

Coleman v. Newsom: The Important Role of a Psychiatrist Whistleblower

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In 1990 *Coleman v. Newsom* (1) was filed as a federal class action alleging constitutional and civil rights claims related to the provision of

mental health care to patients in the California prison system. The Federal District Court found the California Department of Correction and Rehabilitation (CDCR) had violated prisoners' Eighth Amendment rights, in part because of chronic understaffing of mental health professionals including psychiatrists. (2) The Court ordered injunctive relief and appointed a Special Master to monitor CDCR's compliance. The Special Master works with a team of monitors and experts, some of whom are AAPL members.

In 1997, parties in *Coleman* agreed to a "Program Guide" to outline appropriate delivery of mental health services to the California prison population. The initial Program Guide was the Court-ordered remediation plan, setting the minimum level of care the CDCR must provide to mentally ill persons in custody. Material deviation from the Program Guide requires a court order. The process to change the Program Guide involves an initial discussion between CDCR staff and the Special Master with subsequent involvement of plaintiff's counsel and the Court. Once CDCR began using an electronic medical record, "business rules" were used to translate program guide requirements into an electronic dashboard that could be used to monitor compliance with the Program Guide requirements.

In October 2017, after more than two decades of remedial effort, the *Coleman* court issued an order requiring defendants to come into complete compliance with psychiatry staffing ratios delineated in the 2009 Staffing Plan, with a maximum ten percent

staffing vacancy rate as required by a prior court order. Compliance was ordered to be achieved by October 2018. In that same order the *Coleman* court granted defendants' request to explore with the Special Master whether there was data to support a change in the prior psychiatrist staffing levels. Plaintiff, defendants, and the Special Master then began negotiations. Ultimately, defendants presented a staffing proposal that would have cut by approximately twenty percent the total number of line psychiatry staff positions allocated throughout the prison system. Plaintiffs considered accepting the proposal for reduced psychiatric staff.

Dr. Michael Golding is the Chief Psychiatrist of Statewide Policy Oversight at CDCR headquarters. On October 3rd, 2018, before plaintiffs accepted the CDCR's proposal for reduced psychiatrist staff Dr. Golding, acting as a whistleblower, submitted a document entitled "CDCR Mental Health System Report" (the "Golding Report") (3) to the Court. Dr. Golding alleged that the CDCR had presented misleading information to the Special Master and to the Court in order to justify the proposed reduction in psychiatric personnel under the Program Guide. To investigate this matter, the Court appointed a neutral expert to investigate Dr. Golding's allegations. The Court's order appointing the neutral expert's team limited the investigation to "identifying 'whether facts exist raising a question whether defendants committed fraud on the court or intentionally misled the court or the Special Master' regarding seven specific issue areas raised in the Golding Report." (4) The neutral expert interviewed multiple witnesses, reviewed 12,000 documents and took four months to complete their investigation.

On October 15th, 2019 Judge Kimberly J. Mueller began four days of hearings on Dr. Golding's allegations.

Judge Mueller issued her order on this matter on December 15, 2019. (5) She wrote:

Under no circumstances may remediation be accomplished by end runs and hiding the ball to create a false picture for the court, as has happened here. Given the constitutional deprivations underlying this case, and the court's monitoring by way of a Special Master, defendants' expenditure of so much time and effort to create records designed to advance litigation as the primary way to achieve a complete remedy or termination by other means is confounding. This court's predecessor carefully constructed a process supervised by a Special Master that was intended to moderate court intrusion into defendants' own remedial efforts. Such a process is arguably more respectful of defendants' knowledge of their operations and their management prerogatives than a process whereby oversight is transferred to a receivership; it also is more hopeful that defendants can best determine how to meet their constitutional obligations to the seriously mentally ill inmates in their custody. At the same time, given the authority that here remains vested in defendants themselves, the importance of defendants' transparent and accurate reporting is paramount: the court and the Special Master must be able to rely fully on defendants' representations. *As explained in this order, the court has concluded the reliability of those representations at multiple levels of the Coleman case structure is in serious doubt.* If the approach of monitoring by a Special Master has contributed to play in the joints allowing for those misrepresentations, the court may need to revisit that structure in future proceedings. For now, that is a question for another day. (6) [emphasis added].

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Judge Mueller found that while there was not enough evidence to support fraud, the “...defendants have knowingly presented misleading information to the court in numerous areas critical to the remedy in this case and measuring compliance with that remedy.” (6) Most revolved around how data was collected from and interpreted in an electronic medical record that included the dashboard to monitor compliance with Program Guide rules. For one example, the Program Guide requires that psychiatrists see all patients every 30 days in confidential (not cell side) visits. However, the electronic medical record defaulted to confidential visits and psychiatrists had no way to indicate non-confidential contacts, so that many non-confidential visits were counted as confidential. This led in part to CDCR’s argument that fewer psychiatrists were needed.

Judge Mueller found that:

...the record created through the evidentiary hearing demonstrates a marginalization of psychiatry that impedes defendants’ ability to achieve full compliance with the constitutional requirements embodied in the court-approved remedy. ... testimony explains the pressures and disincentives created by reliance on automation and electronic data: Psychiatrists are being made to practice in an environment that, among other things, “causes data to have to be massaged in certain ways to allow information to be more presentable to say we don’t need psychiatrists so we can get out of the lawsuit. And the more you automate this process to make sure that compliance happens, the more you take control out of the clinician to be able to determine what’s clinically relevant for the patient.” [internal citations omitted] (6)

Perhaps most importantly, Judge Mueller further found that psychiatric input for critical policy decision making was “severely constrained”:

Psychiatrists are critical to appropriate mental health staffing, given that they are medical doctors bound by the Hippocratic Oath (“Psychiatrists as physicians do have the Hippocratic Oath to do the best we can for our patients.”). This does not mean psychiatrists must always prevail in internal policy- and decision-making processes. But they must be meaningfully consulted; their professional views must be heard, considered and accounted for. Defendants’ marginalization of psychiatry and their clumsiness in the process reflects a significant lack of good judgment and bureaucratic dysfunction that, if allowed to continue, presents a major obstacle to successful remediation in this action. [internal citations omitted]. (7)

Judge Mueller wrote that as of December 2019 psychiatrist staffing vacancies were at 30%. While she acknowledged there were many market difficulties in hiring psychiatrists for sometimes remote California prisons, “these hearings have provided additional explanations and identified other contributors to the challenge in identifying psychiatrists, including an uninviting dysfunctional workplace that does not value the essential treatment perspectives that psychiatrists have to offer and creates an atmosphere where morale is low.” (8)

This part of the *Coleman* case highlights several important issues. First it reminds us how data gleaned from electronic medical records can be manipulated and lead to misinterpretation. It is imperative that managers, who rely on such data, check to see if the data collected reflects clinical reality. Dr. Golding did so and uncovered many problems with the electronic dashboard that had been used to measure compliance. Second it is important that the Court in this case

highlighted the importance of psychiatrists providing treatment in the correctional system. The court pointed out significant administrative barriers and “bureaucratic dysfunction” within CDCR that made it difficult for line and manager psychiatrists to successfully treat patients and also interfered with the recruitment of new correctional psychiatrists. (9)

References:

- (1) (formerly *Coleman v. Brown and Coleman v. Wilson*), No. 2:90-cv-00520-KJM-DB (E.D. Cal.),
- (2) *Coleman v. Wilson*, 912 F. Supp. 1282, 1307 (E.D. Cal. 1995)
- (3) Case No. 2:90-cv-00520-KJM-DB, ECF No.5988-1
- (4) Case No. 2:90-cv-00520-KJM-DB, ECF No. 6147 page 2
- (5) Case No. 2:90-cv-00520-KJM-DB, ECF 6427
- (6) Case No. 2:90-cv-00520-KJM-DB, ECF 6427 page 41
- (7) Case No. 2:90-cv-00520-KJM-DB, ECF 6427 page 42-43
- (8) Case No. 2:90-cv-00520-KJM-DB, ECF 6427 page 48

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a Committee Chair. Barring unusual circumstances and at the discretion of the President, *it is anticipated that members will serve as Committee Chairs for no more than six consecutive years.*

To be eligible to be appointed as Committee Chair, an AAPL member, if possible, should have served at least one three-year term on the Committee. An AAPL member is limited to being Chair of only one Special Committee at a time.

Committee Chairs should consider requests for appointment and reappointment during the “enrollment period” of October 15 to December 1. Lists for membership appointments or reappointments should be forwarded to the President by December 1, and the President will work with Committee Chairs to make recommended appointments.

Committee Chairs are responsible for ensuring that their Committee meets its obligations. If Committee

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