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UNION OF AMERICAN PHYSICIANS AND DENTISTS

AFFILIATED WITH AFSCME, AFL-CIO

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March 20, 2017

Michael Bien
Rosen Bien Galvan & Grunfeld LLP
mbien@rbgg.com

Dear Mr. Bien:

The Union of American Physicians and Dentists (UAPD) represents the civil-service Psychiatrists employed by the California Department of Corrections and Rehabilitation (CDCR). We agree with the overall assessment made by Rosen Bien Galvan & Grunfeld LLP in its January 25, 2017 mailing to *Coleman* Special Master Matthew A. Lopes -- that the State has not done enough to fix a Psychiatrist staffing shortage that has existed for more than twenty years within CDCR. We especially agree that the State's Final Staffing Plan will not "lead to a 'final and full' remedy for this problem without further salary increases for psychiatrists and additional steps." We regret the State was not willing to rectify the problem in this most recent round of bargaining with UAPD. We are providing you with the following information to support the Plaintiff's claims that more must be done to recruit and retain Psychiatrists.

Attachment 1 CDCR BU16 Psychiatry Vacancy Information:

Attachment 1(2) CDCR BU16 All CDCR Vacancy Information - Source Document:

Attachment 1 is a spreadsheet showing the vacancy rate for Staff Psychiatrists at each CDCR facility as of October 2016. As you will see, the overall vacancy rate for CDCR Psychiatrists was an abysmal 44%. At the time six facilities actually had a 100% vacancy rate for Staff Psychiatrists, meaning that there were none on staff. The Staff Psychiatrist vacancy information in Attachment 1 was taken from a report on CDCR vacancies in every classification, included as Attachment 1(2), that was sent by CalHR's Candace Murch on October 19, 2016.

Attachment 2 CDCR Psychiatrist Dec 2016 Job Satisfaction Survey:

In December 2016, UAPD conducted an anonymous job satisfaction survey of State Bargaining Unit members. Attachment 2 contains answers from CDCR Psychiatrists that we have deemed relevant to the Plaintiff's case. Q1 and Q3 establish that the answers come from CDCR and Psychiatrists respectively, and that 64 of them participated in the survey. Q4 demonstrates that almost half of the

respondents have fewer than 6 years with CDCR¹. Q6 demonstrates that nearly 20% of the respondents are subject to the reduced pension benefits under PEPRA (including a \$118,775 cap on pensionable salary)², which the comments reveal to be a significant and fast-growing impediment to Recruitment and Retention. Q8 reveals that more than one-third of CDCR Psychiatrists who completed the survey are "extremely concerned" that "current staffing levels are compromising patient safety at your facility." Q14 gives 36 open-ended comments from CDCR Psychiatrists. Here are some of what they chose to communicate to their union.

Poor Staffing/High Workload That Undermines Patient Care

- "Staffing levels for Psychiatrists at RJ Donovan have been below minimal standards for over a year now. Those of us remaining are seeing patients who are long overdue for appointments as per the requirements. It is only a matter of time before an adverse outcome occurs, unless a significant improvement in recruitment occurs." (#15)
- "...the situation at SVSP is at a crisis point." (#21)
- "I'm trying to hold on for my 10 years. I can't recommend other Psychiatrists work here. The system is exceptionally top down. The environment is decidedly non-academic and the aspiration is for 'the minimal constitutionally mandated level of care'." (#31)
- "Employer tries to overwork you..." (#17)
- "...due to inadequate staffing, our present efforts at trying to fill-in leads to poor quality, rushed and uninformed work, and burns out providers..." (#4)

The 2013 PEPRA Pension Cuts Make CDCR Employment Less Attractive

- "Retirement plan changes after 2013 have made working for CDCR much less appealing" (#17)
- "The retirement benefits that drew me to this job turned out to have been destroyed by PEPRA. I was not informed of this or educated about this in any way before accepting the position." (#4)
- "I am a Classic CalPERS employee with 9 years of service credit...or I would already be gone and in the private sector." (#10)

The On-Call Requirement is Onerous and Low-Paid

- "On-call schedule too heavy with dismal compensation" (#11)
- "Call should be paid hourly rate" (#12)
- "Hate call" (#13)
- "I DO NOT WANT TO TAKE CALL" (#23)

¹ If needed, UAPD can do an information request about total CDCR Psychiatrist (rather than just survey respondents) years of service.

² If needed, UAPD can do an information request about the total number of CDCR Psychiatrists (rather than just survey respondents) subject to PEPRA.

Attachment 3 CDCR Psychiatrist Issues Survey March 2017:

In March 2017 UAPD conducted a survey of CDCR Psychiatrists to ask them what information they would like to convey to the Plaintiff's attorneys in the *Coleman* Case. The responses are included as Attachment 3. In some cases the doctors responded anonymously, and in some cases they included a name and phone number. The attorneys are free to contact those doctors to ask for their participation in the case. These doctors report that:

Short Staffing Compromises Patient Care

- "Psychiatry understaffing in my work at San Quentin" has led to an increased "risk of harm to patients, physicians, custody and staff." (#4273)
- "I am a Telepsychiatrist at VSP (Valley State Prison) and know from my own patient caseload that the intervals for patient contacts is (sic) not being met according to the Program Guide. Yet somehow, whenever there is a *Coleman* visit, the numbers seemingly look in compliance...These seriously mentally ill patients have quickly decompensated and put pressure on Mental Health Crisis Beds." (#4275)
- "We have been substantially short-staffed with Psychiatrists here at RJD (RJ Donovan State Prison) for a couple of years... it is only a matter of time before an adverse outcome...We are all feeling the effects of burnout and loss of morale." (#4288)

Telepsychiatry Is Not a Solution

- "They hire senile contractors to fill in (at Pelican Bay State Prison), creating more work for myself to fix after they leave. They are on the 4th or 5th different Telepsychiatrist (I've lost count already). ..The ONLY reason I try to hang on is to make it closer to my retirement and then I'm getting out ASAP." (#4282).
- "The Telepsychiatrists and contractors (most of whom have quit) are no substitute for adequate staff." (#4288)

Psychiatrists are Leaving Facilities for Other Work, Including CDCR Telepsychiatry

- "I had worked at CIW inside the institution until an inmate threatened me. We had a rash of suicides, were understaffed at the time, and morale was horrendous. I transferred to telepsychiatry which is a different world... " (#4281)
- "Two out of our three Psychiatrists (at Solano State Prison) are looking for other jobs since the recent bargaining deal was so weak. I will soon be the only State Psychiatrist left. HELP!" (#4279)

Attachment 4 UAPD Salary Proposal 10.4 (7-19-16)

The January 25, 2017 letter to Special Master Lopez recounts on page 5 that the State could not share any information about possible plans to increase Psychiatrist salaries with *Coleman* attorneys because the issue was being bargained with UAPD. UAPD is willing to share with you the records of that bargaining. *At no point did the State of California offer CDCR Psychiatrists anything more than the General Salary Increases (GSIs) that go to all state doctors, despite an abysmal a 44% vacancy rate among the prison Psychiatrists.* Attachment 4 is UAPD's initial proposal to the State regarding salaries, from July 19, 2016. Under 10.4 A, UAPD proposed that all doctors, including CDCR Psychiatrists, would receive 4% General Salary Increases each year for the term of the contract. UAPD also proposed that any classification at any worksite with more than a 25% vacancy would receive a Recruitment and Retention differential of 5% or greater. This would have benefitted the vast majority of CDCR Psychiatrists. The State rejected the proposal. In order to settle the deal, UAPD had to lower its GSI demand to 2 %, 3%, 2%, and 2% for CDCR Psychiatrists (and all others), and withdraw the proposal for Recruitment and Retention differentials that would cover Psychiatrists.

In contrast, the State did offer a 15% Recruitment and Retention differential to the Physician and Surgeons (medical doctors) at prisons where the vacancy rate for those classifications was greater than 15%. They admitted at the table that the Federal Receiver was the driving factor in the State's decision to propose those bonuses to that group of doctors. It is becoming clear that the State requires court intervention to offer salaries that are sufficient to resolve its problem recruiting doctors

Attachment 5 CDCR Psychiatrist Response to Lift and Shift:

Attachment 5(2) DSH Psychiatrist Response to Lift and Shift :

In the January 25, 2017 letter to Special Master Lopez, page 3 states that the proposed "Lift and Shift" of Department of State Hospital (DSH) prison-based psychiatric programs over to CDCR is certain to make staffing problems at CDCR worse. In February 2017, we surveyed UAPD members about the proposed transfer, and they agree. The Lift and Shift survey answers from CDCR Psychiatrists are included as Attachment 5, and from DSH Psychiatrists are in Attachment 5(2). 91% of the DSH Psychiatrists and 71% of the CDCR Psychiatrists who answered the survey oppose Lift and Shift (see Q4 in both Attachments).

The open-ended comments from CDCR Psychiatrists (Attachment 5, Q5) are insightful:

- "CDCR HAS NEVER EMPLOYED ENOUGH STAFF TO TAKE CARE OF THEIR REGULAR NEEDS. This is an added burden with no relief in sight" (#5)
- "CDCR has no experience in providing inpatient psychiatric care...The proposed change will result in a disruption to the current care" in prisons. (#1)
- "...going by past experience, it would not come as a surprise if HQ Psychiatry leadership simply 'dumps' the extra workload on the respective institutions, without providing additional

staff/resources. Given the morale at various CDCR institutions, some DSH staff have expressed their intent to leave.." (#2)

Also informative are the comments from DSH Psychiatrists (Attachment 5(2), Q5), who have an overall negative assessment of working for CDCR:

- "With CDCR's inability to retain Psychiatrist (sic), we don't want this take over to happen. If the situation gets bad I am going to leave here for another job." (#4)
- "Staff retention record is poor (inside CDCR) and so puts pressure on those working." (#5)
- "CDCR has a proven record of providing poor healthcare, poor psychiatrist retention, staff burnout, poor management skills." (#9)

In closing, the Union of American Physicians and Dentists is committed to doing everything in its power to resolve the CDCR Psychiatrist staffing crisis now. Do not hesitate to contact us if more information is required.

Sincerely,

A handwritten signature in black ink that reads "Stuart Bussey, MD, JD". The signature is written in a cursive, slightly slanted style.

Stuart A. Bussey, MD, JD
President, UAPD