

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA

MARGARET FARRELL,)
) CASE NO. RG03079344
 Plaintiff,)
)
 vs.)
)
 MATTHEW CATE,)
)
 Defendant.)
 _____)

TWELFTH REPORT OF SPECIAL MASTER

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APPENDICES

Appendix A:	Schwartz, Ph.D., <i>California Department of Corrections: Division of Juvenile Justice Sex Behavior Treatment Program Audit 4</i> (September 2009)
Appendix B:	DJJ, <i>Sexual Behavior Treatment Program Guide</i> (September 3, 2009)

I. INTRODUCTION

This report reviews the 2009 report of the sexual behavior treatment expert and summarizes the status of compliance with the Sexual Behavior Treatment Program Remedial Plan. The sexual behavior treatment expert's report is included as Appendix A. The office of the special master (OSM) provided a draft of this report and the expert's report for the parties' comments. OSM and expert submit these final reports after consideration of the parties' comments.

II. SEXUAL BEHAVIOR TREATMENT

The *Farrell* sexual behavior treatment expert, Dr. Barbara Schwartz, conducted her fourth audit of DJJ's sexual behavior treatment program (SBTP) between January 2009 and June 2009.¹ Dr. Schwartz reviewed and approved this section of the special master's report.²

DJJ's capacity to develop a standardized SBTP improved notably as a result of changes at central office in late 2008 and early 2009. DJJ created a Court Compliance Task Force in December 2008 and devoted greater attention to increasing compliance with the SBTP remedial plan. Erin Peel, formerly of Chaderjian, began serving as Sex Behavior Treatment Team Leader in December.³ Dr. Heather Bowlds, formerly at O.H.

¹ See Appendix A, Barbara Schwartz, California Department of Corrections: Division of Juvenile Justice Sex Behavior Treatment Program Audit 4, September 2009, p. 2 [hereinafter Barbara Schwartz, 2009 Audit Report]. Dr. Schwartz visited DJJ's central office and its four facilities with residential SBTP units: Chaderjian, O.H. Close, Stark, and SYCRCC. See *ibid.* Unlike last year, she did not visit the Preston facility because it has discontinued its outpatient SBTP. See *ibid.*; Eighth Report of the Special Master (February 2009), p. 12.

² See e-mail of Barbara Schwartz to Aubra Fletcher, November 3, 2009.

³ See DJJ Quarterly Report (July 31, 2009), Org Chart 28, June 29, 2009; e-mail of Mike Brady to Donna Brorby, et al., December 24, 2008.

Close, became acting SBTP coordinator in January 2009.⁴ Dr. Bowlds and Ms. Peel work closely together and maintain regular communication with Dr. Schwartz.

A. Program Policies and Guidelines

Dr. Bowlds oversaw the development of an SBTP program guide this year.⁵ The program guide will function as a governing policy and encompasses most aspects of the SBTP, from initial assessment to reentry preparation.⁶ Dr. Schwartz has approved the program guide's content,⁷ and DJJ's SBTP Task Force has begun to develop a plan for the guide's implementation.⁸ The guide makes possible an escalation of efforts to develop program curricula and paves the way for a standardized program of sexual behavior treatment across DJJ.

The program guide does not address treatment confidentiality or informed consent.⁹ In August 2009 DJJ shared a draft treatment confidentiality policy with Dr. Schwartz and all other *Farrell* experts.¹⁰ OSM and the experts provided written feedback in early September 2009 and are awaiting a response as of mid-December 2009.¹¹ DJJ has not begun drafting a policy addressing informed consent to sexual behavior

⁴ See e-mail of Ed Morales to Donna Brorby, et al., December 12, 2008.

⁵ See Appendix B, DJJ, Sexual Behavior Treatment Program Guide, September 3, 2009. Dr. Schwartz had identified the completion of the program guide as her first priority for fiscal year 2009-2010. See Eleventh Report of the Special Master (November 2009), Appendix I (Experts' Priorities for Fiscal Year 2009-2010), p. 4.

⁶ See generally Appendix B, DJJ, Sexual Behavior Treatment Program Guide, September 3, 2009; see also Barbara Schwartz, 2009 Audit Report, p. 3.

⁷ See, e.g., statements of Barbara Schwartz during DJJ Court Compliance Task Force meeting, September 24, 2009.

⁸ Statements of Heather Bowlds during DJJ Court Compliance Task Force meeting, September 24, 2009.

⁹ The remedial plan requires DJJ to promulgate confidentiality and informed consent policies. See Sexual Behavior Treatment Remedial Plan, Standards and Criteria, item 14. Dr. Schwartz has identified the development of a treatment confidentiality and informed consent policy as a priority for fiscal years 2008-2009 and 2009-2010. See Ninth Report of the Special Master (June 2009), Appendix A (Experts' Priorities for Fiscal Year 2008-2009), p. 4; Eleventh Report of the Special Master (November 2009), Appendix I (Experts' Priorities for Fiscal Year 2009-2010), p. 4.

¹⁰ See DJJ, Treatment Confidentiality (draft policy), August 10, 2009 (provided as PoP # 477, August 6, 2009).

¹¹ See, e.g., e-mail of Aubra Fletcher to Thy Vuong, et al., September 2, 2009.

treatment. As the special master has previously noted, providing sexual behavior treatment to youth without appropriately documented informed consent raises immense ethical concerns.¹² Dr. Schwartz has raised this issue with DJJ management and counsel since her involvement with *Farrell* began.¹³ She reiterates in her 2009 report that “DJJ’s psychologists are placing their licenses in jeopardy every day that they continue to treat these youths without clarification of these issues.”¹⁴

B. Curriculum

The program guide provides a context and foundation for the development of an SBTP curriculum.¹⁵ Dr. Bowlds has begun writing the new residential program curriculum for males¹⁶ and is working to secure outside assistance by contract.¹⁷ DJJ expects a contractor to be in place by March 15, 2010.¹⁸ DJJ has acknowledged the need for a separate curriculum for female youth with sexual behavior issues, and counsel for DJJ has informed the OSM that the curriculum-development contract will encompass the development of a curriculum for females.¹⁹ As of June 2009, DJJ housed eight young women in need of sexual behavior treatment.²⁰

¹² See Eighth Report of the Special Master (February 2009), p. 20; *id.* at Appendix C (Schwartz report), pp. 6, 9.

¹³ See Second Report of the Special Master (June 2006), p. 14; Fifth Report of the Special Master (October 2007), Appendix C (Schwartz 2006-2007 report), pp. 2, 11.

¹⁴ See Barbara Schwartz, 2009 Audit Report, p. 7.

¹⁵ Dr. Schwartz has identified curriculum development as a priority for fiscal years 2008-2009 and 2009-2010. See Ninth Report of the Special Master (June 2009), Appendix A (Experts’ Priorities for Fiscal Year 2008-2009), p. 4; Eleventh Report of the Special Master (November 2009), Appendix I (Experts’ Priorities for Fiscal Year 2009-2010), p. 4.

¹⁶ See, e.g., statements of Heather Bowlds during central office site visit, June 8, 2009; Barbara Schwartz, 2009 Audit Report, p. 8.

¹⁷ Statements of Heather Bowlds during DJJ Court Compliance Task Force meeting, September 24, 2009. DJJ decided to seek a contractor to assist with curriculum writing after consultation with Dr. Schwartz, who endorses the decision to contract. See, e.g., statements of Barbara Schwartz to Aubra Fletcher during teleconference, September 24, 2009; Barbara Schwartz, 2009 Audit Report, pp. 7-8.

¹⁸ See memorandum of William Kwong to Donna Brorby, December 10, 2009, p. 1.

¹⁹ *Ibid.*

²⁰ Memorandum of Barbara Mendenhall to Heather Bowlds, May 6, 2009, pp. 2-3.

The remedial plan requires DJJ's SBTP to incorporate a "healthy living" curriculum, which offers the first step in sexual behavior treatment for most youth, and the only step for some.²¹ All facilities with an SBTP piloted a "healthy living" curriculum during 2008, with Dr. Schwartz's approval.²² DJJ has not used the curriculum since the pilot;²³ a legal dispute with the contract curriculum writer reportedly prevented the curriculum's use until April 2009.²⁴ In May 2009, DJJ began revising the curriculum in response to the pilot.²⁵ Dr. Schwartz generally approved the curriculum in October 2009, though she offered recommendations for some improvements.²⁶

C. Screening and Assessment

The SBTP remedial plan mandates appropriate screening and assessment tools to evaluate risk and treatment needs initially and on an ongoing basis.²⁷ Dr. Schwartz identified the implementation of a comprehensive assessment as a priority for fiscal year 2009-2010.²⁸ DJJ's new program guide outlines a screening and assessment protocol, which was approved by Dr. Schwartz but has not been implemented.²⁹ The program guide also creates a residential SBTP orientation unit, to be housed at Chaderjian, where

²¹ See Sexual Behavior Treatment Program Remedial Plan, p. 14; Fifth Report of the Special Master (October 2007), p. 29 n.115.

²² See, e.g., Eighth Report of the Special Master (February 2009), Appendix C (Schwartz report), pp. 2, 5, 6, 8, 16, 21, 23, 27, 49, 53, 62, 81, 98, 114, 115; Barbara Schwartz, 2009 Audit Report, p. 8.

²³ The special master previously reported that DJJ continued to use the curriculum following the pilot, but this has since been clarified. See Eighth Report of the Special Master (February 2009), p. 13; e-mail of Heather Bowlds to Aubra Fletcher, October 13, 2009.

²⁴ E-mail of Heather Bowlds to Aubra Fletcher, October 13, 2009.

²⁵ See statements of Heather Bowlds during central office site visit, June 8, 2009; statements of Heather Bowlds during meeting with Barbara Schwartz and Aubra Fletcher, August 20, 2009; Barbara Schwartz, 2009 Audit Report, pp. 5, 8.

²⁶ See e-mail of Barbara Schwartz to Heather Bowlds, October 6, 2009.

²⁷ See Sexual Behavior Treatment Program Remedial Plan, Standards and Criteria, item 3.

²⁸ See Eleventh Report of the Special Master (November 2009), Appendix I (Experts' Priorities for Fiscal Year 2009-2010), p. 4.

²⁹ See Appendix B, DJJ, Sexual Behavior Treatment Program Guide, September 3, 2009, pp. 28-30.

much of the assessment and introduction to the SBTP will occur.³⁰ Dr. Schwartz has expressed strong support of the creation of an orientation unit.³¹

Though the implementation of DJJ's new protocol in its entirety will take time, there is no reason that DJJ cannot immediately begin to use the J-SOAP risk assessment tool that it agreed to use in March 2006 based on Dr. Schwartz's recommendation.³² DJJ has implemented two other risk assessment tools under the 2008 mandate of the California legislature, beginning in January 2009. Because these tools are not validated for a population like DJJ's, DJJ has included the J-SOAP as a part of its assessment protocol.³³

D. Organizational Structure

Dr. Schwartz has identified the production of "a meaningful organizational chart" as a priority for fiscal year 2009-2010.³⁴ The SBTP coordinator has historically lacked sufficient authority to hold SBTP staff accountable for adherence to program rules or completion of tasks.³⁵ DJJ's new program guide includes a chart depicting reporting relationships, but the SBTP coordinator still lacks the authority to hold clinical and non-

³⁰ *See id.*, pp. 16-23, 28-30; Barbara Schwartz, 2009 Audit Report, p. 4. The orientation unit will also serve as a "transition unit" for many outgoing youth. *See* Appendix B, DJJ, Sexual Behavior Treatment Program Guide, September 3, 2009, pp. 16-23, 28-30.

³¹ *See, e.g.*, statements of Barbara Schwartz during central office site visit, June 8, 2009.

³² *See* Second Report of the Special Master (June 2006), p. 15; Eighth Report of the Special Master (February 2009), p. 22.

³³ *See, e.g.*, Eighth Report of the Special Master (February 2009), p. 22. DJJ intends to use the J-SOAP alongside the non-validated instruments. Statements of Juan Carlos Arguello during Ventura site visit, December 3, 2008; Barbara Schwartz, 2009 Audit Report, p. 6. Dr. Bowlds explains that prior to her arrival not all staff had received J-SOAP training and that DJJ had not identified how exactly it would use the tool in conjunction with other assessments. The program guide Dr. Bowlds helped finalize describes how DJJ intends to use the J-SOAP; she expects the current SBTP units to use the tool together with the YASI to create treatment plans, and the tool will also form a part of the larger assessment that will take place on DJJ's future orientation unit. *See* e-mail of Heather Bowlds to Aubra Fletcher, et al., October 19, 2009.

³⁴ *See* Eleventh Report of the Special Master (November 2009), Appendix I (Experts' Priorities for Fiscal Year 2009-2010), p. 4.

³⁵ *See* Eighth Report of the Special Master (February 2009), pp. 16-17; Fifth Report of the Special Master (October 2007), p. 27.

clinical SBTP staff accountable.³⁶ The depicted structure at the facility level suffers the same problem: staff report along separate chains of command and operate within separate clinical and custody “silos.”³⁷

The sexual behavior treatment expert believes that a clear and adequate organizational structure is a prerequisite to the development and delivery of the sexual behavior treatment program.³⁸ She has raised this issue repeatedly in her reports and in contacts with DJJ management.³⁹ Without clarity as to actual reporting relationships, the SBTP coordinator cannot ensure the delivery of treatment services in an organized and consistent manner.

Dr. Schwartz reported again this year that staff do not follow a standardized treatment approach, which “leads to the type of inconsistency that has been a problem for this program in the past.”⁴⁰ Psychologists apply varied approaches to treatment.⁴¹ No facility consistently provides the required amount of treatment hours to youth.⁴² The role of youth correctional counselors (YCCs) in therapy groups varies across the state.⁴³ Facilities offer differing levels of treatment to youth with co-morbid disorders or special

³⁶ See Appendix B, DJJ, Sexual Behavior Treatment Program Guide, September 3, 2009, p. 38; statements of Barbara Schwartz during teleconference, October 20, 2009.

³⁷ See Appendix B, DJJ, Sexual Behavior Treatment Program Guide, September 3, 2009, p. 38; statements of Barbara Schwartz during teleconference, October 20, 2009.

³⁸ Eighth Report of the Special Master (February 2009), p. 17.

³⁹ *Ibid.*; statements of Barbara Schwartz to OSM during meeting of OSM and experts, August 29, 2008; statements of Barbara Schwartz during teleconference, September 16, 2008; e-mail of Barbara Schwartz to Doug Ugarkovich, November 6, 2008; statements of Barbara Schwartz to OSM during teleconference, December 30, 2008.

⁴⁰ See Barbara Schwartz, *Farrell SBTP Audit*: H.G. Stark, July 24, 2009, p. 3.

⁴¹ See Barbara Schwartz, 2009 Audit Report, pp. 9-12. Dr. Schwartz notes that the current model is incomplete. See *id.*, p. 9.

⁴² See *id.*, p. 9. Dr. Schwartz found some improvement in the number of documented treatment hours provided to youth. See *ibid.*

⁴³ *Ibid.*

treatment.⁴⁴ The lack of clear lines of accountability at times results in open defiance of the current treatment model.⁴⁵

E. Record Keeping

For the first time since Dr. Schwartz began auditing DJJ facilities, all sites were using the new version of the Ward Information Network (WIN) to track services provided to youth.⁴⁶ WIN is a helpful source of information,⁴⁷ but inconsistent, duplicative, and incomplete treatment-related recordkeeping continues to be a problem even in electronic form. For example, co-facilitators of a single group session take separate, often contradictory, notes and store them in different locations.⁴⁸ This practice persists despite Dr. Schwartz's past recommendations that it cease.⁴⁹ Also, a problem in the WIN system prevented it from consistently displaying treatment minutes logged by providers.⁵⁰ Thus, the time spent in individual or group sessions did not always appear on the case note entry describing the session. It is unknown to what extent this was due to the WIN glitch or to staff failure to log minutes.

⁴⁴ *Id.*, p. 12.

⁴⁵ Dr. Schwartz encountered "staff who were openly defiant when discussing uniformity of treatment" during her last two site visits. *See id.*, p. 10. For example, "[o]ne YCC has told [Dr. Schwartz] that he has no intention of following a preset curriculum but gives his own version of Anger Management, including bastardizing Aggression Replacement Therapy, a copyrighted program." *Id.*, p. 6; *see also* Barbara Schwartz, *Farrell SBTP Audit*: H.G. Stark, July 24, 2009, p. 3.

⁴⁶ The new WIN was just coming on line as Dr. Schwartz completed her monitoring and reporting for fiscal year 2007-2008. Eighth Report of the Special Master (February 2009), p. 22.

⁴⁷ *See ibid.*

⁴⁸ *See* Barbara Schwartz, *Farrell SBTP Audit*: Chaderjian, July 1, 2009, p. 4; Barbara Schwartz, *Farrell SBTP Audit*: O.H. Close, June 30, 2009, p. 3; Barbara Schwartz, *Farrell SBTP Audit*: H.G. Stark, July 24, 2009, p. 2; Barbara Schwartz, *Farrell SBTP Audit*: SYCRCC, June 30, 2009, p. 4.

⁴⁹ *See* Eighth Report of the Special Master (February 2009), Appendix C (Schwartz report), pp. 11, 27, 32, 33, 34, 64, 85.

⁵⁰ *See* Barbara Schwartz, *Farrell SBTP Audit*: Chaderjian, July 1, 2009, p. 4; Barbara Schwartz, *Farrell SBTP Audit*: O.H. Close, June 30, 2009, p. 3; Barbara Schwartz, *Farrell SBTP Audit*: H.G. Stark, July 24, 2009, p. 2; Barbara Schwartz, *Farrell SBTP Audit*: SYCRCC, June 30, 2009, p. 5. The remainder of this paragraph is based on these sources.

DJJ is finalizing dramatic improvements to the SBTP-related WIN features and demonstrated the new system for Dr. Schwartz and monitor Aubra Fletcher in January 2009.⁵¹ These features include automated tracking of residential placements, therapy and resource group assignments, and services provided. The “achievement matrix” document which DJJ began to use in 2008 will be automated. Appropriate security restrictions will prevent unauthorized staff from viewing youth clinical records. The SBTP coordinator will be able to view all SBTP youths’ electronic records from Sacramento. As of the end of September 2009, DJJ planned to pilot the new WIN features at O.H. Close during the month of October.⁵²

F. Other Areas of Improvement and Need

Areas of continued progress include the use of multidisciplinary teams to conduct quarterly treatment reviews at all facilities.⁵³ Some SBTP units have established youth committees to increase the role of youth in living unit activities and operations.⁵⁴ All facilities are involving youth in community service activities.⁵⁵ And in addition to completing the SBTP program guide, central office has begun drafting a revised SBTP remedial plan in consultation with Dr. Schwartz and OSM.⁵⁶

⁵¹ WIN programmer Ed Chance and SBTP Team Leader Erin Peel presented a demonstration at DJJ’s central office on January 30, 2009. Unless otherwise noted, the remainder of this paragraph is based on information provided during that presentation.

⁵² Statements of Heather Bowlds during DJJ Court Compliance Task Force meeting, September 24, 2009.

⁵³ Barbara Schwartz, 2009 Audit Report, p. 17.

⁵⁴ *Id.*, p. 12.

⁵⁵ *Ibid.*

⁵⁶ *See, e.g.*, Sexual Behavior Treatment Program Remedial Plan draft, undated (provided as PoP #506, September 28, 2009); e-mail of Aubra Fletcher to Erin Peel, et al., September 29, 2009 (attaching response to draft plan from OSM, Dr. Schwartz, and Dr. Terry Lee); Barbara Schwartz, 2009 Audit Report, p. 5. Dr. Schwartz considers the revision of the remedial plan to be a priority for this fiscal year. *See* Eleventh Report of the Special Master (November 2009), Appendix I (Experts’ Priorities for Fiscal Year 2009-2010), p. 4.

Staff training at DJJ has also improved this year. DJJ sent Dr. Bowlds to a national conference highly recommended by Dr. Schwartz in March 2009.⁵⁷ Dr. Bowlds has since provided day-long trainings at each facility with a residential SBTP.⁵⁸ DJJ also sent four SBTP staff to a California Coalition on Sexual Offending conference this spring.⁵⁹ Adjunct SBTP staff, however, are still in need of training.⁶⁰

Dr. Schwartz raises concerns regarding various aspects of the delivery of treatment. Again this year, she found that psychologists are failing to provide the requisite hours of one-on-one treatment to youth.⁶¹ Almost all facilities lacked adequate physical space for treatment as of the expert's site visits.⁶² DJJ continues to staff its SBTP units with YCCs based on a shift-and-bid system that often results in inappropriate staff placements.⁶³ Once assigned to an SBTP unit, YCCs do not receive the training or supervision necessary to become qualified treatment providers.⁶⁴ Yet, DJJ directs its YCCs to teach psycho-educational resource groups, to co-facilitate therapy groups, and to provide individual "treatment" to youths.⁶⁵ DJJ also directs YCCs to develop treatment

⁵⁷ See, e.g., e-mail of Erin Peel to Aubra Fletcher, March 23, 2009.

⁵⁸ Barbara Schwartz, 2009 Audit Report, pp. 5, 7.

⁵⁹ Statements of Erin Peel and Heather Bowlds during central office site visit, June 8, 2009.

⁶⁰ Barbara Schwartz, 2009 Audit Report, p. 8. Adjunct staff include educational, medical, recreational, and security staff who interact with SBTP youth. See Sexual Behavior Treatment Program Remedial Plan, Standards and Criteria, item 27.

⁶¹ Barbara Schwartz, 2009 Audit Report, p. 10.

⁶² *Id.*, p. 13. Improvements to physical space have occurred following the close of the expert's audit round. See, e.g., memorandum of William Kwong to Donna Brorby, December 10, 2009, p. 2.

⁶³ Barbara Schwartz, 2009 Audit Report, p. 7; see also Barbara Schwartz, *Farrell SBTP Audit*: O.H. Close, June 30, 2009, pp. 1-2. Dr. Schwartz has called on DJJ to make the solution to this problem a priority. See Ninth Report of the Special Master (June 2009), Appendix A (Experts' Priorities for Fiscal Year 2008-2009), p. 4; Eleventh Report of the Special Master (November 2009), Appendix I (Experts' Priorities for Fiscal Year 2009-2010), p. 4.

⁶⁴ Barbara Schwartz, 2009 Audit Report, pp. 6-7 ("YCCs can be valuable treatment providers if they are selected for their ability to work with this population, provided with intensive ongoing training and supervision, provided with approved curriculum which they are mandated to rigorously follow and follow carefully developed and highly individualized treatment plans.").

⁶⁵ See *id.*, pp. 6-7, 9. Dr. Schwartz writes that DJJ documents case work provided by YCCs as if it were individual "treatment." See *id.*, p. 6. She adds: "Treatment is not casework. Treatment is provided by a

plans for individual youth,⁶⁶ rather than assigning this task to staff who possess the “fairly sophisticated skill” necessary for treatment plan development.⁶⁷ Dr. Schwartz recommends that treatment plans be highly individualized and specific as to interventions, timelines, and responsible staff, and that DJJ mandate YCCs to follow them rigorously.⁶⁸

Dr. Schwartz finds that one facility’s choices of “victim outreach” projects for SBTP youth were inappropriate. Staff at O.H. Close coordinated a project in which SBTP youth made Valentine’s Day cards for abused children and women at local shelters in February 2009.⁶⁹ In March, staff directed youth to make blankets for the abused children.⁷⁰ Dr. Schwartz described these activities as “inappropriate[] . . . for this particular population” because they prompt sexually inappropriate youth to focus on children.⁷¹ DJJ responded to the expert’s determination that such activities were inappropriate for SBTP youth, and for the shelter residents, by asserting that “providing blankets for children is appropriate for this population due to many victims being children [O.H. Close’s SBTP] provides a resource for children who face many of the same obstacles and stressors as our youth.”⁷² In her comprehensive report the expert

qualified mental health professional. This does not necessarily mean a psychologist It does not mean a YCC unless that individual is also a qualified mental health professional.” *See id.*, p. 10.

⁶⁶ Statements of Heather Bowlds during meeting with Barbara Schwartz and Aubra Fletcher, August 20, 2009.

⁶⁷ *See* Barbara Schwartz, 2009 Audit Report, p. 12 (also noting that treatment plans are often “vague, redundant, and reference[] interventions which were not available”). Additionally, at “several institutions youths were assigned to special resource groups” regardless of whether the youth was in need of the special group or not. *Id.*, p. 11.

⁶⁸ *See id.*, pp. 6, 12. Currently, staff allow youth to “languish at various stages [of treatment] without active intervention.” *See id.*, p. 11.

⁶⁹ Barbara Schwartz, *Farrell SBTP Audit: O.H. Close*, June 30, 2009, p. 23.

⁷⁰ *Ibid.*; *see also* e-mail of William Kwong to Barbara Schwartz, et al., August 5, 2009 (attaching DJJ’s comments on Dr. Schwartz’s draft informal report for O.H. Close).

⁷¹ *See* Barbara Schwartz, *Farrell SBTP Audit: O.H. Close*, June 30, 2009, pp. 12, 23.

⁷² *See* e-mail of William Kwong to Barbara Schwartz, et al., August 5, 2009 (attaching DJJ’s comments on Dr. Schwartz’s draft informal report for O.H. Close).

reiterates that these activities were “clearly not appropriate” for a population that includes youth who have sexually abused children.⁷³

III. CONCLUSION

OSM recommends that the Court consider modifying the SBTP Remedial Plan to assign a deadline for implementation of an adequate informed consent policy.⁷⁴ As discussed above, providing sexual behavior treatment without appropriately documenting youths’ informed consent raises immense ethical concerns.⁷⁵ Dr. Schwartz and OSM have consistently raised this issue in reports and interactions with DJJ since 2005,⁷⁶ yet DJJ still has not begun drafting an informed consent policy.

The office of the special master respectfully submits this report.

Aubra Fletcher
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⁷³ See Barbara Schwartz, 2009 Audit Report, p. 12.

⁷⁴ See Consent Decree, ¶ 27(n) (special master may “[a]dvice the Court concerning any modification to the remedial plans that appears necessary to effectuate the Decree”); Sexual Behavior Treatment Remedial Plan, Standards and Criteria item 14 (requiring implementation of adequate informed consent policy, without assigning a deadline).

⁷⁵ See, *supra*, pp. 2-3.

⁷⁶ See, e.g., Appendix A, Barbara Schwartz, 2009 Audit Report, p. 7; Second Report of the Special Master (June 2006), p. 14, Appendix D (Schwartz 2005 report), p. 2; Fifth Report of the Special Master (October 2007), pp. 28-29, Appendix C (Schwartz 2006-2007 report), pp. 2, 11; Eighth Report of the Special Master (February 2009), p. 20, Appendix C (Schwartz report), pp. 6, 9; Ninth Report of the Special Master (June 2009), Appendix A (Experts’ Priorities for Fiscal Year 2008-2009), p. 4; Eleventh Report of the Special Master (November 2009), Appendix I (Experts’ Priorities for Fiscal Year 2009-2010), p. 4.