landed Marshall in the Missoula County jail in December 2007, and an apparent suicide attempt had him committed to the state hospital later that same month. But instead of assigning him to the hospital's forensic unit, which is reserved for dangerous offenders and patients convicted of crimes, Marshall was placed in a treatment unit for patients with co-occurring disorders.

Still, Marshall was supposed to have one-on-one supervision, McCarthy said.

***

For days after her arrival, Marshall pursued K.G., "essentially stalking her," according to the claim. During those several days, K.G. did not reject Marshall's attention, "but rather was flattered by it given her own largely absent self-esteem as compounded by depression, borderline personality disorder, post-traumatic stress disorder and her recent suicide attempt," according to Perry's claim.

Hospital personnel took no steps to intervene in Marshall's pursuit of her, however, and on the night of March 28, Marshall enticed a group of patients to play a game of "True or

False." K.G. was among the group that participated in recounting sexual experiences, which continued until about midnight, well after the mandatory lights-out hour.

The following day, Marshall approached K.G. to discuss the previous night's game, and told her he wanted to organize another game, but that it would now be "Truth or Dare" and participants would engange in sexually explicit behavior. K.G. again participated in the game - during which Marshall exposed himself - but tried to end her participation and go to bed after 30 minutes.

At about 2 a.m., Marshall coerced K.G. to perform oral sex on him, "and she did so only as a result of his coercion and the duress exerted upon her." She then went to bed and told no one what happened.

The following day, Marshall continued to pursue K.G., indicating that he wanted more oral sex, that he wanted to have sex, "and making other objectively predatory comments," the claim states. K.G. rejected his advances and said she did not want to have sex of any kind.

That evening, Marshall instructed another patient to have hospital staff unlock a restroom, and then prop the door open with a towel. Marshall then coerced K.G. into the bathroom and demanded oral sex. She began experiencing flashbacks from prior sexual abuse, and asked to leave the bathroom, but Marshall forced her to stay. He alternately forced her to perform oral sex on him and watch him masturbate.

"K.G. believes she was trapped in the bathroom for approximately 1.5 hours, yet no staff ever came looking for either Marshall or K.G.," according to the claim. "K.G. was crying and shaking violently as she left the bathroom, as at least one other patient observed. What is most troubling is the fact that a patient expressly informed an MSH employee that he believed Marshall and K.G. were engaged in sexual relations in the men's bathroom, but the employee did nothing to intervene."

After K.G. informed staff what happened "while violently crying and shaking and beating her head against the wall of her room, she was transferred to another unit and the Anaconda Police Department was called to investigate. Marshall was taken into custody and returned to the Missoula County Detention Facility.

"Apparently, staff had concluded that Marshall had reached 'the maximum benefit of treatment,' " the claim states.

"After this event they discharged him because he was apparently at a medical end point in terms of improvement, and this was on the heels of having raped this girl," Perry said. "I don't understand it."

On June 26, 2008, Marshall was sentenced on a parole violation to 15 years in the Montana State Prison, with five years suspended. Charges were never filed in the sexual assault on K.G.

***

Disability Rights Montana began investigating the rape claim almost immediately, but did not submit its complaint to the Montana Department of Health and Human Services until May 2008, several weeks after Montana State Hospital administrator Ed Amberg signed off on a report concluding there was no evidece of neglect by the staff.

Both DRM investigators and Terance Perry disagreed with the hospital's conclusion.

"To argue that there was no neglect with respect to (K.G.) and negligence on the part of the state of Montana in permitting the events at issue to have transpired is to argue that water is not wet," Perry wrote in his claim.

The hospital's proposed corrective action included giving "consideration" to revising the nursing stations to enhance observation of patients, and to expect staff to check the bathroom and shower areas at a minimum of every hour and more often "when a need is indicated."

Amberg recently retired as hospital administrator after approximately 20 years, and attempts by the Missoulian to contact him at his home in Anaconda were unsuccessful.

Department of Health and Human Services director Anna Whiting Sorrell made the following statement about the state's decision to settle the claim:

"This was an unfortunate incident and one that we hope will never happen again. The State Hospital has a very difficult mission in balancing all patients' interests in privacy, freedom, and safety," Sorrell wrote in an e-mailed statement. "The state agreed to an early settlement in this case because we believed it was in everyone's best interests, it would avoid the uncertainties of litigation, and it will allow the patient to move on with her life."

Sorrell said it would not be appropriate for the Montana State Hospital's new administrator, John Glueckert, to comment about what the hospital is now doing to ensure that convicted felons and sexual offenders receive adequate supervision. However, Sorrell said both Marshall and K.G. were patients committed to the hospital by court order for treatment of their mental health issues.

"Neither was at the hospital because of criminal activity," she said. "It would be very unusual for a patient that is under a civil commitment to be placed in the forensic unit."

Sorrell said Marshall had been observed at the state hospital for two months prior to the incident with K.G. and there were never any reports of unwanted sexual advances by him against other patients.

***

A task force appointed to determine the extent to which sexual behavior is a hospitalwide problem found that it is not widespread, but several measures were put in place to prevent problems from occurring again, she said.

Since the incident, more than 100 video security cameras have been installed at the hospital, and patients are allowed into bathing rooms only at scheduled times. Automatic locks were also installed in the bathrooms, and a class called "Healthy Relationships and Sexuality" was also developed. Sorrell also initiated an "After Action Review" of the entire incident to ensure that task force recommendations and the hospital's corrective action plan are being followed.

"Both I and the 400 State Hospital employees are committed to patient safety. We have made several positive changes at the hospital to help address the complex issue of patient sexual behaviors, and these efforts will continue as we move forward with the important work of mental health treatment," Sorrell wrote in the e-mail.

Bernadette Franks-Ongoy, executive director of DRM, said the organization has set up an appointment with the new administrator to address what actions are being taken to ensure that a newly admitted and vulnerable patient with a diagnosed mental illness is not allowed in the company of a sexually violent predator, unmonitored by hospital staff.

"We have an expectation that when people go to hospitals they are going to be safe and they are going to get the kind of treatment that will bring them back to a healthy position," Frankes-Ongoy said. "Clearly, that is not what happened to K.G. We are really pleased that the hospital was held responsible for its negligence."

Perry said the Montana State Hospital's own policies regarding the forensic unit are perfectly adequate as long as they are followed.

"This rule that violent convicted felons coming from lockup are on the forensic unit, that rule is in place for a reason. That's not subject to their own whim and caprice. They are required to comply with those regulations. Those regulations really just codify common sense," Perry said. "You really just cannot put the fox in the chicken coop."

Reporter Tristan Scott can be reached at 523-5264 or at tscott@missoulian.com.