

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**)
)
Plaintiff,)
)
v.)
)
DWAYNE M. SIBETANG,)
)
Defendant.)
_____)

Crim. Case No. 00-0164D

**ORDER GRANTING IN PART
DEFENDANT’S MOTION FOR
PROTECTIVE ORDER AND
DIRECTING RESUMPTION
OF PROCEEDINGS**

This matter came before the court on June 7, 2000 in courtroom 217A on Defendant Dwayne Sibetang’s emergency motion for protective order precluding the transfer of the Defendant to the Commonwealth Health Center (“CHC”) for psychiatric treatment and compelling the Commonwealth to provide adequate treatment pursuant to the Patient’s Rights Act, 3 CMC § 2551 et seq. and the Criminal Commitment Act, 6 CMC § 6001 et seq. (the “Emergency Motion”). Robert T. Torres, Esq. appeared on behalf of the Defendant, and James J. Benedetto, Esq. appeared on behalf of the Government. Following the hearing in this matter, the court took the matter under submission and notified the parties that it would be issuing written findings and conclusions. After careful review and consideration of the proposed orders submitted by the parties, the arguments at the hearing, and all papers submitted in support of and in opposition to the Motion, the court now issues the following Order. [p. 2]

I. BACKGROUND

1. Since March 23, 2000, the Defendant has been held without bail in the custody of the Department of Corrections. Pursuant to the Defendant’s request and this court’s Order of

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March 30, 2000, the Defendant has been receiving psychiatric care and treatment at the Central Male Detention Facility.¹

2. On May 4, 2000, this court issued an Order denying Defendant's Motion to Transfer to CHC for psychiatric treatment.² In denying Defendant's Motion, however, the court made specific findings that the Commonwealth Health Center was not an appropriate placement facility for the Defendant. *Id.* at ¶ 1. The court ruled that the Defendant, who is being lawfully detained pending trial in a detention, jail, or correctional facility, and who has voluntarily requested psychiatric care and treatment, has the right to prompt and adequate psychiatric and medical care from qualified mental health professionals in a facility that comports with the requirements for treating and evaluating persons with mental illness under the Patient's Rights Act, 3 CMC § 2551 *et seq.* (the "PRA") and the Criminal Commitment Act, 6 CMC § 6601, *et seq.* (the "CCA"). *Id.* at ¶ 4. This court also found that the Central Male Detention Facility, in which the Defendant is currently being detained pending trial, lacks the physical requirements and staff mandated by statute to address the needs of mentally ill inmates and detainees. *Id.*³ [p. 3]
3. Since the Central Male Detention Facility does not now comply with the requirements mandated by the PRA and the CCA for treatment facilities, even though it is providing

¹ See *CNMI v. Sibetang*, Crim. Case No. 00-0164D (March 30, 2000) (Order Granting, in part, Petition for Voluntary Psychiatric Treatment and Motion to Determine Competency).

² See *CNMI v. Sibetang*, Crim. Case No. 00-0164D (May 4, 2000) (Order Denying Defendant's Motion to Transfer to CHC) at 9.

³ In material part, this court ruled that the PRA applies uniformly to assessments, evaluations, care and treatment provided at every "evaluation or treatment facility." Order of May 4, 2000 at 8. For every person receiving treatment in an evaluation or treatment facility in the Commonwealth, moreover, this court held that the PRA provides certain rights, including, but not limited to: (1) sufficient qualified mental health professional staff in the facility, (2) written individualized treatment plans for each patient, (3) evidence in the record that the treatment plan is being followed, (4) periodic review of treatment, (5) evidence of actual treatment, including individual therapy, group, therapy, occupational therapy, and (6) appropriate discharge planning where applicable. 3 CMC §§ 2555, 2557. Although a detention facility may plainly serve as a "treatment facility" where, as here, it provides "treatment" to a detainee, it must also contain an area separated by walls, doors, sight, and sound from the rest of the institution. PRA, 3 CMC § 2501(m) (a correctional institution or facility or jail may serve as an "evaluation facility" or "treatment facility" when persons are properly detained therein); see also CCA, 6 CMC §§ 6601(c) and (h) (correctional institution or facility or jail may be designated as an evaluation or treatment facility, so long as the person is properly detained therein and in an area "separated by walls, doors, sight and sound from the rest of the institution.")

“treatment,”⁴ the court directed the parties to file appropriate motions addressing the Defendant’s treatment needs and to update the court as to whether the Commonwealth had designated any DOC facility as suitable to evaluate, house, or treat detainees suffering from mental illness.

4. On May 30, 2000, the Emergency Motion was filed, reporting that the Defendant had once again attempted suicide.⁵ The Emergency Motion also maintains that the Defendant has not been receiving either prompt or adequate treatment; (b) there is no documentation of the care being provided to him, (c) there has been no monitoring of his medication; (d) there is no treatment plan; (e) there has been no therapy offered to him; and (f) the facility in which he is being housed continues to lack the space and staff trained to handle persons suffering from mental illness. *See* Motion at 3; Declarations of Ray Palacios and Angela Bennett.⁶ As a result, the Emergency Motion seeks an Order from this court directing the Commonwealth, including the Secretary of [p. 4] Public Health and the Commissioner of the Department of Public Safety, to undertake immediate measures to comply with the PRA and CCA, including, but not limited to: (1) renovating the facility so that persons receiving treatment

⁴ Under the PRA, “Treatment” means any effort to accomplish any significant change in the physical, mental or emotional condition or behavior of the patient...” 3 CMC § 2501(aa); Order of May 4 at 8. A “treatment facility” is “any mental health care facility that is licensed or operated by the Commonwealth to provide treatment pursuant to law; provided, that no correctional institution, facility or jail shall be, or be used as, a treatment facility except in the cases of persons otherwise properly detained therein.” 3 CMC §§ 2501(bb). *See also* 6 CMC § 6601(h) (“treatment facility” means any mental health care facility that is licensed or operated in the Commonwealth to provide treatment. In order for a correctional institution, facility, or jail to be so designated for persons properly detained there, an area separated by walls, doors, sight and sound from the rest of the institution must be used for the purpose).

⁵ There are reports that, aside from the current incident in which the Defendant attempted to hang himself, the Defendant has previously attempted suicide by use of a razor. Declaration of Ray Palacios, Ex. “2” at ¶¶ 12-13.

⁶ Mr. Palacios and Ms. Bennett, both of whom are associated with Northern Marianas Protection and Advocacy Systems, Inc. (“NMPASI”) have submitted Declarations. Mr. Palacios, the Protection and Advocacy Advocate for NMPASI who has monitored the Defendant throughout his detention at DPS, reports that he has been unable to obtain an individualized treatment plan or documentation of actual treatment provided to the Defendant. Ex. “2” at ¶ 7. Ms. Bennett, legal counsel for NMPASI and a trained psychologist, testified that, notwithstanding medical releases obtained from the Defendant, whatever treatment records she was able to examine were at best inadequate, in that there was no evidence that the Defendant had been provided with any medication at all during the month of April; there was no evidence of either an individualized treatment plan or actual treatment; evidence documenting visitation from the Defendant’s treating physician was conspicuously lacking; and that DPS officials were refusing to provide the Defendant’s representatives with medical records.

for mental illness are separated by sight and sound from the rest of the unit; (2) staffing DOC with a forensic treating psychiatrist and other forensic mental health professionals, round-the-clock; (3) instituting training for Corrections Officers to address the needs of mentally ill inmates and detainees; and (4) requiring record-keeping and other treatment safeguards mandated by the PRA.

5. The Government does not dispute the Defendant's assertions concerning the lack of documentation and monitoring, or any of the Defendant's multiple allegations of noncompliance with the CCA and PRA. Instead, the Government simply reiterates that, notwithstanding the dictates of the CCA and the PRA, there is no facility in the Commonwealth suitable for housing pretrial detainees such as the Defendant, who suffer from mental disorders that require, among other things, careful monitoring by trained professionals in a secure setting. *See, e.g.*, Government's Proposed Findings re: Defendant's Motion for Protective Order at ¶¶ 4-5; May 4 Order at ¶ 7.
6. While the Government acknowledges the Defendant's right to receive prompt and adequate treatment by qualified health professionals, the Government maintains that DOC's pretrial detention facility is not a treatment or evaluation facility simply because it has never been designated as such by appropriate authorities. *Id.* at Proposed Order, ¶ 1; Proposed Findings at ¶ 4. The Government proposes that, in addition to affording the Defendant access to treatment records and recognizing his confidentiality rights, DOC should make efforts to ascertain a secure room, segregated from the rest of its facility by walls, doors sight and sound, that might be appropriate for housing the Defendant. *See* Proposed Findings at ¶ 9.
7. The Government's proposal does not go far enough. The court has found that statutes in full force and effect in the Commonwealth are unique in many respects and provide specific rights and protections to those with mental illness who have requested and are receiving treatment. The court has further concluded that the terms and conditions of the Defendant's current detention ignore and violate these statutes. The repeated suicide attempts suggest that the continued incarceration of the [p. 5] Defendant in a facility unsuited and indifferent to his treatment needs not only poses a significant risk to the Defendant, but raises the spectre

of significant liability to the Commonwealth. At the same time, housing Mr. Sibetang in a non-secure psychiatric setting such as that afforded by CHC not only threatens the patient population and the public in general, but places Mr. Sibetang at risk, given his predilection to escape from that facility.

ORDER

After considering the proposals submitted by the parties,⁷ the Court therefore ORDERS:

1. On or before July 12, 2000, the Commonwealth shall certify that the Defendant is being detained in a facility that comports with the requirements of 6 CMC §§ 6601(c) and (h). While the court is not directing the Commonwealth to build a facility for persons with mental illness separate in sight, sound and location from other detainees and inmates by this date, it is reasonable for the Commonwealth to modify, renovate or reconfigure an existing facility by then to insure that detainees and inmates with mental illness such as the Defendant will be managed appropriately.
2. On or before July 5, 2000, the Commonwealth shall certify to the court that it has prepared and is maintaining a written individualized treatment plan for Dwayne Sibetang pursuant to 3 CMC §§ 2555 and 2557(a)(1)-(6) and (b). The Commonwealth shall further certify that:
 - (a) the treatment plan is being followed;
 - (b) the treatment plan is being maintained;
 - (c) treatment has been and will be reviewed periodically;
 - (d) appropriate treatment is being provided; and
 - (e) it is maintaining records of medication administered to the Defendant, the Defendant has been provided with such information about his medication as is required by statute, and **[p. 6]** that notation of the Defendant's medication is being kept and maintained in the Defendant's medical records.

⁷ The court notes that while both parties filed their proposed terms for the protective order, attached to the Commonwealth's proposal was a limited opposition to the Defendant's recommendations that it apparently failed to serve upon the Defendant. *See* Motion to Strike Commonwealth's Limited Opposition to Defendant's Proposed Order, filed June 28, 2000. As the court did not request motions from the parties, it will not, and has not, considered the Commonwealth's Opposition in issuing its Order.

3. The Commonwealth shall maintain the treatment plan, records of medication administered, and documentation of other medical and psychiatric services separately from other records pertaining to the Defendant, and access to these documents shall be limited to professionals providing treatment, the Defendant's attorneys, and the Defendant. Access to the Defendant's treatment records shall be governed by rules governing patient access to public mental health institution treatment records provided in 3 CMC § 2561.
4. The CCA and the PRA require the Defendant to receive prompt and adequate treatment by qualified mental health professionals. It is therefore the responsibility of custodial officials to ensure that prompt and adequate mental health services are provided for detainees such as the Defendant. Therefore, on or before July 12, 2000, the Commonwealth shall certify that the treatment facility in which the Defendant is receiving treatment is sufficiently staffed with qualified mental health professionals. The Commonwealth shall further report to the court on measures it will institute to train DOC corrections officers, personnel, and supervisors in the management of detainees and inmates with mental illnesses.
5. Pursuant to 6 CMC § 6607, the court finds the Defendant is competent to stand trial. Proceedings in this case are hereby resumed and the parties are directed to set the matter for trial forthwith.
6. For reasons stated above, Defendant's Motion to Strike Commonwealth's Limited Opposition to Defendant's Proposed Order and for sanctions is DENIED.

So ORDERED this 29 day of June, 2000.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge