



Minnesota Department of **Human Services**

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October 4, 2007

John D. Erskine, Director  
Minnesota Sex Offender Program  
1111 Highway 73  
Moose Lake, MN 55767

License Number: 810838 (DHS Rule 26)

### **CORRECTION ORDER**

Dear Mr. Erskine:

You are hereby notified that the Commissioner of Human Services is issuing a Correction Order to the Minnesota Sex Offender Program (MSOP) located at 1111 Highway 73, Moose Lake, Minnesota. The Correction Order is based on licensing violations determined during on-site licensing review conducted by DHS licensors on August 7, 8 and 9, 2007, and September 4 and 5, 2007, to determine compliance with the provisions governing residential treatment programs for persons committed as sexual psychopathic personalities or as sexually dangerous persons under Minnesota Rules, parts 9515.3000 through 9515.3110 (DHS Rule 26).

#### **A. Reason for the Correction Order**

Pursuant to Minnesota Statutes, section 245A.06, subdivision 1, if the Commissioner finds that the license holder has failed to comply with an applicable law or rule the Commissioner may issue a correction order.

During an on-site licensing review conducted in August and September 2007, DHS licensors discovered significant problems and noncompliance with Rule 26 requirements. Significant problems discovered during the review, included:

- When administrative and clinical staff members were interviewed about daily program operations, staff provided inconsistent information about what, how, and when program operations were completed. Explanations provided were also inconsistent with the multiple versions of written policies and procedures provided to the reviewers.

- None of the many and varied verbal explanations and written policies and procedures or actual practices were in compliance with regulations regarding the use of seclusion and protective isolation practices, treatment planning, and documentation of treatment services.

The following violation(s) of state laws and rules were observed. Corrective action for each violation is required by Minnesota Statutes, section 245A.06 and is hereby ordered by the Commissioner of Human Services. Failure to correct the violations within the prescribed time may result in fines and/or further action against your license as provided for in Minnesota Statutes, sections 245A.06 and 245A.07.

1. Citation: Minnesota Rules, part 9515.3090, subpart 4.

Violation: The license holder does not currently have a policy that meets rule requirements for the use and documentation of protective isolation (PI). The current policy became effective in October 1995, and was revised in May 2002, and again in July 2003. In March 2007, a DHS licenser issued a Correction Order to the license holder requiring the license holder to submit a policy for protective isolation that meets rule requirements. Since the issuance of the order, the license holder has submitted two additional policies, but neither fully complies with rule requirements.

During the licensing review conducted on August 7, 8 and 9, 2007, and September 4 and 5, 2007, it was determined that the program was not following its PI policies and procedures in the following ways:

- A. On September 28, 2006, a client (C8) was transferred from the St. Peter MSOP to the Moose Lake MSOP program. Upon admission at the Moose Lake MSOP program, C8 was placed directly into PI. At the conclusion of the licensing review on September 5, 2007, approximately one-year later, C8 was still residing in PI.

C8 had originally been placed in PI at the St. Peter location on September 26, 2006. A Request for Protective Isolation form completed by St. Peter staff indicated that C8 should be placed in PI for 48 hours until the transfer to Moose Lake MSOP, at which time the Moose Lake team could reassess C8's status.

Following C8's transfer to Moose Lake, Moose Lake staff completed no additional requests for PI forms until January 22, 2007. The program's policy in effect at that time required that if the PI continued beyond 48 hours, a review by the PI Review Panel and approval by the Clinical Director must be completed and documented in the client file.

In addition, the policy required that PI may not exceed seven days without review and approval by the Clinical Director. This approval must be made prior to the end of each seven day period. Despite C8 continuously remaining in PI, C8's file did not contain documentation of any of these required reviews until after the licensing site visit (see below). When staff were asked why there was no documentation in C8's file, the staff indicated there should have been reviews, approvals, including documentation, but, that for a period of time, C8 was on "client initiated PI."

The license holder's policy does not address "client initiated PI." When asked further about "client initiated PI," the staff indicated that the client was refusing to room with other clients and that at some point, possibly January 2007, the client's PI status was changed from "client initiated PI" to staff initiated PI although the issues as to why the client was in PI had not changed.

Since January 2007, the treatment team has completed Request for Protective Isolation forms on: January 22, 2007; March 15, 2007; April 19, 2007; May 14, 2007; June 15, 2007; July 6, 2007; and August 1, 2007. All the forms were signed by the Clinical Director, Representative of Treatment Team and PI Review Panel Chairperson on August 31, 2007, after the issue was noted during the review. However, the forms do not indicate who participated in the PI review panel or whether or not the panel included the three required participants.

In addition, the license holder's policy requires a review by the Hospital Review Board (HRB) when PI continues beyond seven days. The HRB makes written recommendations to the Clinical Director who then recommends, in writing, whether the recommendations of the HRB would be accepted, rejected, or modified. The HRB's recommendations are then submitted to the Medical Director who decides whether to accept, reject or modify the recommendations. The decision of the Medical Director should be communicated orally to the client and the client advocate and include a written decision stating the reasons for rejecting or modifying the HRB's decision. Although the HRB made recommendations on January 29, 2007; February 2, 2007; March 6, 2007; March 16, 2007; April 19, 2007; June 1, 2007; and July 6, 2007, and MSOP staff presented the case to the HRB, staff were unable to find documentation of the Clinical Director's review or the Medical Director's decision regarding the HRB's recommendations.

Further, although staff indicated that the Chief Officer has been involved in the decision regarding the client's placement in PI and the recommendations of HRB, C8's file did not contain documentation of this involvement nor were staff able to locate any other documentation.

Since May 2007 the program has submitted two draft PI policies, and both policies required many of the same review elements. However, the program failed to follow the review elements in either of the policies. And, although staff stated that there have been many conversations and efforts made regarding the resolution of C8's PI and the review board's recommendations, there was no documentation of these efforts.

- B. The license holder's most recent policy regarding PI, still in draft form, does not address the long term use of PI or "client initiated PI."
- C. Another client's file reviewed, (C9), contained a form titled "PI Assessment Meeting." This form did not contain all of the required information for documentation of PI by the treatment team. When asked further about this form, staff stated that this was a form the unit developed and that it has not gone through the "proper channels."

Corrective Action Ordered: Within 15 days from receipt of this order, you must submit policies and procedures for the use of PI and all forms used to document the use of PI. The policies and procedures must meet all rule requirements and must address the following:

- (1) use and documentation of client initiated PI;
- (2) use and documentation of long term PI; and
- (3) privileges clients will have, if any, while in PI.

- 2. Citation: Minnesota Rules, part 9515.3090, subpart 3.

Violation: At the beginning of the review, the license holder stated the program did not use emergency seclusion. However, during the review visit in August, staff provided inconsistent information regarding the use of emergency seclusion.

Based on licensor observations and information provided by staff, it was determined that emergency seclusion was being used:

- (1) as a means of security and medical preparation for clients who were scheduled to leave the facility the next day for an outside medical appointment. The license

holder explained that clients are removed from their units and secluded prior to an outside appointment to prevent the client from alerting others about the client's destination and to conduct preparation procedures for the medical appointment;

(2) to limit client movement because of a medical condition; and

(3) as a behavioral intervention to protect the client.

In all the circumstances described in (1), (2) and (3), the client was removed from the unit and placed in another area of the facility and doors to the individual rooms were locked, thus becoming seclusion. By the time of the site visit in September, the license holder stated that the program was no longer using seclusion for the monitoring of medical conditions or for security and medical preparations for an outside medical appointment.

Throughout the licensing review, the program provided inconsistent information on whether or not it intends to use emergency seclusion. The license holder has submitted three different policies to the Division of Licensing regarding the use of emergency seclusion, and none of the three policies meet the rule requirements. The most current policy included a statement that the policy did not apply to Rule 26 programs [this program is a Rule 26 program]. Currently, the program's intention regarding the use of emergency seclusion is still unknown.

Corrective Action Ordered: Given the pervasive inconsistencies among staff persons' understanding and use of seclusion and protective isolation, you must conduct a complete analysis regarding your intended use of these forms of client restrictions. The analysis must establish policies and procedures that include:

- clear definitions of protective isolation and seclusion, identifying where one intervention ends and the other intervention begins on the continuum of client restrictions;
- the conditions under which each of these interventions is to be implemented;
- how each is to be implemented;
- which staff are authorized to impose each;
- which staff are authorized to approve each; and
- which staff are to conduct a review after the use of either restriction is imposed.

Within 30 days from receipt of this order, you must submit policies and procedures governing the use of seclusion and protective isolation that meet the rule requirements. Within 45 days from receipt of this order, you must provide training to all staff persons governing the use and documentation of client restrictions.

3. Citation: Minnesota Rules, part 9515.3040, subpart 1.

Violation: The license holder failed to provide and/or document required treatment services to clients, as evidenced by the following:

- A. The license holder described a system of using a trimester schedule for providing treatment and reviewing client treatment progress. This trimester system is described as a period of approximately three months of sex offender treatment. The trimester is followed by a break, lasting approximately one month, in which no sex offender treatment groups are offered. The license holder indicated this break is a "break in treatment." However, after further discussion, it was determined that other treatment services are provided, including recreation and vocational services.

Although other treatment services are provided during the break, the clinical staff did not consistently identify these services as treatment services, nor did the client files contain documentation identifying what services were being provided between trimesters. The services identified on the treatment plan updates, conducted at the trimester reviews, *concentrated on the services provided during the trimester, and not services provided during the breaks.* When interviewed, staff offered conflicting explanations for the purpose of the month long break between trimesters, including the following:

- The end of trimester break is a time for the staff members to complete paperwork required in the client files. Upon further discussion, it was explained that the end of trimester treatment plan reviews are prepared and trimester meetings are conducted during this break.
- The trimester breaks allow for a break in treatment for the clients. During the break, the focus of treatment changes from sex offender treatment to other areas, including recreation and vocational skills.
- The trimester breaks were actually a time for the clients to use and practice new skills that they had learned in the previous trimester.

The inconsistent statements from staff regarding the reason for and what occurs during the trimester breaks prevented clear determination of what the intended clinical benefits of the breaks are for the clients. Moreover, charting did not reflect the evaluation of client's skills learned during the previous trimester.

B. Staff were also inconsistent as to when clients actually begin receiving sex offender treatment. Staff stated that clients begin to receive sex offender treatment under one of three conditions:

- If the client has not previously received sex offender treatment, but is willing to participate, the client is not allowed to begin sex offender groups until the beginning of the next trimester. While waiting to begin sex offender treatment, the client is given individual assignments and is placed in a therapeutic community, but is not allowed to attend the sex offender treatment groups.
- Once committed, if a client has previously received sex offender treatment, the client may begin sex offender groups upon admission, if willing. However, a review of a client file showed a committed client was not allowed to begin sex offender treatment upon admission, despite past sex offender treatment. When asked about this, a staff person stated that a client may not begin sex offender groups before the next trimester if the treatment team determines that the client did not take the previous treatment seriously, or if the treatment the client previously received was not adequate. When asked what would be considered adequate treatment, the staff person did not explain.

In another discussion, another staff person explained that if the client previously attended an outpatient sex offender treatment program, the client would not be able to immediately begin attending sex offender groups.

- A client who initially refuses to participate in treatment and who subsequently consents to treatment is required to wait until the next trimester. When asked about the possibility that a client who is willing to participate may have to wait months before beginning sex offender treatment, a staff person stated that clients are asked to demonstrate their seriousness in wanting to begin sex offender treatment until the next trimester.

C. Client files did not include sufficient documentation to determine that participants received all treatment services required by the rule. The license holder explained that end of trimester reports identify a list of treatment modalities indicative of what treatment services are offered to clients. The list of modalities, however, also identifies items that are not considered treatment services. The list includes a review of the client's

plan, the assessment of the client's vulnerability, and the assignment of a Primary Resource Person (PRP). The list does not identify specific sex offender programming. This list of modalities is a list of what services are provided overall in the program, and not what services that a specific client is offered or provided. In addition, the list of modalities was the same in all client files reviewed.

Client files also contained a treatment schedule, but this schedule was brief and not indicative of all services that were being provided. When asked, staff stated that other services are provided that are not included on the schedule.

Corrective Action Ordered: Within 30 days from receipt of this order, you must:

- (1) develop and submit a description and schedule that identifies what treatment services are provided during the trimester break;
- (2) submit documentation that all clients will be offered treatment services while at MSOP;
- (3) submit documentation supporting how the services the clients receive will be documented in the client files; and
- (4) if continuing to offer a break from sex offender groups to evaluate client skills, submit a plan of how this will occur and how this will be documented.

4. Citation: Minnesota Rules, part 9515.3030, subpart 4.

Violation: The rule requires that, at a minimum, the treatment team must include the client, a psychologist, a social worker, a nurse, a member of the treatment support staff and, when psychiatric and medical treatment is provided, a physician must be involved. The license holder did not comply with treatment planning requirements as evidenced by the following:

- A. Client files did not include documentation of who was present and who participated in the end of trimester review meetings. Based on a review of client files and staff interviews, inconsistent explanations were given about how the license holder documented who participated in treatment planning, including the following:
  - The end of trimester report has a final page, containing three spaces for signatures, including the client, the Behavior Analyst who prepared the report and the Assistant Clinical Director.

- End of trimester reviews in some client files contained a form titled "Trimester Review Signature and Attendance Page," which identifies multidisciplinary treatment team members who were present during the trimester review. This form is located in a separate part of the file and allowed for the signatures of the client, county social worker, security counselor, vocational person, psychologist, registered nurse, recreational therapist, social worker, and behavior analyst that prepared the report. Two of the Trimester Review Signature and Attendance Page forms reviewed (C8) did not include the required signatures. Missing were the signatures of the client, Registered Nurse, County Social Worker, Vocational Counselor and Security Counselor, who is considered the treatment support staff.
- Progress notes may include documentation of who was present at the end of trimester review meetings. However, a review of progress notes in the client files did not address who was present at the meeting.

Regardless of which forms are used to document the involvement of the multidisciplinary team, the client files did not consistently include the disciplines or persons required by the rule.

- B. At the time of the review, two client files reviewed (C8 and C9) did not contain trimester reviews for the month of January 2007 and three client files reviewed (C4, C6 and C8) did not contain trimester reviews for the month of May 2007. When asked, the license holder was able to produce a May 2007 trimester review for C4 and a January 2007 trimester review for C8; however, these reviews were electronically reproduced and did not include any signatures. The license holder was also able to produce a May 2007 review for C8; however, the review was signed and dated in July and August, months after the review. The other missing trimester reviews were not provided during the review.
- C. One client file (C5) contained a trimester review in May 2007. This trimester review was a review of a treatment plan created while the client was in the St. Peter Security Hospital. No treatment plan was developed for this client after the client was admitted to the Moose Lake MSOP in March 2007.
- D. In one client file (C8), the Behavior Analyst who signed the May 2007 report indicating s/he prepared the report was not the same Behavior

Analyst who signed the two Trimester Review Signature and Attendance Page forms indicating s/he prepared the report.

Corrective Action Ordered: Within 30 days from receipt of this order, you must submit a plan to correct systemic deficiencies in the trimester review process. The plan must require ongoing monitoring of the trimester treatment review process that includes timeliness for filing of the end of trimester reviews and a single consistent means of documenting who attended and participated in the reviews.

5. Citation: Minnesota Rules, part 9515.3030, subpart 4.

Violation: One client file reviewed (C4) contained no documentation in the January 2007 and May 2007 trimester reviews that a psychiatrist or physician was included on the trimester review team even though the client was being treated for a mental illness by a psychiatrist at the time of the trimester reviews.

Corrective Action Ordered: Within 30 days from receipt of this order, you must submit a plan to include a psychiatrist or physician on the trimester review team when the client requires psychiatric or medical treatment. In addition, you must submit documentation of when, and under what circumstances, a psychiatrist will be involved with clients.

6. Citation: Minnesota Rules, part 9515.3110, subpart 2, item G and subpart 3, items A to E.

Violation: Client records did not meet rule requirements in the following ways:

- A. Two client files reviewed (C2 and C4) did not contain telephone numbers of their attorney, county case manager, and any other individuals warranted by the person's legal or medical status.
- B. Trimester reviews are not consistently filed in the client's file in a timely way. Electronic copies were presented at the time of the review but did not include signatures of those involved in their development.
- C. Ten client files did not contain transfer summaries from St. Peter MSOP to Moose Lake MSOP.
- D. The client charts were not uniform and did not provide for the flow or continuity of care. Client files were not organized uniformly. Due to the length of stay and size of the files, it was difficult to locate needed documentation. At the time of the licensing review, the files did not

contain the most recent information, including treatment plan and trimester reviews.

- E. Documents in client files consistently lacked names and were not dated. Client files contained errors including misspelled names and contradictory information regarding dates of admission and dates of commitment. These inconsistencies were discussed with staff members at the time of the review.
- F. One client file (C9) contained a form titled "PI Assessment Meeting." This form was different from other forms found in other client files. When staff were asked about the form, they stated that the form was developed by the unit, without approval.

Corrective Action Ordered: Within 30 days from receipt of this order, you must submit a plan demonstrating how you will reduce documentation omissions and errors. The plan must address omissions in treatment plans and trimester reviews, transfer summaries missing from client files, names of professionals involved with clients, and admission and commitment dates that are required to be documented in the client file. In addition, the plan must specify how persons who provide treatment services will be informed of any documentation deficiencies and what efforts and procedures will be used to correct the problems.

- 7. Citation: Minnesota Statutes, section 245A.65, subdivision 1, and section 626.557, subdivision 4a, paragraph (b).

Violation: The license holder's policy for reporting maltreatment did not include the following:

- A. The primary and secondary person or position to whom internal reports may be made.
- B. The primary and secondary person or position responsible for forwarding internal reports to the common entry point and that the secondary person must be involved (with receiving the report and forwarding it to the common entry point) when there is reason to believe that the primary person was involved in the alleged maltreatment.
- C. The primary and secondary person or position who will ensure that, when required, internal reviews are completed and that the secondary person shall be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment.

- D. The license holder will make internal reviews accessible to the commissioner upon the commissioner's request.
- E. Reporters are informed, in a manner that protects the confidentiality of the reporter, about whether the facility reported the incident to the common entry point.

Corrective Action Ordered: Within 30 days from receipt of this order, you must submit, for approval by the Licensing Division, a revised maltreatment reporting policy that complies with statutory requirements. Within 30 days after approval of the maltreatment reporting policy by the Licensing Division, you must provide training to all staff and you must submit the names of all staff trained on the reporting policy.

8. Citation: Minnesota Rules, part 9515.3040, subpart 2, item B.

Violation: The license holder's policy specified that the license holder would collect and evaluate data on individual treatment outcomes for program improvement. The license holder verified that no individual treatment outcome data has been collected.

Corrective Action Ordered: The license holder must immediately begin and continuously collect data on individual client treatment outcomes. The license holder must have data on individual client treatment outcomes by March 30, 2008.

Repeat violation: This violation was previously cited in a Correction Order dated August 3, 2005, (citation number 1).

9. Citation: Minnesota Rules, part 9515.3080, subpart 2.

Violation: The license holder had no documentation that the written rules and range of consequences had been reviewed and approved annually.

Corrective Action Ordered: Within 30 days from receipt of this order, you must submit documentation demonstrating that the license holder's written rules and range of consequences have been reviewed and approved.

10. Citation: Minnesota Statutes, section 245A.04, subdivision 13, paragraph (d).

Violation: Although a written policy is not required, the license holder has a policy regarding the handling of resident funds and property but that policy does

not include that staff must not use resident funds to purchase items for which the facility is already receiving public or private payments.

Corrective Action Ordered: Within 30 days from receipt of this order, you must revise the program's policy for handling resident funds and property to include a statement that staff must not use resident funds to purchase items for which the facility is already receiving public or private payments.

11. Citation: Minnesota Statutes, section 626.5572, subdivision 21, clause (4).

Violation: In one of 10 client files reviewed (C3), the file did not contain documentation that a determination was made whether C3 is a vulnerable adult.

Corrective Action Ordered: A client who is committed as a sexually dangerous person or a sexual psychopathic personality must be assessed using the criteria in Minnesota Statutes, section 626.5572, subdivision 21, clause (4), to determine if the client is or is not a vulnerable adult. You must immediately determine if C3 is a vulnerable adult and submit documentation of that determination.

12. Citation: Minnesota Statutes, section 245A.65, subdivision 2, paragraph (a).

Violation: The population assessment in the license holder's program abuse prevention plan did not include knowledge that the license holder may have regarding previous abuse that is relevant to minimizing risk of abuse for clients.

Corrective Action Ordered: Within 30 days after receipt of this order, you must submit a revised program abuse prevention plan population assessment that includes knowledge the license holder has regarding previous abuse that is relevant to minimizing risk of abuse for clients.

13. Citation: Minnesota Statutes, section 245C.04, subdivision 1, paragraph (d).

Violation: Two of 25 personnel files reviewed (P3 and P6) contained background studies conducted under an old license number and did not contain documentation that a background study had been completed and submitted on or after October 1, 1995. Of the 25 personnel files reviewed, three additional personnel files (P7, P8, and P16) contained background studies conducted under an old license number.

Corrective Action Ordered: At the time of the review, the license holder submitted background studies for all employees who had not completed a new background study on or after October 1, 1995, and for those who had not completed a background study under the current license number. No further corrective action is required.

14. Citation: Minnesota Rules, part 9515.3060, subpart 2, item B.

Violation: One of 25 personnel files reviewed (P18) did not contain documentation demonstrating that P18 was qualified to provide assessments and individual and group counseling services.

Corrective Action Ordered: Within 30 days from receipt of this order, you must submit documentation demonstrating how P18 is qualified to provide assessments and individual and group counseling services.

15. Citation: Minnesota Rules, part 9515.3060, subpart 2, item A.

Violation: Three of 25 personnel files reviewed (P12, P20, and P24) did not contain required documentation of the person's current license, certification, or registration.

Corrective Action Ordered: Within 30 days of receipt of this order submit documentation that the staff person's file includes the required documentation.

Repeat violation: This violation was previously cited in a Correction Order dated August 3, 2005 (citation number 2).

**B. Right to Request Reconsideration of the Correction Order**

You have the right to request that the Commissioner of Human Services reconsider the Correction Order. If you choose to exercise this right, your request must be made in writing and received by the Commissioner within twenty (20) calendar days after you receive this order. You should submit with your request for reconsideration written argument or evidence in support of your request. (See Minnesota Statutes, section 245A.06, subdivision 2.) A timely request for reconsideration of the Correction Order does not stay the requirements of the Correction Order.

Your request for reconsideration of the Correction Order must be sent to:

Commissioner, Department of Human Services  
ATTN: Legal Unit  
c/o Licensing Division  
444 Lafayette Road  
St. Paul, MN 55155-3842

John D. Erskine, Director  
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## RECOMMENDATION

The following recommendation is not a requirement of Minnesota Rules or Statutes governing your services or facility. This recommendation is provided to call your attention to an area where your facility is in minimum compliance with the requirements of rules or laws, but it would be advisable to strengthen your efforts in this area.

Predatory Offenders, Minnesota Statutes, section 243.166, subdivision 4b.

The statute requires that if a health care facility receives a fact sheet from a law enforcement authority or correction agent for a client admitted to the facility, the facility must distribute the fact sheet to all clients at the facility or if the facility determines that distribution to a client is not appropriate given the client's medical, emotional, or mental status, the facility shall distribute the fact sheet to the client's next of kin or emergency contact.

Although the program has not received a fact sheet from a corrections agent or law enforcement authority, they have forms titled "Notice of Admission of Predatory Offender" and "Notice of Program Practices Regarding Predatory Offender Admission (Non Hospital)" that indicate at the bottom of the form that these forms are "In compliance with Minnesota Statutes 243.166." These forms are used for a process authorized under law, but that is not part of Minnesota Statutes, section 243.166, so the statement is not correct. Remove the reference that indicates compliance with the statute.

Failure to follow this recommendation will not result in a fine or action against your license at this time. However, should failure to follow the recommendation result in a violation of rules or laws at a future date, you will be cited for noncompliance and may be subject to a fine or other action against your license.

If you have any questions regarding this correction order, please contact me at (651) 296-0156.

Sincerely,

Julie Reger, Unit Manager  
Division of Licensing

cc: Nancy Johnston, Deputy Director  
Brooke Shaw, Quality Compliance Officer  
Mike Tessner, State Operated Services  
Dr. Jennifer Service, State Operated Forensic Services  
Roberta Opheim, Ombudsman Mental Health and Developmental Disabilities