D e b r a A. P i n a l s, M. D.

Board Certified in Psychiatry, Forensic Psychiatry, and Addiction Medicine

Neutral Expert Fifth Report
Regarding the Consolidated *Mink and Bowman* Cases

Date of Report: 4/17/23
Neutral Expert: Debra A. Pinals, M.D.

Background and Context of this Report

On 12/21/21, the Honorable Michael W. Mosman, U.S. District Judge for the United States District Court for the District of Oregon, Portland Division, entered an order appointing me, Dr. Debra Pinals, as a Neutral Expert in granting a Stipulated Motion from defendants at the Oregon Health Authority (OHA) and the Oregon State Hospital (OSH) and plaintiffs Jarrod Bowman, Joshawn Douglas-Simpson, Disability Rights Oregon, Metropolitan Public Defender Services, Inc., and A.J. Madison. The Court's order consolidates two cases, *Bowman et al v. Matteucci* et al (Case Number: 3:21-cv-01637-MO) and *Oregon Advocacy Center et al v. Mink* et al (Case Number: 3:02-cv-00339-MO) and identifies *Mink* as the lead case. Through this consolidation, the *Bowman* case was reassigned from the Honorable Marco A. Hernandez to Judge Mosman.

Judge Mosman's order stipulates further that OHA enter into a contract with the Neutral Expert and provide any needed information to her. The Court ordered that the Neutral Expert should "make recommendations to address capacity issues at the Oregon State Hospital." The order delineates that the first report from the Neutral Expert include "suggested admissions protocol that addresses the admission of patients found unable to aid and assist in their own defense under ORS 161.370 (.370 patients) as well as patients found to be Guilty Except for Insanity (GEI patients)." The Court further ordered a second report by the Neutral Expert to include "a short report and recommendations for a proposed long-term compliance plan for OSH." I submitted my First Report on 1/30/22 and Second Report on 6/5/22 to the Court in accordance with those orders. Then, on 6/7/22 the Court ordered my ongoing appointment and stated, "Beginning on September 7, 2022, Dr. Pinals will provide brief quarterly reports to update the Court regarding compliance status and any needed additional recommendations to address any barriers to achieving compliance." The following reports have since been submitted: Third Report on 9/15/22 and Fourth Report on 12/21/22.

In accordance with the Court's order and given the many moving parts to this matter, this report will reflect a brief summary as my Fifth Report in this matter.

Background and Summary of the Two Consolidated Cases

A more detailed background to these cases is reviewed in my prior reports. In summary, state defendants were previously found by the Ninth Circuit (*OAC v. Mink, 2003*) to be out of compliance with Constitutional requirements and were ordered to admit individuals found unable to Aid and Assist to Oregon State Hospital for restoration within seven (7) days. Compliance with that order has been an ongoing challenge with some periods of improvement, but it faltered further around the COVID-19

pandemic. In December 2021, after further litigation, the parties entered an interim settlement agreement that involved the appointment of a Neutral Expert to provide recommendations to help achieve compliance with the Ninth Circuit's seven (7) day admission requirement. Since that time, efforts toward compliance have continued but compliance has yet to be achieved.

In a separate litigation, in November 2021, plaintiffs Jarod Bowman and Joshawn Douglas-Simpson brought action against the OSH and Oregon Health Authority (OHA) (plaintiffs were later joined by Metropolitan Public Defender) for failure to timely admit these individuals adjudicated Guilty Except for Insanity (GEI) by the Multnomah County Circuit Court, after the Honorable Nan Waller had ordered them to OSH for treatment, without unreasonable delay. After further litigation, The Honorable Marco A. Hernandez, United States District Court Judge, did agree with the defendants that a consolidation of the *Mink* and *Bowman* cases made sense. At the time of the appointment of the Neutral Expert for the consolidated cases, the parties entered an interim agreement that no individuals found GEI would wait longer than four months for admission to OSH.

The Neutral Expert First report recommended that given the much smaller number of GEI cases, and the longer waits in jail for a hospital bed for that population, that there be one waitlist for people waiting in jail for a bed at OSH, whether GEI or under the Aid and Assist process. Both those waiting times continue to be tracked as part of this consolidated litigation.

Qualifications to Perform this Work

My qualifications to render opinions as the Neutral Expert were described in my first report. In summary of that experience, I have worked for almost twenty-five years as a clinical and academic and forensic psychiatrist, and over twenty years functioning in state and local level behavioral health administrative leadership, management, policy and legislative development, clinical treatment, forensic evaluation, and consultative roles across several U.S. jurisdictions.

Sources

Background court and legal documents I have reviewed during this interim period for this matter include:

1. *Mink* 0339 Court Order Granting Motion for Stay of Deadlines. Joint Status and 5/9/22 Joint Status Report;
2. Mink 0339 COURT Order Consolidating Cases and Appointing Neutral Expert #240, signed 12/21/21;
3. Bowman 1637 COURT Order Consolidating Cases and Appointing Neutral Expert #21, signed 12/21/21;
4. Bowman 1637 COURT Notice of Judicial Reassignment from Judge Hernandez to Judge Mosman #20;
5. *Mink* and *Bowman* Interim Agreement, Filed 12/17/21;
6. *Bowman* 1637 PLD Plaintiffs 1st Amended Complaint #22;
7. Order on Joint Stipulation to Continue Appointment of Neutral Expert, signed by the Honorable Michael W. Mosman, 6/7/22;
8. January 30, 2022, Neutral Expert First Report, dated 1/30/22;

9. June 5, 2022, Neutral Expert Second Report, dated 6/5/22;
10. September 15, 2022, Neutral Expert Third Report, dated 9/15/22;
11. *Bowman* Opinion and Order, Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Trailing Case), signed by Judge Mosman 8/16/22;
12. Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Member Case), Order to Implement Neutral Expert's Recommendations, signed by The Hon. Michael W. Mosman on 9/1/22;
13. Legacy Hospital 1460 PLD Motion to Dismiss (#30);
14. Legacy Health 1460 PLD Disability Rights OR Unopposed Mtn for Amicus Brief #32 (L183147-01);
15. Activity in Case 3:02-cv-00339-MO Oregon Advocacy Center et al v. Mink et al Opinion and Order Denying Intervenor's Mtg to Modify 9.1.22 Order (#338), signed 1/9/23 by The Honorable Michael W. Mosman;
16. Intervenors' Response to Plaintiffs' Motion to Clarify Order on Intervention;
17. Plaintiffs' Response to Amicus Brief in Support of the Motion to Dismiss Plaintiffs' Amended Complaint;
18. Legacy Hospital 1460 PLD Def's Reply ISO MTD #55 (L183147-01);
19. Unopposed motion for extension of time to discharge (up to five) patients;
20. Plaintiffs' Motion for Order Requiring Marion County Sheriff to Transport Patients and Docket 360 Declaration of Derek Wehr;
21. Oral Argument Transcript of Proceedings Before The Honorable Michael W. Mosman, Case No. 6:22-cv-01460-MO, 3/31/23 (hearing 4/4/23); and
22. Mediation documents as permitted by amici, intervenors, plaintiffs and defendants.

Although some documents may have been inadvertently not included or not included in detail for confidentiality reasons, additional background documents I have reviewed in the interim between this report and my prior report include the following:

1. OSH Forensic Admissions and Discharge Bi-Weekly Reports;
2. OSH Forensic Admission and Discharge monthly data dashboards January to April 2023;
3. Monthly Average Wait Time Prior to Admission Progress Metrics for Benchmark Goals;
4. *Mink & Bowman* Monthly Progress Reports from OHA from January, February, March and April 2023;
5. Letters from Steve Allen for CHOICE, Civil, and Aid and Assist clarifications
    a. "CHOICE Letter…"
    b. "CMHP Letter…"
6. OHA Aid and Assist Legislative Concept
    a. "LC0520 DRAFT…"
    b. "LC 520 OHA Explanatory…"
7. Information on provider fee increases
    a. https://www.oregon.gov/oha/HSD/OHP/Pages/BH-Rate-Increase.aspx
8. Mink/Bowman Progress Update Meeting PowerPoint
    a. "12.15.22 Neutral Expert Task Updates – Final Presentation"
    b. "12.15.22 Neutral Expert Task Updates – Final Appendices"
9. Community Navigator Program Comparisons
    a. "CN Models Review"

10. Aid & Assist Patient LOCUS Score Analysis September 2019 through September 2022;
11. Presentation on Information Court Must Consider When Determining Appropriate Placement, prepared by Debra Maryanov, Oregon Judicial Department, 12/6/22;
12. Aid & Assist Placement Data sent to OHA from OJD received on 12/20/22;
13. Notice RE 10-day HLOC assessments and follow up letter, dated 1/10/23;
14. Email communications December 2021 regarding the OSH Notice regarding hospital level of care assessments by day 10;
15. Impacts Legislative Report 2023;
16. Introduced HB 2460;
17. Introduced SB 219;
18. Introduced SB380-01;
19. Marion County Orders ordering Sheriff not to transport a defendant until an updated progress report pursuant to ORS 161.371;
20. AOCMHP Recommendations for solutions to over-representation of Aid and Assist clients at OSH;
21. Felony Measure 11 Tracking Sheets;
22. Disability Right's Oregon Support of SB 219 draft testimony;
23. Letter to Superintendent Dolores Matteucci from The Honorable Audrey J Broyles, Marion County Circuit Judge, dated 2/22/23;
24. Two sample FES reports sent by Mr. Jesse Merrithew;
25. Legal skills curriculum for OSH (Legal Understanding, Working with Your Attorney, and Making Decisions in Your Legal Case);
26. Civil expedited admissions protocol from June 2023;
27. OHA Behavioral Health Presentation 2023 received by Ms. Carla Scott on 4/3/23;
28. Sample Continuing Care Discharge Plan documentation from OSH;
29. OSH .370 Order;
30. Behavioral Health Financial Assistance Agreement contract negation language provided by Mr. Brad Anderson, 4/11/23;
31. OJD 365 Evaluations data 3.24.23 and OJD Aid & Assist Data 2.17.22;
32. Request for Response: FCP OAR 309-090-0025 Rule Revisions and miscellaneous responses;
33. Lewis and Clark Law Student Data Analysis draft report and presentation;
34. Data on civil commitment, voluntary, and voluntary by guardian admissions, sent to me on 4/14/23 from Mr. Scott Hillier; and
35. Miscellaneous media stories, including Lund reports.

Regular/semi-regular meetings during this interim period from my prior report including the following meetings and discussions:

1. Periodic meetings and communications with Judge Mosman and Judge Beckerman;
2. Numerous meetings with OHA staff including Mr. Cody Gabel , Mr. Bill Osborne (currently OSH staff as of the time of this writing), OSH staff Mr. Scott Hillier regarding data requests, Drs. Beckman and Davies and Ms. Micky Logan regarding FES, and Dr. Sara Walker, CMO OSH, Ms. Della Hoffman, Director of Social Work, OSH and others;

3. At least Weekly or bi-weekly meetings and several ad hoc meetings with OHA, OSH, DRO and MPD representatives and leaders both separately and together. In addition, I met with staff from these agencies at various points in this interval period.
    a. From OHA, OSH, the weekly/bi-weekly leadership meetings have included:
        i. Prior administrative leaders, Steve Allen, Director of Behavioral Health, OHA, Dawn Jagger, Chief of Staff, OHA
        ii. Prior administrative leaders including Yoni Kahn, former Chief of Staff, OHA;
        iii. Current administrative leaders including Ms. Ebony Sloan Clarke, Director of Behavioral Health, OHA; Mr. Dave Baden, Interim Director of OHA, and Dr. Dana Hargunani, recent CMO, OHA
        iv. Dolores Matteucci, OSH Superintendent-CEO
        v. Ms. Lindsey Burrows, Deputy General Counsel, Office of Governor Kotek
        vi. Ms. Annaliese Dolph, Behavioral Health Initiative Director, Office of Governor Kotek
    b. From Oregon Department of Justice (DOJ):
        i. Carla Scott, DOJ Special Litigation Unit Counsel
        ii. Sheila Potter, Deputy Chief Counsel, Special Litigation Unit, Oregon DOJ
    c. From Disability Rights Oregon (DRO), Emily Cooper, Legal Director, and Dave Boyer, recently onboarded at DRO as Managing Attorney
    d. From MPD as plaintiff party, Jesse Merrithew of Levi Merrithew Horst PC
4. Periodic discussions with OJD representation through Judge Nan Waller, Multnomah County

I have also had numerous discussions with individuals and groups, including but not limited to:

1. Listening session hosted by former OHA Director James Schroeder and Governor Kotek's Behavioral Health Initiative Director, Ms. Dolph, on 2/9/23;
2. Meeting with Dr. Alison Bort, Director, PSRB, with then OHA leadership, on 2/16/23;
3. Meeting with Ms. Cherryl Ramirez and AOCMHP leadership, 2/23/23 as well as other discussions with Ms. Ramirez;
4. Meeting with Mr. Billy Williams, 3/2/23;
5. Meeting with Mr. Eric Neiman, 3/30/23 and several subsequent telephone conversations with him;
6. Meeting with Mr. Billy Williams and Washington County District Attorney Kevin Barton on 4/4/23;
7. Meeting with representatives of Private Hospitals including Peace Health, Unity and Providence Hospitals, 4/4/23;
8. Meeting with Washington County representatives Mr. Tom Carr and Mr. Brad Anderson, 4/10/23.

I participated in a site visit and tour of OSH Salem Campus on 3/17/23. I observed a Court hearing that took place on 4/4/23 regarding the issue of transport of Aid and Assist patients. I also participated in two formal mediation sessions overseen by The Honorable Stacie Beckerman, one in-person on 3/16/23, and one by video on 4/10/23, involving representatives from private hospital intervenors and their counsel, as well as amici judges, county officials, and district attorneys and their counsel, as well as the parties to the Mink/Bowman case. Because of the confidential nature of that mediation further, details will not be provided in this report, though in principle the goal is to come to some agreement between

the amici and intervenors and the parties that could help move toward compliance while compromising on various positions represented by the various stakeholders in their prior court motions. I note as well that Hearings about transportation by the sheriffs and action on the state's motion to dismiss the filing by the private hospitals are still pending as of this writing.

Glossary of Acronyms and Terms Used in this and Prior Reports

A&A or AA: Aid and Assist
CCOs: Coordinated Care Organizations
CCBHCs: Certified Community Behavioral Health Clinics
CFAA: County Financial Assistance Agreements
CMHPs: Community Mental Health Programs
DOJ: Department of Justice Oregon
DRO: Disability Rights Oregon
FES: Forensic Evaluation Services
GEI: Guilty Except for Insanity
HLOC: Hospital Level of Care
IMPACTS: Improving People's Access to Community-Based Treatment, Supports, and Services
ISU: Intensive Services Unit
MOOVRS: Multi-Occupancy OSH Vacancy Resource & System Improvement Team
MPD: Metropolitan Public Defender
OCBH: Oregon Council for Behavioral Health
OCDLA: Oregon Criminal Defense Lawyers Association
OHA: Oregon Health Authority
ORPA: Oregon Residential Provider Association
OSH: Oregon State Hospital
PSRB: Psychiatric Security Review Board
SHRP: State Hospital Review Panel
SRTF: Secure Residential Treatment Facility

Summary of Activities During this Reporting Period:

I have continued to meet with the state and the plaintiffs regularly to discuss progress and the implementation of my recommendations. This has been a busy time with numerous transitions in leadership across the state. I have been reviewing data throughout this interim period to help inform progress toward compliance and my work. I made a site visit to Oregon in March 2023 for the first mediation session and a tour of OSH.

Data Summaries

Background Data: Data received shows progress being made toward compliance. That said, this may be an artifact of two cohorts (Cohort 1 and 2) being discharged in a concentrated manner simultaneously. Also, with the number of AA orders continuing to increase, the trajectory may not be sustainable. Nevertheless, it does appear preliminarily that the 9/1/22 order by the Court is achieving the desired effect toward compliance. **Figure 1** and **Table 1** show decreasing numbers of people waiting for admission, with a downward in days waiting. For the average numbers of days people are waiting in a snapshot of the waitlist, one can see that this was 11.1 days on 4/1/23 compared to 21.7 days on

12/1/22. For individuals who were admitted the month prior (which is different from the snapshot average), defendants waited an average of 20.4 days during this reporting period, as opposed to 28.5 days noted at the end of November 2022, which is again going in a positive direction toward compliance (see also **Figure 3** for trends). The days waiting for placement with the Ready to Place list from OSH and the numbers of people waiting for discharge is growing, as seen in **Figure 1.** With 84 people determined by the hospital as ready to place in the community, if those individuals could be discharged, then the 51 people waiting for admission could be admitted, and the state would return to compliance. The number of GEI patients thought by the hospital to no longer need hospital level of care is also trending upward this reporting period. A concentrated effort at discharge of patients who are ready for discharge is critical.

Figure 1. Data Dashboard Charts Reflecting Progress in *Mink/Bowman* as of March 31, 2023

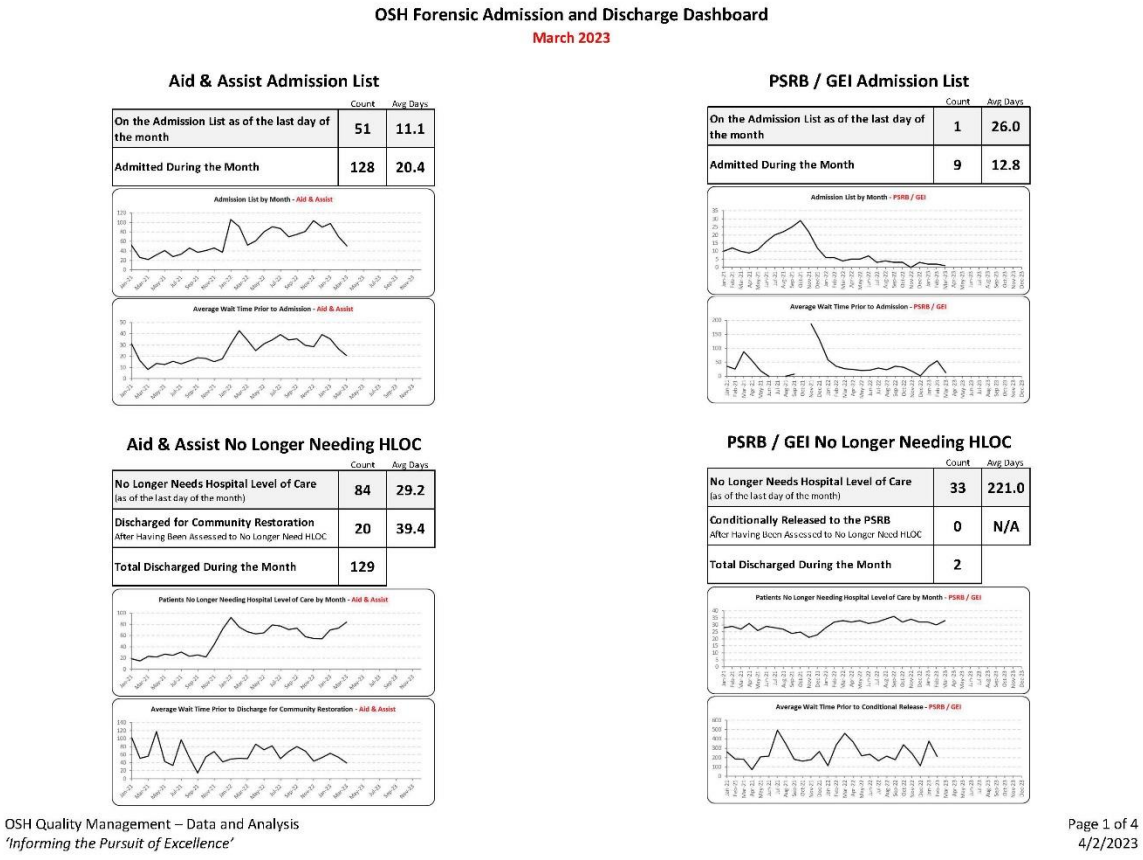

Table 1. Individuals Awaiting Admission

1. Regarding individuals on OSH admission list with signed and received A&A court order						
	As of 1/5/22	***As of 1/28/22***	***As of 5/1/22***	***As of 9/1/22***	***As of 12/1/22***	***As of 4/1/23***
Total Number of individuals	46	93*	67	70	104	51

Average days current individuals have been waiting	15.8 days	22.5 days	16.2 days	19.8 days	20.7 days	11.1 days
Range of Days on waitlist	2-23 days	3-44 days	2-28 days	3-34 days	1-36 days	1-18 days
2. Regarding individuals found GEI and ordered to OSH						
	As of 1/5/22	***As of 1/28/22***	***As of 5/1/22***	***As of 9/1/22***	***As of 12/1/22***	***As of 4/1/23***
Total number of individuals	15	4	3	4	0	1
Average days waiting	45.6 days	23 days	18 days	13.0 days	N/A	26.0 days
Range of Days on waitlist	1-110 days	17-28 days	12-26 days	3-20 days	N/A	26 days

*The marked increase in numbers awaiting admission was most likely a residual of the pauses in admissions due to COVID-19

Table 2 and **Table 3** show the capacity and census at OSH, which uses an operational active capacity metric and as of 4/1/23 had a census of 691 patients, the majority of which are in the A &A process. There are some vacancies in a neuro-geriatric unit that is going back to its pre-COVID-19 capacity. Overall, the hospital is operating at about 97% active capacity.

Table 2: OSH Bed Capacities as of 4/1/23*

Site	Licensed Capacity	Active Capacity
Salem Main Campus HLOC	502	472
Salem Main Campus SRTF	90	87
Salem Main Campus Total	**592**	**559**
Junction City HLOC	76	73
Junction City SRTF	75	72
Junction City Total	151	145
OSH Total	**743**	**704**

* Two Salem HLOC beds are temporarily offline

Table 3. OSH Census as of 4/1/23

Date	Aid & Assist	PSRB	Civil Commitment	Other	Total
9/1/2022	410	275	14	1	700
12/1/2022	396	279	13	0	688
4/1/2023	400	279	11	1	691

The ever-increasing demands on admissions for restoration are striking (See **Table 4** and **Figure 2**), with record numbers in January and March of 2023. Although the reasons for this are not clear, one theory that several stakeholders told me about was that as an unintended consequence of the 9/1/22

order that more individuals are being discharged into community restoration secure settings, which in turn now may be full. Thus, OSH may be the option viewed as appropriate by the Court for new defendants who might otherwise have been diverted to community restoration. Others have speculated that the Court is catching up with criminal filings after the pandemic. These are various hypotheses and will require further analysis. Trends for GEIs show some stability in order numbers but a slight increase in revocations in March 2023.

Table 4. Aid and Assist and GEI Orders

Number of Orders Received	Aid & Assist	GEI
April 2022	80	7 (4 standard/ 3 revocations)
May 2022	77	7 (4 standard / 3 revocations)
June 2022	75	6 (4 standard / 2 revocations)
July 2022	65	5 (3 standard / 2 revocations)
August 2022	74	7 (4 standard / 3 revocations)
September 2022	84	6 (5 standard / 1 revocations)
October 2022	95	3 (3 standard / 0 revocations)
November 2022	95	6 (2 standard / 4 revocations)
December 2022	73	4 (4 standard / 0 revocations)
January 2023	109	3 (3 standard / 0 revocations)
February 2023	74	5 (3 standard / 2 revocations)
March 2023	108	7 (2 standard / 5 revocations)

Figure 2. Aid & Assist Admissions/Orders Trends through March 2023

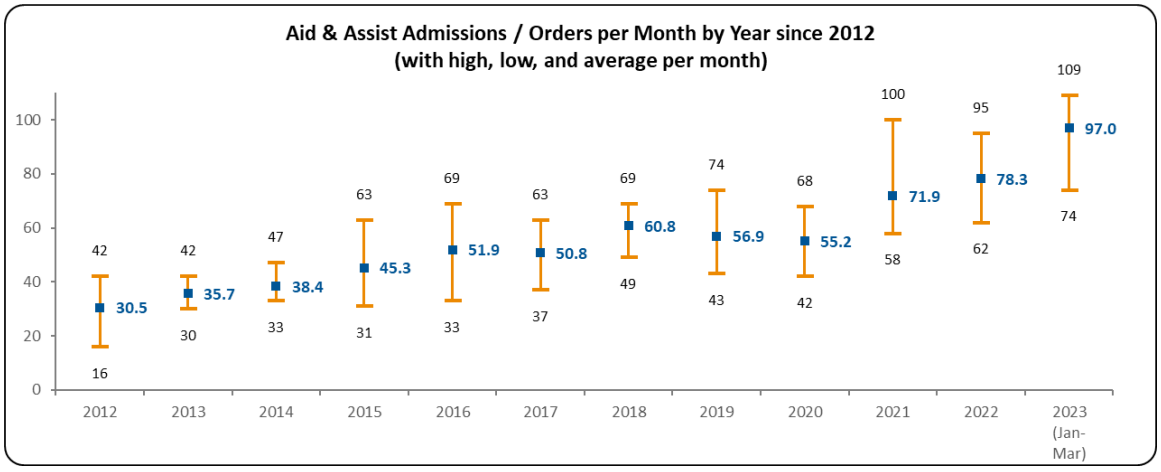

Figure 3 shows progress toward benchmarks and in the director toward compliance set forth in my June 2022 report. Again, although trends appear to be positive, compliance benchmarks have not

been achieved, and increases in admissions or other pressures could result in waitlist trend lines going up in the next few months.

Figure 3. Admission Wait Time Projections Compared to Benchmarks Set in Second Report based on data as of 4/1/23

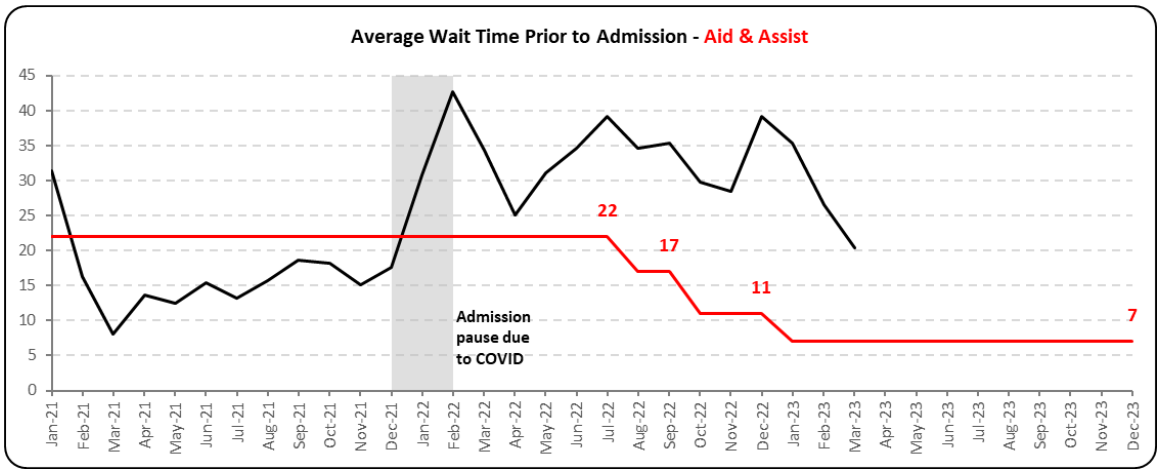

Figure 5 below shows data related to the order by Judge Mosman. At this time, of the 409 individuals who were in OSH at the time of the 9/1/22 order (so-called "Cohort 1"), only 42 were in the hospital as of 4/1/23 on their initial restoration order. It is unclear at this time how many have returned to the hospital, though this would be important to track over time. As noted further in **Figure 5** and **Table 5**, most patients are being discharged after being found able, and many are sent to community restoration. It is my understanding that the data for discharge reasons is such that those discharged prior to the end of restoration as unable and ordered to community restoration are labeled as "community restoration" discharges. Individuals discharged at the end of the Federal Court 9/1/22 restoration time may or may not be ordered to community restoration. This is not data that is depicted in the chart below, though it is something that I will be reviewing going forward. As I have noted in prior reports, increased demand on community restoration services raises several concerns, including the use of resources for restoration that may yield little restorative benefits after a period of hospitalization, while making throughput of bed utilization more challenging.

Figure 5. Discharge Data Related to the 9/1/22 Order by Judge Mosman

- **Cohort 1:** Patients at OSH at the time of the Federal Court Order
- **Cohort 2:** Patients admitted to OSH after the issuance of the Federal Court Order on 9/1/22

			Restoration Limit Notice Outcomes (total since 9/1/2022)			Discharge Reasons (total since 9/1/2022)							
Cohort 1	At OSH as of 9/1/2022	At OSH as of 4/1/2023	30-Day RL Notices Sent	Discharged Prior to Meeting 30-Day RL Notice Period	Discharged After Meeting 30-Day RL Notice Period	Found Able	Found Never Able	Community Restoration	Charges Dismissed or Released	Discharged After Meeting 30-Day RL Notice Period	End of Statutory Jurisdiction	Other	Total Discharged
Misdemeanor	85	0	51	25	26	18	2	29	7	26	3		85
Felony	217	10	100	28	62	68	13	54	10	62			207
Violent Felony	107	32	25	10	3	36	27	5	2	3	2		75
Total	**409**	**42**	**176**	**63**	**91**	**122**	**42**	**88**	**19**	**91**	**5**	**0**	**367**

			Restoration Limit Notice Outcomes (total since 9/1/2022)			Discharge Reasons (total since 9/1/2022)							
Cohort 2	Admitted since 9/1/2022	At OSH as of 4/1/2023	30-Day RL Notices Sent	Discharged Prior to Meeting 30-Day RL Notice Period	Discharged After Meeting 30-Day RL Notice Period	Found Able	Found Never Able	Community Restoration	Charges Dismissed or Released	Discharged After Meeting 30-Day RL Notice Period	End of Statutory Jurisdiction	Other	Total Discharged
Misdemeanor	217	94	97	31	50	37	12	18	5	50	1		123
Felony	344	198	42	15	10	88	12	30	6	10			146
Violent Felony	100	68	1			28	4						32
Total	**661**	**360**	**140**	**46**	**60**	**153**	**28**	**48**	**11**	**60**	**1**	**0**	**301**

Table 5. Legal Status of AA Discharges in March 2023 based on Hospital Data and Hospital Restoration Limits

March 2023 A&A Discharges

Reason	Cohort 1	Cohort 2	**Total**
Able	0	45	**45**
Never Able	4	13	**17**
Community Restoration	4	21	**25**
Dismissed	1	1	**1**
Restoration Limit	18	22	**40**
Total	**27**	**102**	**129**

Although the 9/1/22 Court Order related to length of restoration has allowed for the increase in discharges, with the actual numbers of admission orders far exceeding those that were originally projected, compliance with *Mink*'s seven-day admission provision by March 2023 was not achieved as projected initially and as depicted in **Table 6**.

Table 6. Projections vs. Actuals Admissions, Discharges, and New Restoration Orders

	Projected				Actuals			
Month	Discharges	Admissions	New Orders	Admit List	Discharges	Admissions	New Orders	Admit List
Sep-22	67	67	74	77	85	76	84	86
Oct-22	90	90	74	61	90	91	95	90
Nov-22	90	90	74	45	85	81	95	104
Dec-22	95	95	74	24	92	77	73	90
Jan-23	97	97	74	10	93	101	109	98
Feb-23	97	97	74	10	94	107	74	70
Mar-23	107	107	79	10	129	128	108	51

Restoration in the community is complex, and one of my earlier recommendations was to enhance data collection for this service. Data that is available is presented in **Table 7,** showing that 130 community restoration episodes lasted for over one year (987-857=130), despite the fact that defendants charged

with lower-level offenses are often the ones who are in community restoration. The maximum duration of restoration is unlimited by statute, and according to this OHA data for the period of data collection, the maximum days in restoration was 1399, and the median was 147 days. I note that data presented in my Fourth report showed the maximum number of days was 1222 and the median was still 147 days. There were 875 completed community restoration episodes up through 6/30/22, and 991 through 9/30/22, meaning that there were an additional 116 community restoration episodes in the last three months of data.

Table 7. CMHP Reported Completed Community Restoration Data 1/1/2019-9/30/2022

CMHP Reported Completed Community Restoration Data 1/1/2019-9/30/2022		
# of Completed Community Restoration Episodes**	991	
# of Days Minimum	0	
# of Days Maximum	1399	
# of Days Mean	197	
# of Days Median	147	
Days in Community Restoration	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**
0-90	311	31.38%
0-180	588	59.33%
0-365	857	86.48%
0-730	974	98.28%
0-1095	987	99.60%
*Missing Marion County Data for 7/1/2022-9/30/2022		
** Completed does not reference success of restoration, but rather indicates that the community restoration episode		

Data from an Oregon Judicial Department data analysis showed the Court cases for Aid & Assist doubled between 2020 and 2023 with 619 active cases on 1/1/20, and 1256 cases by 2/1/23 (See Figure 6). In **Figure 7**, OJD has presented data showing the percentage of cases committed to OSH by County. They note that some numbers are very small, which may skew the impressions of the data. The reasons for higher percentage commitments to OSH are many, but it might be useful to understand the drivers of these outcomes across the state, examining local practices and availability of community resources for outpatient restoration, for example.

Figure 6. Aid & Assist Caseload According to OJD Data

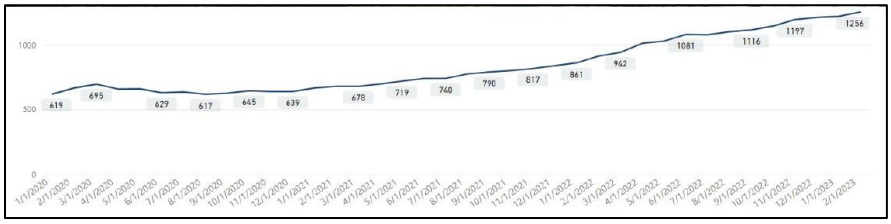

Figure 7. Percentage of Defendants Unfit to Proceed Committed to OSH by County per OJD Data

Of Defendants Who are Currently Unfit to Proceed, Percent Committed to OSH

COURT	% OSH	Current A&A Caseload	Current Placement OSH	COURT	% OSH	Current A&A Caseload	Current Placement OSH	COURT	% OSH	Current A&A Caseload	Current Placement OSH
Harney	100%	<5	<5	Clackamas	59%	59	35	Clatsop	42%	12	5
Morrow	100%	<5	<5	Multnomah	59%	160	94	Union	40%	5	2
Wallowa	100%	<5	<5	Marion	58%	110	64	Lincoln	36%	14	5
Linn	79%	19	15	Malheur	56%	9	5	Jefferson	33%	<5	<5
Umatilla	79%	19	15	Deschutes	53%	34	18	Tillamook	33%	15	5
Jackson	77%	44	34	Josephine	53%	17	9	Klamath	29%	14	4
Baker	75%	<5	<5	Crook	50%	<5	<5	Hood River	0%	<5	<5
Polk	75%	28	21	Curry	50%	14	7	Sherman	0%	<5	<5
Benton	71%	17	12	Lake	50%	<5	<5	Wasco	0%	<5	<5
Lane	68%	105	71	Douglas	48%	42	20	Gilliam	NA	0	NA
Coos	60%	15	9	Yamhill	46%	13	6	Grant	NA	0	NA
Washington	59%	91	54	Columbia	44%	16	7	Wheeler	NA	0	NA

This table shows the number of unfit defendants committed to OSH by each jurisdiction but does not explain the variations.

OJD Aid & Assist Data (data current as of 2/13/23) 2/17/2023 8

Forensic Evaluation data is also showing increased demand for services, and the FES staff have indicated that they continue to get orders for evaluations of people outside of OSH. **Table 8** shows recent data on active cases for which FES has been assigned to evaluate, 311 of which are not currently at OSH.

Table 8. Number of Active FES Cases as of 4/6/23

Type of Evaluation and Location	Number
.370 Evaluations at OSH	394
.370 Evaluations not at OSH	197
.365 Evaluations not at OSH	98
.315 Evaluations not at OSH	16
Total Cases	705

Updates Since my December 2022 Fourth Report

Updates from OHA:

In the period since my last report, Oregon has elected Governor Tina Kotek, and has seen the transition from OHA Director Pat Allen and Behavioral Health Director Steve Allen, as well as Chief of Staff Dawn Jagger. Each of these OHA leaders had been significantly involved in the work of *Mink/Bowman*. It was not clear in the transition how much the work was able to be briefed for Governor Kotek from Governor Brown initially. Mr. James Schroeder was named OHA director, and his Chief of Staff, Mr. Yoni Kahn was assigned to the work. In addition, Ms. Annaliese Dolph was appointed to lead behavioral health initiatives for Governor Kotek. During several meetings with them there was back and forth about SB 219 proposed legislation by OHA. When asked, I initially received unclear messages from OHA and Ms. Dolph about whether this bill would be supported by the high-level executive branch leaders, though eventually Mr. Kahn was able to receive positive word that the legislation would be supported. As this was happening, Mr. Schroeder and Ms. Dolph held a listening session town hall in which stakeholders conveyed their concerns about the 9/1/22 Federal Court order and other matters pertaining to the behavioral health system. After the listening session there was a plan to hold workgroups, but in our all-parties meetings several questions were raised about whether this plan would derail from the roadmap set forth previously. Shortly thereafter Mr. Schroeder put in his resignation, creating a need to re-orient to new leadership once again. Mr. Dave Baden was named in an interim capacity to lead OHA and Ms. Ebony Clarke came in as Behavioral Health Director. I have met with both and noted their strong investment in helping the state achieve compliance. Other transitions include the following: Mr. Kahn left his position, Mr. Bill Osborne transitioned from OHA to OSH staff, Ms. Dolph has been less involved in the all-parties meetings than previously, and Ms. Lindsey Burrows from the Governor's Office of the General Counsel has been actively participating. Ms. Clarke indicated that she has multiple vacancies on her team and is actively recruiting.

Taken together, the transition has not been as smooth as one would have hoped, but it does appear to be settling down some with the current leadership in place. I have been very appreciative that Dr. Hargunani has stayed within OHA for the time being to help ensure follow up to details and coordination with the state leaders. Ms. Carla Scott and Ms. Sheila Potter have also worked diligently to help their clients get caught up on the litigation and the recommendations to date.

While all the state leadership transitions were happening, in January as soon as she entered office, Governor Kotek declared houselessness as a state emergency and is invoking her powers to help combat this issue. This will undoubtedly help many of the individuals in forensic processes who are also houseless, and I look forward to seeing if there can be some initiative overlap in this regard.

The state's work on the recommendations for community-based services set forth in my Second Report will be reviewed in future meetings with the parties. However, during this interim period the work on these recommendations has not had the same elevated attention by the state or in the work with the parties due to the many moving parts of the system and the litigation.

Oregon State Hospital Updates:

Ms. Dolly Matteucci has contributed greatly to the activities related to this case, and it has been very helpful to have a steady hand helping sort through mechanisms to achieve compliance especially with all the leadership transitions for the state. The staff at OSH have been working diligently navigating record numbers of admissions and discharges to keep pace with the orders coming in, shifts in the time demands for the Hospital Level of Care (HLOC) considerations, and new restoration limits. At the end of February, I met with the professional staff at their annual meeting and listened to their concerns and ideas. There were several suggestions made, including an examination of medication practices that could be helpful. Although they feel they are doing the best they can, they reported some degree of demoralization given the number of times their work is viewed negatively, despite the fact that they are doing more with fewer resources, and are keeping pace with an onslaught of admission orders. The meeting was productive, and I look forward to hearing more from them over time.

Another issue that surfaced was when OSH sent a notice out in January about the change in HLOC determinations to day 10. This created some challenges for the CMHPs, and a clarification was issued at the request of Ms. Ramirez.

An additional ongoing concern is that the FES evaluators are finding themselves with increasing numbers of orders including for those in the community.

I met with several members of the clinical and forensic evaluation team to help review the Measure 11 cases that were due to be discharged by 3/15/23. After discussing these cases, there were five patients for whom additional time flexibility was sought and granted by the Court. This involved getting clinical updates to determine whether the individuals would meet civil commitment criteria, were not fit to stand trial, and/or would be subject to 701 commitment petitions by the district attorneys. There was a need to also identify housing or placement in the community. From conducting that review, many other patients were able to have discharge strategies catalyzed.

Dr. Walker and I met with Ms. Matteucci to review the civil expedited admission criteria. There is ongoing discussion about the existing criteria as noted in my Fourth Report, given concerns raised by the private hospitals that the criteria preclude the admission of people whose hospital course necessitates a stay at OSH. Through those discussions other needs were identified for information sharing. More work will likely be done to help achieve this.

OSH Site Visit Meeting with Patients

During my site visit I met with two patient groups and observed a legal skills group in process. For the two informal meetings with patients, DRO attorneys were present as was Ms. Carla Scott from DOJ. One of the patient groups I met with included about five patients, four of whom were hospitalized under a restoration order, and one was hospitalized under a 701 order. The patients varied in their length of stay, with one person at OSH for 1.5 years, and another having just arrived at the end of February. We heard the comments that it was “better than jail.” One patient described that in jail he had been in segregation much of the time, had been biting his arms and had been suicidal. One woman stated that she had been staying at OSH for about three months, but at the Marion County Jail she had been in isolation for 30 days. She stated she experienced hearing a microchip in her head, but when she went before the court, the Judge did not believe her- and she stated her experience in court was painful, as a Judge had used disparaging language referring about her diagnosed mental illness of schizophrenia, and

stated in open court that she did not believe the patient. Another patient described himself as a veteran having previously had mental health support through the VA. One of the patients had been living in a carboard box on the streets. He stated he had been at OSH once before and had been admitted related to low level charges. The social worker at OSH had gotten him connected to shelter care and homelessness supports, but then he was charged with Trespassing and Harassment and his supports "dissolved." He described a sense of dread and despair about "going back to the carboard box." The patient who was committed on the 701-commitment described how limited his options would be for placement as he had been deemed a "dangerous" person.

We also met with four patients who had been found GEI. The first had his first commitment, which was revoked about 3.5 years ago. He described that during the height of the pandemic he was restricted to the units, and he felt that he had been spending years "twiddling [his] thumbs." He stated that the PSRB was "very broken" and "very rigid," but he was looking forward to being out from under jurisdiction in 15 months. A second patient had been revoked for two years. He stated that the barriers to his success included the lack of infrastructure of community supports. He said he had not understood what it would mean to be found GEI when he agreed to make that plea in court. He said he has about five years left under PSRB jurisdiction, and although his son lives further away, he was agreeing to be conditionally released to a program in a different county so that he could get into the community. A third patient had been at OSH for four years, and he described the limited treatment that he was receiving. He said the PSRB had to approve his placement, and that it was difficult when placed in a situation where there were also people on civil commitments as they seemed to get more priority. The fourth patient had been at OSH for 33 months. She said she had never been on conditional release and was looking at placements in a group home. She stated they were good parts and bad parts to being found GEI. She felt that you can "get out of this place [OSH] what you put into it. " She said she had been working with a peer specialist, she had also been able to attend college classes and get certificates for classes. She said that the Aid and Assist patients take up much of the staff time and so she had to advocate to get therapy for herself.

Legislative Updates

In the prior administration and as noted in earlier reports, OHA worked to file legislation that addressed two of my recommendations: 1) modified limits to allowable restoration timeframes; and 2) a proposal to hire a consultant to study cost sharing and cost incentives for days spent at OSH. As the new administration took office, there were initial gaps in awareness of this bill (SB219) and its progress. This was followed by conversations to ensure alignment and ongoing support of the proposed legislation, though for a couple of weeks, the support by the state was unclear. Several meetings with the parties took place to achieve that alignment, and testimony to support the bill was being prepared, when on 3/8/23 the legislative hearing was cancelled. According to the parties, there was information that the bill had elements that were raising concerns from stakeholders.

Additional Community Initiatives:

The IMPACTS grant program that is administered by the Criminal Justice Commission had received additional funds to support their programs and continue to measure their progress. I will look forward to hearing of their work.

Forensic Evaluation Models:

I have not received the report from OJD leadership and the GAINS workgroup regarding models to consider for forensic evaluation services in Oregon. I will be meeting with representatives of OJD at the end of April for a follow up.

Input from Stakeholders including Prosecutors and Counties:

Much of what has been discussed has been under the cloak of mediation and will not be repeated here. However, it has been helpful to meet with District Attorney Barton and Mr. Williams outside of mediation to learn more of their perspectives. There is ongoing discussion about durations of commitment under the 9/1/22 order.

Information from Progress Reports to the Neutral Expert

Progress reports are submitted to me monthly, pursuant to the Court's order. They are also delineated on the state's website to help increase transparency around these matters (see: https://www.oregon.gov/oha/OSH/Pages/mink.aspx). The following updates are highlights of what I was provided:

- OHA restructuring CFAA to increase accountability currently halted
- PDES research study underway related to Aid and Assist
- Review of existing contracts with the CCOs and CMHPs to help expand scope to serve the AA population
- Expansion of about 16 SRTF beds in Lane County is ongoing
- Regional development and innovation investments- pending staff transitions
- Ongoing work with the SB295 hearings (though some motions to intervene by DOJ have been denied by state courts)
- Meetings with OJD leadership awaiting assignment to a particular OHA staff member
- OHA should explore means for timely discharge and development of additional resources for community providers to complete timely discharge planning documents for GEI patients
- OSH staffing continues to be a focus of attention. Nursing staff RNs and LPNs are disciplines for which there are staffing challenges

Several items were also placed on "pause" status. These included but were not limited to:

- Enhancing Community Restoration Program data collection
- Development of a Community Restoration manual and trainings
- Identifying assessment process to help facilitate discharges

The progress reports as written make it difficult to know when the items are completed in full or in concept or initiated. I note that the progress notes will at times mark an item complete when the item is not completed in full. For example, one easy lift is the "Mink/Bowman" website, which to date remains a "Mink" website, yet is marked complete. A meeting with the parties is currently planned for the end of April to review my recommendations from my Second Report and sort out these issues.

Recommendations and Comments

This period can be summarized by both the major transitions within state leadership and adjustment to the contours of the 9/1/22 order of the Court. I note that this report shows progress toward compliance with a downward trend in how many people are waiting in jail, and for how long. Still, with 51 people found unable to Aid and Assist having waited, as the last day of March 2023, an average of 20.4 days prior to their OSH admission, the state remains out of compliance with the Ninth Circuit's ruling to admit them within seven days. At the current rate, it will still take many months to achieve compliance, and there are many concerns that the downward trend will not be sustained. There is also tremendous pressure from stakeholders to make exceptions to the Federal Court Order, each with some reasonable intentions (e.g., perceptions of public safety, need for the level and duration of care that OSH provides with greater frequency, and concerns that substance use, houselessness, and safety net services make OSH the least restrictive appropriate alternative for many people). That said, with the pressures to reverse any of the advances of the Order, there is significant risk for a backslide on the trajectory. The parties and numerous stakeholders have engaged in complicated discourse to try to achieve remedies that can work from various vantage points through mediation, and where this ends up remains to be seen. That said, in making my recommendations along the way, my experience managing several hospital and community frameworks where a balance is required helps guide my opinions. Overall, my opinions rest on considering the use of OSH being prioritized for people who likely have the most clinical and forensic need for a state hospital psychiatric inpatient stay. Thus, there have been choices made that have gone against compliance but, in my opinion, represent important principled exceptions. One such example was with my recommendation for the state to request flexibility on the discharge dates of certain individuals charged with Measure 11 crimes during a time of massive transition accommodating to new timelines for restoration.

In the meantime, the leadership transitions at the state, and the various political forces and settling in of the new administration, has made focus on the community-based recommendations a challenge. The stakeholder engagement has been very strong, which is ultimately a good thing, but the leadership will want to organize itself around work done to date, without duplicating effort. It is therefore hoped that the transition of new state leaders at OHA will now enable a doubling down on organizing activities to achieve more movement on the recommendations that were set forth previously, with potentially revisiting any that have become stale. The parties of the *Mink/Bowman* matter have been engaged in ongoing dialogue and discourse and will be setting new dates for milestone accomplishments through the end of April/beginning of May. The state is hiring a consultant to help ensure the recommendations are delivered, and DRO worked with law students whose work will be reviewed by the parties as it pertains to patterns for pretrial defendants.

On the hospital side, OSH staff deserve much credit for their hard work in adjusting their timelines and continuing to manage the evaluations and treatment of the population under *Mink/Bowman*. The tireless actions of the professional staff should be acknowledged. Furthermore, the courts of Oregon, and all the professionals that support the criminal case processes, as well as the community behavioral health system should also be commended for the difficult work of sustaining services given the

increased demand for these services in the face of workforce shortages and countless other challenges. The behavioral health system overall has long been underfunded across the U.S., and Oregon is no exception, and ongoing investments are necessary.

Specific to the issues of compliance with *Mink/Bowman*, in my opinion the following recommendations should also be pursued, each of which is consistent with recommendations made in prior reports.

1. **Await Any Outcome of Mediation:** At the time of this writing, mediation is taking place under the guidance of The Honorable Stacie F. Beckerman. The outcome of that mediation may require further changes in practices or policies, and as such the parties should be standing by ready to pivot as needed.

2. **Focus on Discharges**: There are too many people identified as ready for non-hospital level of care settings who are not being discharged, and too many people coming into the hospital who very early on do not appear clinically to need this level of care. This is a major concern. Barriers to discharge identified have included the purported failure of various system partners to follow the SB295 requirements, as well as gaps in coordination between OSH and the community, and a lack of options for community-based placements. These will need to be examined by the new OHA leadership and OSH together, with the parties. If discharges are realized, it could yield compliance most immediately. Community Navigators should be part of the discharge planning (as identified further below) to also help reduce the risk of recidivism.

3. **Track progress of the 9/1/22 Order and Continue to Examine Regular System Level Data**: This will include asking the state to provide information such as data examining returns to OSH of the population as well as outcomes of restoration. It will be helpful to gather information about what would define "success" or "failure" beyond compliance with the Ninth Circuit 7-day admission timeline. Shortly after the order was first issued, amici prosecutors, counties and judges, and intervenor private hospitals inserted themselves, and argued that the order would cause many problems. The Honorable Michael W. Mosman utilized the phrase summarizing their concerns as a putative "parade of horribles" that he was hoping to understand better given the number of issues that were raised before him. To date, although the order has created system shifts and more patient turnover at OSH, many of the concerns I have heard do not appear directly related to the "Mosman Order" but to problems that had existed long before the order was issued, and they seem to relate to larger problems with behavioral health services. Thus, in my opinion, any review of the outcomes of this order should be specific to the order itself. This review should seek to examine any new issues from the order and identify factors that may help explain the increase in state court orders for admission for restoration.

4. **Limit Community Restoration to its Intended Purpose and Study its Utilization**: As I have said in nearly every report since my Second Report, community restoration, in my opinion, requires a significant set of changes. This should again be a major focus of effort, and I laid out specific recommendations in my Second Report to tighten this service and limit its duration of use. Without sufficient "throughput" in any system, there can be back-up, and this back-up could impact compliance. Moreover, the data showing a median of 147 days in community

restoration, and outliers that are spending *thousands* of days in community restoration, raises major concerns about the utilization of restoration for its intended purpose, and the extended court oversight of individuals who, but for their disabilities, would not be under pre-trial supervision for that length of time. This strikes me as a potential *Olmstead* and ADA issue of significant concern. Legislation to limit the duration of restoration recently was dropped from consideration, and in my opinion, it should again be elevated. In the meantime, I recommend the parties focus on studying these issues further.

5. **Reset Expected Milestone Timelines and Review all Recommendations from Second Report with New Leadership and the Parties**: The recommendations from my prior reports must be re-reviewed with the new OHA leadership. Any that have been completed can be marked as such, but there should be agreement on what "completed" really means. New timelines should be agreed upon as part of this litigation, and these recommendations should, in my opinion, become a formal part of the settlement agreement between the parties, though completion of these recommendations has been agreed upon by the state. Any recommendations that are stale should be eliminated after considerations by the parties in consultation with the Neutral Expert. I plan to continue to work with the parties to discuss this and consider whether new recommendations are in order. Specific priority areas of focus include increasing efficiencies to GEI discharges, building out Community Navigators, and focusing on Community Restoration, as well as examining financial incentives and risks along with the range of recommendations that had to do with pulling in payors to help provide the services needed.

6. **Examine whether the Housing Emergency Declaration can be Leveraged for the AA and GEI Populations and Consider Additional Executive Orders if Appropriate**: Given the rates of houselessness among individuals found GEI and in the AA process, it would seem there is an opportunity to leverage various initiatives and funding to help solve some of the challenges identified by the persons in the forensic processes. At the same time, there should be consideration of whether any additional Executive Order would give additional funding or capacity to realize some of the recommendations timelier.

7. **Emphasize CCBHC and 988 Diversion Strategies**: The state should continue its efforts to minimize law enforcement response to behavioral health crisis and seek alternatives within the behavioral health system to reduce the penetration of individuals into criminal case processing.

8. **Pursue Legislative Remedies at the Earliest Opportunity**: The legislation of SB219 was a start, but more could be done in the direction toward my prior recommendations. The parties should work together, and some version of this legislation should be attempted again at the soonest possible available time. It would be my strong recommendation that OHA, with support of the Governor's Office, revisit this legislation as a priority but organize itself around socializing it. Although the federal order is in place, it is not a sustainable solution for the state. A legislative remedy to the appropriate use of OSH beds and community restoration slots is critical.

9. **Consolidation of Stakeholder Meetings Pertaining to *Mink/Bowman***. It will be useful to pivot from separate meetings that were being directed from the Governor's office, and from the prior

Aid and Assist workgroup, to a regular stakeholder forum that could provide updates and allow for input from various vantage points to help develop any recommendations as new information becomes available.

10. **Ongoing meetings of the parties**. I recommend ongoing meetings between the parties and the Neutral Expert to review data and to monitor progress.

I would like to acknowledge the many individuals whose perspectives and input have been invaluable in shaping my contributions to the Oregon behavioral health AA and GEI efforts and the broader behavioral health system, and whose work is noteworthy despite strained resources and staff shortages seemingly everywhere. I would like to commend the parties again for their firm commitment to help the many individuals in jails across Oregon who are waiting admission to OSH, and whose needs and rights are at the center of this litigation.

Respectfully Submitted,

Debra A. Pinals, M.D.
Neutral Expert, *Mink/Bowman*