



Kate Brown, Governor



August 30, 2022

500 Summer Street NE, E-86
Salem, OR 97301-1118
Voice: 503-945-5763
Fax: 503-378-8467
TTY: 800-375-2863
www.oregon.gov/OHA/hsd/amh

Dear Colleagues,

Yesterday, Monday, Aug. 29, Judge Michael Mosman ruled that, effective immediately, we must change our discharge policy for patients at the Oregon State Hospital (OSH) who receive restoration services for aiding and assisting in their defense. This decision is intended to comply with the *Mink Order*, which requires us to admit patients under ORS 161.370, or "Aid and Assist" orders, for competence restoration within seven days of receiving the order.

Judge Mosman's decision limits the timeframes patients under Aid and Assist orders can stay at OSH for restoration treatment.

For the past few years, OSH has been out of compliance with the *Mink Order* due to several factors:

- Since 2018, we have seen an unprecedented increase in people ordered to OSH for competence restoration, creating a wait list for admission as we do not have enough beds to accommodate the surge.
- There are not enough beds in the community to discharge patients from OSH to, which means patients who are ready to place remain at the hospital longer than necessary while they wait for community placement, and
- The COVID pandemic has necessitated changes that have impacted our admissions policies.

Judge Mosman's ruling is based upon recommendations submitted by Dr. Debra Pinals, a neutral expert chosen by the Oregon Health Authority (OHA), Metropolitan Public Defender (MPD), and Disability Rights Oregon (DRO) as part of a Dec. 10, 2021, settlement agreement. Dr. Pinals was required to submit two reports to address the hospital's current capacity challenges and recommend solutions to the issue.

Dr. Pinals' [first report](#), submitted on Jan. 30, 2022, outlines a short-term plan to shorten admission wait times for the hospital. The [second report](#), submitted to the court on June 5, 2022, outlines a long-term plan for remaining in compliance with the seven-day admission requirement.

Dr. Pinals' recommendations include limiting the time patients may stay at OSH for competence restoration, which Judge Mosman adopted in yesterday's decision. The

new time limits are:

- For patients whose most serious charge is a misdemeanor, the maximum duration of commitment for restoration is the lesser of the maximum permissible sentence for the underlying offense or 90 days.
- For patients whose most serious charge is a felony, the maximum duration of commitment for restoration is six months, unless the felony meets the definition of a "violent felony" under ORS 135.240(6), in which case the maximum duration of commitment for restoration shall be one year.

Yesterday's decision means that approximately 100 patients are eligible to be discharged from OSH. Releasing a surge of patients into the community would be unsafe and challenging for hospital staff and community providers. Instead, in consultation with the parties and the neutral expert, we will be staggering the release of patients who have reached their restoration time limit over five months, beginning late September. Each month, additional patients will also reach their time limits and discharge into the community.

To meet the ruling's requirements and create a successful transition into the community, OSH will give counties 30 days' notice before a patient who has reached the maximum time limit is discharged, so the county has time to make plans for the patient's disposition and care. We anticipate that this notice and the staggered release of patients will help alleviate the pressure on the courts and the community mental health providers responsible for their care.

We plan to provide additional resources about this transition:

- We will post an FAQ on the Oregon State Hospital website as questions come in.
- We will meet with community partners beginning this week to work out successful transition plans and discuss ways we can be supportive of our partners.
- **Along with DRO and MPD, we will hold a virtual townhall on Tuesday, Sept. 6 at 3:30 pm to provide a more detailed plan and hear your questions and concerns.**

As described in Dr. Pinals' June 2022 report, the new time limits are clinically supported and based on time limits for competency restoration imposed in other states. Dr. Pinals reviewed statutes from multiple states and a summary of state restoration statutes published in the *Journal of the American Academy of Psychiatry and the Law*. She also spoke with many stakeholders, including OSH patients, peer recovery specialists, behavioral healthcare providers, defense and prosecuting attorneys, Psychiatric Security Review Board members, and others for a comprehensive view of varying perspectives and suggestions.

We recognize the importance of providing needed psychiatric care for people being held in jail to alleviate their suffering and support them in regaining their ability to participate in their legal proceedings meaningfully. However, we also recognize that the changes

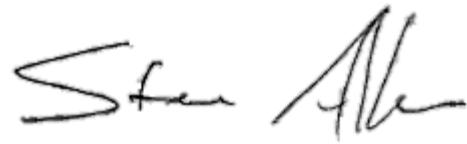
ordered by Judge Mosman will have impacts on patients already at the hospital and on our community partners.

We expect many conversations over the next few months as we comply with the order. We look forward to partnering with you and offering the most compassionate care we can provide.

Sincerely,

Dolores Matteucci

Dolly Matteucci (she, her, hers)
Oregon State Hospital
Superintendent – CEO
Desk: 503-945-2850
Cell: 503-309-7287



Steve Allen (he, him, his)
Behavioral Health Director
Health Systems Division
Oregon Health Authority
503-449-7643