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Attorneys for Defendants David Baden and Dolores Matteucci

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

DISABILITY RIGHTS OREGON,  
METROPOLITAN PUBLIC DEFENDER  
SERVICES, INC., and A.J. MADISON,

Plaintiffs,

v.

DAVID BADEN, in his official capacity as  
head of the Oregon Health Authority, and  
DOLORES MATTEUCCI, in her official  
capacity as Superintendent of the Oregon State  
Hospital,

Defendants.

JAROD BOWMAN, JOSHAWN DOUGLAS-  
SIMPSON,

Plaintiffs,

v.

DOLORES MATTEUCCI, Superintendent of  
the Oregon State Hospital, in her individual  
and official capacity, David Baden, Director of  
the Oregon Health Authority, in his official

Case No. 3:02-cv-00339-MO (Lead Case)  
Case No. 3:21-cv-01637-MO (Member Case)

DEFENDANTS' PETITION FOR  
EXPEDITED RULING ON SUPREMACY  
CLAUSE

Case No. 3:21-cv-01637-MO

capacity, and PATRICK ALLEN in his individual capacity,

Defendants,

## **I. Introduction**

Pursuant to section VII of this Court’s September 2022 Order, as amended in its July 2023 Order (the Federal Court Order), counsel for the Oregon State Hospital (OSH) mediated the Supremacy Clause issue presented in this petition with the parties in the underlying state-court criminal matter with Judge Stacie Beckerman. Mediation was unsuccessful. OSH now brings this Petition for Expedited Ruling on Supremacy Clause and requests this Court’s assistance in resolving the Supremacy Clause issue described below.

## **II. Supremacy Clause Issue**

Section III.c of the Federal Court Order provides that: “For purposes of this order, restoration across multiple charges shall be consolidated and contiguous consecutive periods of restoration should be eliminated unless there are new charges incurred after an initial period of restoration has ended.”

Pursuant to this provision in the Federal Court Order, OSH denied admission of a defendant on a previously filed Marion County charge who had already met his maximum length of inpatient restoration on contiguous charges in Lane County. Marion County Circuit Court now seeks to require OSH to admit a defendant after he had met his length of permissible inpatient restoration at OSH on the contiguous charges from Lane County. OSH understands the Federal Court Order to preclude OSH from admitting the patient. The Marion County Circuit Court disagrees and has ordered OSH to “show cause” why it has not admitted the defendant. OSH now faces a state court action in Marion County that could lead to contempt and seeks clarification from this Court regarding interpretation and application of its order to the facts presented in this petition.

### III. Facts

The following facts are supported by the accompanying Declaration of Craig Johnson, which is filed under seal pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

On September 3, 2021, the criminal defendant at issue was charged by information in Lane County, which included a Ballot Measure II charge.

On October 26, 2021, the defendant was charged by indictment in Marion County for “Escape in the 2nd Degree” from OSH (a C felony) in 2020 (warrant issued on this same date by Marion County)

On November 15, 2021, the defendant was found unfit to proceed in Lane County and a .370 order issued for OSH to admit defendant to OSH for restoration.

On November 30, 2021, the defendant was admitted to OSH pursuant to the Lane County .370 order.

On December 12, 2022, pursuant to the Federal Court Order’s limit on inpatient restoration, OSH filed with Lane County a 30-Day notice of the end of the inpatient restoration period, indicating that the defendant would be released on or before January 17, 2023. The defendant was discharged accordingly. Defendant was discharged on January 17, 2023.

On January 30, 2023, the defendant was arrested on a Marion County warrant on the October 2021 escape charge. On July 28, 2023, the defendant was found unfit to proceed on that charge by a Marion County Circuit Court Judge and a .370 order issued for OSH admit the defendant for restoration.

On August 15, 2023, OSH responded to an email from the Marion County District Attorney’s Office informing the parties to the Marion County criminal case that defendant was not eligible for admission to OSH on the basis of an October 2021 indictment, under the Federal Court Order.

On September 14, 2023, the Marion County District Attorney's Office filed a "Memorandum Regarding Defendant's Admission to Oregon State Hospital" stating: "At this time, the Oregon State Hospital through it's (sic) attorneys has determined that Defendant is not eligible for admission. At this time we ask the Court to determine whether that is correct."

On September 15, 2023, the Marion County Circuit Court issued an order which states: "Court has reviewed the Second Amended Order by Hon. Judge Mosman, and per this Courts review does not find that this admission would be contiguous or consecutive given the 7-month break between the Lane County and Marion County orders... Defendant has statutory and constitutional rights to be restored at Oregon State Hospital... IT IS HEREBY ORDERED AND ADJUDGED: Oregon State Hospital shall admit Defendant to their facility and follow the Order signed by Judge Broyles July 28, 2023."

Also on September 15, 2023, the Marion County Circuit Court issued a show cause order stating: "IT IS HEREBY ORDERED that the OREGON STATE HOSPITAL Show Cause WHY IT HAS NOT COMPLIED WITH ADMISSON OF DEFENDANT on September 21, 2023 . . . ."

**IV. Analysis**

The charged crime in the Marion County case (Escape from OSH in 2020) was charged and filed in 2021, before the defendant's admission to OSH on the Lane County case. OSH, after consulting with Dr. Pinals, concluded that the Marion County case does not constitute "new charges incurred after an initial period of restoration" ended. Accordingly, as OSH understands the Federal Court Order, because the charge in the Marion County case existed before this defendant's admission to OSH in the Lane County charges, admission of this defendant on the Marion County case would constitute an impermissible consecutive period of restoration. In light of the pending show-cause hearing in Marion County Circuit Court, OSH asks for clarification from this Court whether admitting this defendant would be in conflict with the Federal Court Order.

DATED September 22, 2023.

Respectfully submitted,

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Attorney General

*s/ Carla A. Scott*

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