



# STATE LICENSING COMPLIANCE REPORT

**Report #:** HL016744843C

**Date Concluded:** April 18, 2024

## **Name, Address, and County of Facility**

### **Investigated:**

Minnesota Sex Offender Program  
1111 Highway 73  
Moose Lake, MN 55767  
Carlton County

**Facility Type:** Supervised Living Facility (SLF)      **Evaluator's Name:** Zalei Lewis RN

Special Investigator

The Minnesota Department of Health conducted a complaint investigation to determine compliance with state laws and rules governing the provision of care under Minnesota Statutes, Chapter 144 and Minnesota Rules Chapter 4665. The purpose of this complaint investigation was to review if facility policies and practices comply with applicable laws and rules. No maltreatment under Minnesota Statutes, Chapter 626 was alleged.

To view a copy of the correction orders, if any, please visit:

<https://www.health.state.mn.us/facilities/regulation/directory/provcompselect.html>, or call 651-201-4201 to be provided a copy via mail or email. If you are viewing this report on the MDH website, please see the attached state form.

**CC:**

Office of the Ombudsman for Mental Health and Developmental Disabilities

## Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>01674S</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING _____	(X3) DATE SURVEY COMPLETED  <b>C 01/16/2024</b>
NAME OF PROVIDER OR SUPPLIER  <b>MN SEX OFFENDER PROGRAM</b>		STREET ADDRESS, CITY, STATE, ZIP CODE  <b>1111 HIGHWAY 73 MOOSE LAKE, MN 55767</b>		
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5 000	<p><b>Initial Comments</b></p> <p>In accordance with Minnesota Statute, section 144.56 and/or Minnesota Statute, section 144.653, this correction order has been issued pursuant to a survey. If, upon reinspection, it is found that the deficiency or deficiencies cited herein are not corrected, a fine for each violation not corrected shall be assessed in accordance with a schedule of fines promulgated by rule of the Minnesota Department of Health.</p> <p>Determination of whether a violation has been corrected requires compliance with all requirements of the rule provided at the tag number and MN Rule number or MN Statute indicated below. When a rule or statute contains several items, failure to comply with any of the items will be considered lack of compliance. Lack of compliance upon re-inspection with any item of multi-part rule will result in the assessment of a fine even if the item that was violated during the initial inspection was corrected.</p> <p>You may request a hearing on any assessments that may result from non-compliance with these orders provided that a written request is made to the Department within 15 days of receipt of a notice of assessment for non-compliance.</p> <p>On January 16, 2024 the Minnesota Department of Health initiated an investigation of complaint #HL016748548C and HL016744843C. The total resident population at facility for date of investigation was 438. The following correction order is issued for #HL016744843C tag identification 0660. Although a violation was identified at the time the investigation was initiated, the violation was corrected during course of the investigation. No follow-up will be conducted.</p>	5 000	<p>The Minnesota Department of Health documents the State Correction Orders using federal software. Tag numbers have been assigned to Minnesota State Statutes.</p> <p>The assigned tag number appears in the far left column entitled "ID Prefix Tag." The state statute/rule number and the corresponding text of the state statute/rule number out of compliance are listed in the "Summary Statement of Deficiencies"</p>	

Minnesota Department of Health

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

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5 000	Continued From page 1	5 000	column and replaces the "To Comply" portion of the correction order. This column also includes the findings, which are in violation of the state statute after the statement, "This Rule is not met as evidenced by." Following the evaluators' findings is the Time Period for Correction. PLEASE DISREGARD THE HEADING OF THE FOURTH COLUMN, WHICH STATES, "PROVIDER'S PLAN OF CORRECTION." THIS APPLIES TO FEDERAL DEFICIENCIES ONLY. THIS WILL APPEAR ON EACH PAGE. THERE IS NO REQUIREMENT TO SUBMIT A PLAN OF CORRECTION FOR VIOLATIONS OF MINNESOTA STATE STATUTES/RULES.	
5 660	MN Statute 144.651 Subd. 6. RES. RIGHTS Appropriate health care.  Residents shall have the right to appropriate medical and personal care based on individual needs. Appropriate care for residents means care designed to enable residents to achieve their highest level of physical and mental functioning. This right is limited where the service is not reimbursable by public or private resources.   This MN Requirement is not met as evidenced by: Based on observation, interview, and document review, the facility failed to ensure appropriate care was provided for one of three residents (R1)	5 660		

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5 660	<p>Continued From page 2</p> <p>when staff members used a chemical irritant to enforce compliance with staff directive, when there was no documented evidence of a risk to staff, residents, or property. Facility staff failed to attempt adequate alternative interventions, prior to use of force.</p> <p>Findings include:</p> <p>R1's medical record included the diagnoses of schizophrenia and borderline intellectual functioning. A review of incident reports indicated an incident occurred on July 13, 2023, involving R1's refusal to exit the shower and the use of a chemical irritant.</p> <p>Information documented on the incident report form about the events leading up to the Incident Command System (ICS) event on July 13, 2023 included the following:</p> <ul style="list-style-type: none"> <li>-R1 entered the shower area of the unit at approximately 1:00 pm that day and water was flowing. Per incident report documentation, multiple staff members asked R1 to exit the shower from approximately 2:00 pm until 4:30PM.</li> <li>-When R1 did not exit the shower area at 4:30PM for "count" the A-Team (an intervention team at the facility) was called in to "extract" R1 from the shower.</li> <li>-R1 did not follow the A-Team's directive to exit the shower and the decision was made to utilize chemical irritant as the means to get R1 to exit the shower.</li> </ul> <p>The incident report documentation did not indicate R1 was being aggressive physically towards staff members prior to deployment of the chemical irritant spray. There was no evidence that at any time during the event, that R1 attempted to physically engage in or attempt to harm staff.</p>	5 660		

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5 660	<p>Continued From page 3</p> <p>Video review of the July 13, 2023 event included an intervention of knocking on the shower door and asking R1 to come out, with three security counselors at the door. After R1 refused, a security counselor is heard saying "spray him." Four security counselors (A-Team members) identify themselves in the video wearing helmets, gloves, padding, and uniforms. Two additional individuals identify with shields and the last individual identifies with restraints and chemical. All A-Team members appear to be wearing black utility shoes or boots. At no time was there any verbal reference aggression from R1 towards staff, nor any video documentation of R1 acting in a violent or aggressive manner.</p> <p>Continued review of video footage included a 16 minute and 40 second video of the chemical irritant deployment incident which included a chemical irritant spray warning given by a female security officer. The female officer asked R1 if he was going to come out of the shower, R1 replied, "I can't, I'm taking a shower."</p> <p>-At the 4:48 mark on the video the chemical irritant was deployed.</p> <p>-At the 6:17 mark, staff enter a room adjacent to the shower room and turn off the water to the shower at approximately 6:24.</p> <p>-At 6:35, staff asked R1 if he was ready to come out.</p> <p>-At 6:47, R1 was informed by staff the water had been shut off. Staff directed R1 to leave the shower with hands behind his back. R1 did not move toward staff in any manner. R1 faced toward the shower wall appearing to try to turn on the water.</p> <p>-At the 7:36 video mark, a second chemical irritant burst was deployed.</p> <p>-At 7:43, the door to the shower was opened</p>	5 660		

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5 660	<p>Continued From page 4</p> <p>again and R1 was directed to leave the shower. -At the 8:51 video mark, the A-Team entered the shower to remove R1. R1 did not appear to resist. R1 was restrained on a stretcher face down, hands restrained behind his back.</p> <p>Security Counselor(SC)-D was interviewed on February 15, 2024, and stated R1 had a history of posturing aggressively toward staff members but was not "ticing or ghost punching toward them" on this occasion. SC-D described R1 as "squared up" and said "maybe his stance was aggressive," and also stated R1 did not make any physical movement toward staff. When asked to explain why the water to the shower was not shut off as an intervention prior to chemical deployment, SC-D responded, "access to the water line shared water with another client's room, and we did not want to put another client in a situation where they don't have access to water...We eventually did make that decision..R1 continued to refuse to comply with directives to exit the shower and it felt like that [chemical irritant deployment] had to be the next step. In hindsight, if the water had been shut off, perhaps at 4:00PM, the client may have lost interest in staying in the shower."</p> <p>SC-E was interviewed February 14, 2024, and stated described R1's behavior as "the expression on his face became very dark." SC-E stated that because the environment was wet and R1 was unclothed, the use of chemical irritant was chosen. SC-E was unable to state why the situation was an emergency or required the invention, other than "he was in the shower and we needed to get him out." SC-E stated R1 did not make any physical movement towards staff.</p> <p>Two additional incident reports dated July 13,</p>	5 660		

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5 660	<p>Continued From page 5</p> <p>2023, referenced R1 being escorted to health services to decontaminate from the chemical irritant.</p> <p>Registered Nurse (RN)-C was interviewed on February 2, 2024, regarding the incident with R1 on July 13, 2023 and stated that prior to the chemical irritant deployment, RN-C spoke with security staff. RN-C recalled telling security staff to "shut the water off, he'll get cold and want to come out." RN-C stated that had that occurred [the water shut off], the chemical would not have needed to be sprayed in the first place and maybe there could have been some other creative approaches used versus how it ended up.</p> <p>The facility provided a "Use of Force Review" document with a review of the incident with R1 and the chemical irritant deployment on July 13, 2023. The document did not include a date of authorship; however, the review was signed August 14, 2023. The document included a summary of the chemical irritant deployment on July 13, 2023. Recommendations included "Attempts should be made to turn off the water prior to deployment however staff did not initially want to deny water to another client in a room near the shower due to water valve stopping water to the shower and another client room."</p> <p>The facility provided policy titled "Use of Force and Restraints, Minnesota Sex Offender Program" that included an issue date of May 3, 2022 and an effective date of June 7, 2022 which indicated the following: "As a part of the Minnesota Sex Offender Program (MSOP) Client Intervention Continuum ("Use of Force Continuum," 415-5080a), all trained MSOP staff may use reasonable force when necessary to</p>	5 660		

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5 660	<p>Continued From page 6</p> <p>gain compliance with MSOP behavioral expectations. MSOP direct contact staff are trained in using staff presence, verbal de-escalation, and directives in use of force situations. Staff must use the minimum amount of force necessary to resolve a situation. MSOP prohibits the use of force as a punitive action or for staff convenience. Having exhausted alternative options to protect safety and security, staff consider the following when determining to use force or the level of force necessary: A. the need for the use of force; B. the relationship between the need and the amount of force used; and C. the potential for risk, injury, harm or damage to persons or property. AUTHORITY: Minn. Stat. §§ 253B.03 subd. 1 (a, c); 253D.19; 609.485 subd. 1 and subd. 2</p> <p>(5)...PROCEDURES: A. As necessary, the facility director/designee ensures procedures consistent with this policy are developed for, and designated staff are trained in, all levels of intervention, up to and including the use of chemical irritants and riot control measures. B. Determination for Use of Force 1. Staff must take into account the need for use of force while considering alternative interventions, the relationship between the need and the amount of force used, and the potential for risk, bodily harm or damage to persons or property. The client's location and behavior determines when, what kind and how much force staff may use, consistent with the Use of Force Continuum (415-5080a). 2. Staff must only use techniques and equipment in which they are trained and authorized by this policy. Staff may employ other reasonable means immediately available when it is believed necessary to prevent great bodily harm or death to the public, staff, or clients. C. Types of Use of Force 1. Chemical Irritants a) Prior to the use of chemical irritant, staff must attempt to warn the client to provide</p>	5 660		

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5 660	<p>Continued From page 7</p> <p>the client an opportunity to comply. Staff may use chemical irritants to gain control of a situation only when the client is out of behavioral control and irritant use is the safest means in which to maintain safety and security."</p> <p>During the course of the investigation, the facility revised the Use of Force and Restraints policy to indicate "Use of force is only appropriate when it is necessary to protect oneself, others, or property." The revised policy further indicated "Staff attempt to exhaust available alternatives before resorting to the use of force, unless immediate force is required to prevent bodily harm to the client, others or is needed to limit the destruction of property posing immediate safety and security concerns." and "Force may not be used solely to enforce compliance with staff directives." The facility initiated training for staff on this expectation.</p>	5 660		