IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ROBERTO NAVARRO-AYALA,

Plaintiff

v.

GOVERNOR OF PUERTO RICO, ET AL,

Defendants

Civil No. 74-1301 (FAB)

REPORT OF MONITOR

Introduction.

On January 5, 2016, this Court appointed me as Monitor in the above-captioned matter and authorized me to hire the necessary personnel to observe the operation of what was formerly known as the San Patricio Mental Health Center in San Juan and make recommendations with respect to this litigation and the allegations of the San Patricio Support Group (Grupo). With the Court's approval I retained Elizabeth Jones and Olga Leticia Villalon-Soler to assist me. Ms. Jones has extensive experience in evaluating models for the delivery of mental health services, both nationally and internationally, and Ms. Villalon-Soler is fluent in Spanish and is familiar with the mental health system of Puerto Rico, having served in the past as an assistant to the former Special Master in this litigation. Pursuant to the Court's direction, I met with counsel on January 28, 2016 and attended a status conference conducted by the Court the following day.

My assistants and I met with members of the Grupo and former employees of Administración de Servicios de Salud Mental y Contra la Adicción (ASSMCA) on April 25 and conducted a site visit at San Patricio on the following three days. I issued document requests to ASSMCA both prior to, during and subsequent to the visit and met with Administrator Carmen Graulau as well as employees of ASSMCA presently working at the Rehabilitation Center at the San Patricio site. I also met with officials of APS who currently operate the mental health clinic at the site and submitted document requests to supplement the site visit. At my request counsel completed a briefing schedule on relevant legal issues on July 15. Having reconstructed and examined the voluminous record involved in this litigation and having carefully considered the information I have obtained from the site visit, document requests, and interviews, I am prepared to make the following report to the Court and do so with the concurrence of my assistants. It should be noted that I supplied a draft of this report to counsel on August 15, 2016 and entertained and considered all comments received on or before September 1, 2016.

General Background.

Before November of 2014, ASSMCA operated a Mental Health Center at San Patricio that provided a full schedule of mental health treatment services as well as rehabilitation services. Funded by payments from patients enrolled under the Government Health Plan, the Center was also supported by block grants from the United States Government. The funding allowed the Center to employ a large staff of professionals, five to eight psychiatrists, a number of psychologists, together with support staff that included social workers, case managers, occupational and recreational therapists and a health educator. All personnel, including the

professional staff, were paid on an hourly basis. The Center attracted approximately 3,000 individual patients in its last year of operation. By all accounts, the Center was a model operation that provided a full range of services to its patients on site. Former patients attest that the Center provided a sense of community to its patients and staff and achieved a high degree of continuity in care. The more intensive services, such as partial hospitalization, the stabilization unit and an emergency room, were designed to keep patients from being hospitalized or re-hospitalized unnecessarily. The Center's services were based on a model set forth in the System Plan for Mental Health/Rehabilitation Services (the "1996 Plan") accepted and approved by this Court on February 27, 1996 (Docket 402). In 2014 during a budget session, ASSMCA was informed by the federal Substance Abuse and Mental Health Services Administration that block grant funds were to be devoted to rehabilitation and could not be used to supplement the mental health treatment services that were supported by the Government Health Plan which in turn was supported by federal funding. ASSMCA responded to this development by dividing the premises and ceding the mental health treatment services and part of the premises to APS, a private managed care provider. On the remaining portion of the premises ASSMCA organized and continues to operate a free standing Rehabilitation Center, now known as the San Juan Recovery Center (the "Center"), to provide a schedule of rehabilitation services. APS is supported by the Government Health Plan and other insurance payments. The Center is supported by block grant funding for its rehabilitation services and thereby avoids what the U.S. government described as double-dipping.

Despite the assurances offered by Administrator Graulau in a letter to the patients announcing the change in operations, the division of the Center and the introduction of a managed care delivery model for mental health services on the APS side, did result in a change

in the clinical staff and the elimination of a number of services that were previously offered at the site. The MOU that accompanies the November 2014 lease of a portion of the premises from ASSMCA to APS states its objectives are for APS to assume services previously offered by ASSMCA and for the patients to go to the same professionals, same place and minimize inconvenience as well as to maintain continuity of care. Moreover, Administrator Graulau informed the patients that current services would be retained, particularly referencing partial hospitalization, intensive ambulatory services, individual and group therapies, medical injectable clinic, orientation and education for family members and support groups. Finally, she informed patients that APS had agreed to "maintain the clinical staff which currently attends to you." Notwithstanding these assurances, the clinical staff turned over nearly completely and it is conceded and beyond dispute that little by little the following services were eliminated: partial hospitalization, pharmacy and injectable services, recreational therapy, ambulance services, vocational services, and case management. Although eliminated, most of these services are now offered at other facilities and locations in Puerto Rico. The services that are now provided by APS, however, are subject to a delivery system in which clinicians are compensated on the basis of patient encounters rather than on an hourly basis as ASSMCA had provided in the past. This change has led to shorter visits, less continuity of care, delays in scheduling appointments, and no visits for patients without a health plan accepted by APS. Although the MOU provides that APS will provide care and bill ASSMCA for community patients, i.e, those without the government health plan or insurance, there is no evidence that APS or ASSMCA is discharging this responsibility. Finally, there is no integration of the rehabilitation services provided by the Center with the mental health services provided by APS. The two operations are completely freestanding and patients' files and treatment plans are not shared in any meaningful way.

Grupo's Allegations Regarding Changes in the Service Model

Grupo alleges that the changes made in the service model by the Government in 2014 breached the orders of this Court by failing to maintain San Patricio Mental Health Center as an integrated operation, staffed by an interdisciplinary team, and providing the same services that were offered in the past. Factually, Grupo is correct. The mental health services have been privatized, and, although offered on the same site by APS, are no longer integrated with the rehabilitation services offered by the Center. The treatment teams, at best, are multidisciplinary and do not conform to the interdisciplinary approach contemplated by the 1996 Plan. Finally, it is beyond dispute that some of the services previously offered on site have been eliminated, even though they may be offered at other locations to those who are eligible. Thus, it is certain that, as contended by Grupo, the service model at San Patricio was changed substantially in 2014. It is clear that the changes have a negative impact on the services afforded the patients. For example five to eight psychiatrists served 3,000 patients annually in the past. Currently, two APS psychiatrists serve approximately 2,000 patients on an annual basis. Grupo's counsel, however, does not contend that service deficits at San Patricio independently rise to the level of a violation of law or result in a deprivation of constitutional rights and no evidence of such violations was noted during the site visit. Rather, the sole issue presented is whether the changes unilaterally made by the Government at San Patricio in 2014 violate the prior orders of this Court which were designed to vindicate the constitutional rights of patients at the Rio Piedras Psychiatric Hospital.

The Mandates Established by the Prior Orders of This Court.

Before setting forth my interpretation of the relevant portions of the record in this case, I must acknowledge that it is difficult to faithfully and accurately reconstruct the complex history of institutional reform litigation extending over a forty-two year span, recorded in more than 865 docket entries, with many of those docket entries consisting of lengthy and detailed documents. For example, the 1996 Plan alone contains more than 300 pages of text and detailed exhibits. Moreover, I am mindful of the fact that this Court is in a superior position to determine the meaning and intention of its prior orders. I offer my interpretation of the prior orders in this litigation in the hope that it may be helpful and perhaps persuasive, even though not conclusive.

The class action complaint in this matter was filed in 1974 alleging constitutional violations on the part of the Government in the care afforded to patients at what was then called the San Juan Psychiatric Hospital, also referred to as the Rio Piedras Psychiatric Hospital (the "Hospital"). On March 20, 1977, the parties stipulated in writing to forty-one standards to be observed at the Hospital together with a schedule for achieving compliance with those standards. The then Presiding Judge approved the stipulation and judgment was entered by agreement on June 3, 1977. [1] On February 1, 1985, after receiving motions for contempt alleging noncompliance, this Court denied the motion for contempt but granted plaintiffs' motion for the appointment of a Special Master to monitor the consent decree and made the appointment on February 8, 1985. At this point the litigation was focused solely on the operation of the Hospital. In the Special Master's first report to the court entered on August 12, 1985, he documented an abject lack of compliance with the consent decree at the Hospital and observed that the Hospital

[1] Prior to September of 1987, docket entries were identified only by date. Thereafter entries are identified by sequential numbering.

"functions within an integrated system of mental health services and that its effectiveness depends on the effectiveness of the other components of the system and on how they coordinate their functions with those of the Hospital. Hence plans for reforming the Hospital must be part of an integrated plan to reform the entire system of state sponsored mental health services." Id at 7. In 1987, the Government challenged this Court's jurisdiction to entertain recommendations from the Special Master pertaining to pre and post hospital services provided at the San Patricio Mental Health Center. On August 11, 1987, this court entered an order confirming jurisdiction over pre and post hospital services "directly related to the Hospital's compliance with the Consent Decree." Id at 6. On February 22, 1996, this Court entered an order (Docket 402) (Exhibit 1)[2] in which it accepted and adopted the plan presented by the Special Master after thirty-four reports and years of work with a steering committee made up of a host of experts and interested persons. The 1996 Plan entitled, "Plan for a System of Mental Health Treatment/Rehabilitation Services", set forth in detail, requirements for a complete mental health system for Puerto Rico including pre and post hospital mental health services, specifically referring to those provided by the Government at the San Patricio Mental Health Center. It was the judgment of the Special Master that the Plan's implementation "should result in deinstitutionalization of the Rio Piedras Psychiatric Hospital and in keeping it deinstitutionalized," thus making it "feasible for reforms resulting from compliance with the Stipulations by the Hospital to become institutionalized." (Exhibit 1 at 1) The Court observed that the Plan, although designed for the entire Commonwealth, had legal force only within the catchment area of the Hospital, namely Northeastern Puerto Rico. San Patricio was the only mental health center within the catchment area providing pre and post hospital services. In accepting the Plan the Court made the following observations:

[2] For the convenience of the Court, I have attached the most relevant orders as exhibits to this report.

> "The need for a plan based on a system-wide approach has been palpable at least since 1989. This was underscored at the November 30, 1995 status conference in which the Court was informed that, if anything, the problem of institutionalization has worsened: one in three of the Hospital's beds was being occupied by MBH patients (patients who had received the maximum benefits of hospitalization). These MBH patients were being retained in the Hospital in violation of Stipulations 3-b and 35-b, the stipulations intended to secure their rights to receive treatment in compliance with the principles of continuum of care and least restrictive environment. Under these circumstances only two acceptable alternatives were open: one, to impose sanctions for persistent failures of compliance, or, two, to adopt a plan designed to secure compliance within a reasonable time period and, thereafter to assure continuing institutional compliance." (Exhibit 1 at 5)

Four and one half years after the Plan went into effect, following considerable effort and activity on the part of all parties and the Court, a Joint Stipulation of Dismissal was presented by the parties on September 11, 2000. (Docket 494) (Exhibit 2). Essentially, the parties asserted substantial compliance with the Consent Decree, pledged to maintain J.C.A.H.C.O. accreditation and agreed to maintain an annual budget of at least 18.9 million for the Hospital. The Court adopted and entered the order. (Exhibit 2 at 7). As entered, the order of dismissal was without prejudice to reinstatement of the action upon certain conditions. Thereafter on August 11, 2000, the Court issued a notice of proposed settlement and an opportunity for class members to object. (Docket 495) (Exhibit 3). No objections having been filed, on January 28, 2002, the Court approved the joint stipulation and ordered the case dismissed. In doing so, it made the following observation: "The Court's order of March 9, 2000 (Docket 476) and the Joint Stipulation and Order of Dismissal of August 11, 2000 (Docket 494) shall remain in effect to ensure the continued constitutional protection of the patients of the RPPH." (Docket 503) (Exhibit 4 at 5). Noticeably, absent from the order of dismissal and the referenced docket entries of 476 and 494, is any order relating to the provision of pre and post hospital services provided at San Patricio. Docket number 476 (Exhibit 5) pertains to the application of Medicare funds received by the Hospital and 494 (Exhibit 2), together with the "Final Draft of a Proposed Consent Decree"

(Docket 432) (Exhibit 6) which it approves and accepts, makes no reference to pre and post hospital services. All three docket entries relate solely to mandated conditions within the Hospital. Based on these documents, I conclude that the Court never entered an order requiring the continued operation of San Patricio in compliance with the operational standards outlined in the Plan. In short, there is no order of this Court that expressly requires that San Patricio be maintained as an integrated operation, staffed by an interdisciplinary team, offering the schedule of mental health services previously offered and referenced in the Plan.

Plaintiffs' counsel suggests that when the Court "accepts and adopts the Plan" as it did in Docket 402 (Exhibit 1), the Court in effect orders compliance with the Plan in every detail throughout the system, at least as it applies to San Patricio. Moreover, it is argued that, despite a dismissal with prejudice based on substantial compliance (Docket 503) (Exhibit 4), the provisions of the Plan relating to San Patricio remain binding on the Commonwealth unless and until altered by the Court. The Court did observe in its order of dismissal that it "found and still finds that pre and post Hospital support systems are essential to keep and maintain the Rio Piedras Psychiatric Hospital de-institutionalized and constitutionally healthy." (Exhibit 4 at 2) Counsel correctly notes that the Presiding Judge who entered the order of dismissal, ordered a status conference in March of 2003 on the basis of concerns about budgetary support for the Hospital and "whether the San Patricio Mental Health Center was to be shut down." (Docket 508) (Exhibit 7 at 1). Despite being assured that the San Patricio facilities would not be closed or privatized, the Court expressed concern "with respect to compliance by the San Patricio Mental Health Center", id at 2, the Court reappointed the Special Master to "determine the veracity of the alleged non-compliance by the Psychiatric Hospital and the San Patricio Mental Health Center". Id. Ultimately, on January 10, 2005 (Docket 604) (Exhibit 7), after receiving

five extensive reports from the Special Master, the Court declined to reopen the case and ratified its prior order of January 28, 2005 (Docket No. 503) (Exhibit 4), incorporating the order of March 9, 2000 (Docket 476) (Exhibit 5), and the joint stipulation of dismissal of August 11, 2000 (Docket 494) (Exhibit 2). It is significant to note that the Court entered this final order over the objection of the Special Master who argued specifically in his fifth and final report that the dismissal ordered by the Court did not displace or revoke the provision of the 1996 Plan pertaining to pre and post hospital services (Docket 585 at 125-127), and called for the Court to "eliminate all doubt about role of the 1996 plan and should order defendants implement the 1996 Treatment/Rehabilitation Plan, as the Compliance Plan in this case, subject to whatever proposed amendments the Court may see fit to adopt." Id at 128. The Special Master specifically pointed out the repercussions to the system that would flow from the "apparent intention of the Secretary to embark on a program which would turn over more than 90% of mental health patients to the MBHO APS". Id at 121. Notwithstanding the recommendations of the Special Master, although the Court increased the yearly budget mandate for the Hospital, it made no reference to San Patricio other than to state that it "expects the Commonwealth defendants to ... continue complying with **pre** and **post**-Hospitalization continuum." (Exhibit 7 at 4). Such an expectation falls far short of the request of the Special Master to adopt the 1996 Plan as the compliance plan in this case. The language employed by the Presiding Judge does not, in my judgment, rise to the level of an enforceable court order prohibiting changes in the service model for San Patricio. The model currently in force is undoubtedly not to the liking of Plaintiffs but it conforms in broad outline to a model in use in many states. APS reports that its psychiatrists see thirteen patients a day on average and its psychologists see fourteen. Average timeframe for a clinical appointment is thirteen days. In FY 2015, within the population of 2,144 patients, there were

sixty five psychiatric hospital admissions for a 3% hospitalization rate. Service deficiencies at either of the clinics currently operated at San Patricio, if any, could be addressed in separate negotiations or litigation. I would note for example that the services being provided at the San Juan Recovery Center during my visit were rather sparse and poorly attended. Notwithstanding the concerns about service deficiencies, I do not interpret the Court's language in Exhibit 7 retaining jurisdiction "to ensure the continued constitutional protection of the patients at the RPPH" as being broad enough to encompass the Plaintiffs' claims to enforce the 1996 Plan as the compliance plan for San Patricio in this present litigation, unrelated to any allegation or proof of a direct relationship to the Hospital's current compliance with the Consent Decree. Accordingly, I would recommend that the case be dismissed.

In the event that the Court comes to a different conclusion regarding the import of the prior orders as they relate to San Patricio, I am prepared, with guidance from my assistants, to recommend how the combined facility could be restructured to comply with the provisions of the 1996 Plan.

Respectfully submitted this 2nd day of September, 2016.

s/Daniel E. Wathen
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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA, et al.,

Plaintiffs,

v. CIVIL NO. 74-1301 HL

GOVERNOR OR PUERTO RICO, et al.,

Defendants.

OPINION AND ORDER

On January 30, 1996 the Special Master submitted his Thirty-Fourth Report (Doc. No. 401) recommending that the Court accept and adopt the "Plan for a System of Mental Health Treatment/Rehabilitation Services" ("Plan Para Un Sistema de Tratamiento/Rehabilitación para Salud Mental") ("The Plan"). In the Special Master's judgment the Plan's implementation "should result in deinstitutionalization of the Río Piedras Psychiatric Hospital and in keeping it deinstitutionalized," thus making it "feasible for the reforms resulting from compliance with the Stipulations by the Hospital to become institutionalized." The Court now reviews the Plan.

On examining the Plan the Court notes at the outset that it is the product of tripartite consensus. In compliance with the August 23, 1994, Order and the instructions given by the Court in the November 30, 1995, Status Conference, and following 16 months of meetings and discussions, consensus has emerged on how best to develop a system of mental health treatment and rehabilitation services that comply with the Stipulations.

The feasibility of the Plan is attested by the signatures of the principal representatives of the government, who are committed to its implementation, the Hon. Manuel Díaz Saldaña, Secretary of the Treasury, in his capacity as the Governor's personal representative; the Hon. Carmen Feliciano de Melecio, Secretary of Health; the Hon. Astrid Oyola Benítez, Administrator of ASSMCA, in her dual capacity as Administrator and Compliance Officer; and by defendant's counsel. On the other side, the Plan is endorsed by plaintiffs' Counsel and his principal consultant. Further support for the Plan is reflected in the signatures of the Deputy Master and of the members of the Court's AIT (Advisory Interdisciplinary Team).[1] Noteworthy, too, is the list of key professionals from the Hospital and ASSMCA who participated directly in developing the Plan.

The Court genuinely commends the efforts that went into reaching tripartite consensus. The Plan proposes a comprehensive system of treatment and rehabilitation services that will enable the Hospital to fully comply with the requirements of the Stipulations.

Because of the Plan's scope, and its manifold details and commitments, the Court is obliged to fully review the Plan. What follows are the elements of the Plan deemed most significant for reaching the goal of securing compliance with the Stipulations. Because the Plan consists of 160 pages plus budgetary data, in seven sections, and is accompanied by 15 supporting exhibits, only the most salient elements of the Plan will be addressed in this opinion.

[1]Irma Moreira is the only AIT member who did not work on the Plan.

Section I of the Plan

The Plan's steering committee, tripartite in its membership, under the leadership of AIT member Dr. Cynthia Rodríguez Parés, executed the terms of the Court's August 23, 1994 Order which adopted the recommendation in the Special Master's Thirty-Second Report. He had recommended that AIT's working plan "be implemented in accordance with its terms". The representatives of the Hospital, ASSMCA's community and post-hospital mental health services, consisting of professionals at different levels of authority, will be responsible for executing the policies and practices incorporated in the Plan.

ASSMCA's administrator Astrid Oyola participated in the steering committee's meetings and in the final stages of negotiation. Following the November 30, 1995, status conference, she played a decisive role in reaching consensus on what became the Plan's fifth and final draft.

As evidence of their commitment to implement the Plan, the Secretaries of the Treasury and Health joined ASSMCA's Administrator in their January 10, 1996, petition-letter to the Director of Management and Budget, requesting an additional appropriation of eight million dollars to cover the cost of the Plan's first year. Adequate budgetary support is essential to ensuring the Plan's viability. The Special Master also wrote to the Director of the Office of Management and Budget in support of defendants' petition and related his support to the goal of securing compliance with the Stipulations. The question of adequate budgetary support for the Plan is considered below.

In developing the Plan, the parties went beyond the scope of the terms of the August 23, 1994 Order, but they maintained the goal of deinstitutionalizing the Hospital. That goal, the Steering Committee concluded, requires establishment of a system of mental health treatment and rehabilitation services, including the Hospital and its pre and post supporting services, a goal required by constitutional principles as reflected in the stipulations.

Though the Plan encompasses all of Puerto Rico, it should be pellucidly clear that there is no legal commitment to provide services outside northeastern Puerto Rico, the catchment area served by the Hospital as defined by the jurisdictional limits of the present case. Indeed, the only commitment, in terms of time, is limited to what is to be accomplished during the first year of implementation. After the first year of implementation, and after any modifications that may be considered appropriate, it may serve as the model for an island-wide system of treatment and rehabilitation services.

Whether the island-wide potential of the Plan is realized at some time in the future is, of course, entirely for the Commonwealth government, not the Court, to decide. What is significant is that a plan to which all parties have consented has been submitted to the Court based on a tripartite process. The implementation of the Plan may serve as the basis for a finding that compliance with the stipulations has been secured.

The full significance of what has been achieved through tripartite process can best be appreciated by rereading the history of the unresolved problem of

deinstitutionalization as summarized in the Special Master's Thirtieth Report, submitted December 22, 1993. See pages 15-25; the Special Master's Thirty-Second Report, July 6, 1994 (recommending adoption of AIT's proposed tripartite method for resolving the problem of deinstitutionalization, which the Court adopted, and which has resulted in the present Plan).

The need for a plan based on a system-wide approach has been palpable at least since 1989. This was underscored at the November 30, 1995 status conference in which the Court was informed that, if anything, the problem of institutionalization has worsened: one in three of the Hospital's beds was being occupied by MBH patients (patients who had received the maximum benefits of hospitalization). These MBH patients were being retained in the Hospital in violation of Stipulations 3-b and 35-b, the stipulations intended to secure their rights to receive treatment in compliance with the principles of continuum of care and least restrictive environment. Under these circumstances only two acceptable alternatives were open: one, to impose sanctions for persistent failures of compliance, or, two, to adopt a plan designed to secure compliance within a reasonable time period and, thereafter, to assure continuing institutional compliance.

The Court turns now to consider whether the submitted Plan is capable of achieving its stated goals.

It appears that the Plan's principles, guidelines, premises and objectives are internally consistent. The guiding conceptual thread is the definition of rehabilitation: it is to be an integral component of mental health services at the community pre-

hospital stage, during the patient's treatment stage in the Hospital, and in every post-hospital facility. Both in the Hospital and in the pre- and post-hospital facilities, the approach is to be interdisciplinary. The expectation is that in all service components, patients will spend less time in the Hospital, as initial patients or recividists, and that the proposed system of treatment/rehabilitation will maximize the possibility of mentally ill persons achieving their maximum potential for normal autonomous lives.

A number of the Plan's objectives are appropriately and specifically directed toward compliance with the Stipulations in this case. Specifically, the Plan seeks to reduce substantially the institutionalization of Mental Health patients-clients; to proceed with implementation following the principles of from greater to lesser restriction for the patient in accordance with the rigorous evaluation of his condition; and to comply with the Stipulations in the case of Navarro Ayala v. Governor of Puerto Rico.[2]

The "Premises to Implement the Plan" read as follows:

1. The population which recurs to and receives the services required in this plan of treatment/rehabilitation can expect that these (a) will be individualized (in accordance with identified needs, (b) offerred by duly qualified mental health professionals and in adequate number, (c) in continuing progress toward habilitation/ rehabilitation in the least restrictive environment and (d) based on observations/information documented and specified in a plan (which includes the discharge).

2. In contrast to the population which existed at the origin of this case, the present one is much younger, with higher levels of education, with more of a psychiatric diagnosis (Axes I and II)

[2] These and other materials quoted from the Plan are translations by the Court from the Spanish original.

and at risk of social function (Axes IV) in clear deterioration or moving toward a chronic condition.

3. This plan emphasizes that the treatment/rehabilitation process requires, at a minimum, the active participation of a close support group (family, tutor, someone in charge) in each and every of the units of direct services.

4. In this plan there is established a series of units of direct service. Each service specifies its justification (goal), criteria of admission/discharge and its staffing pattern, among others.

5. The administration and professional staff of each unit of direct service will assure that there are identified and implemented standards of service with respect to: (1) the care/treatment/ rehabilitation of the patient, (2) the security of patients, family members, students and working personnel and (3) maintenance of a physical and working environment that is therapeutic and humane.

6. The different components of this plan are subject to significant modifications if the results of the monitoring and evaluations, whether internal or external, should so justify.

7. It is recognized that the administrative decisions related to structure and process to be implemented in order to guarantee compliance with the agreements established in this Plan of Treatment/Rehabilitation are within the competence of ASSMCA.

8. This plan is designed as a system to serve as the paradigm for providing mental health integrated services in the participating institutions. The provisions in this plan are directed to orient the professionals in the mental health services provided by the government with respect to the norms of service which it is intended to offer to persons who require such service and to facilitate compliance with the stipulations in the case of Navarro Ayala.

The section on premises concludes that the Plan is not intended to create individual rights which can serve as the basis for an individual cause of action alleging noncompliance with the provisions of the Plan. The Court agrees with this conclusion.

This of course in no way affects the obligation to effectuate the Plan's institutional reforms.

Section II of the Plan

Of its more than 160 pages, one hundred are dedicated to defining the structure and system of mental health treatment and rehabilitation services provided by ASSMCA and to the coordination ASSMCA must develop with other government agencies such as Police, Education and Social Services. The system of services is presented not as it is presently functioning, but rather how it will function in order to satisfy the Plan's requirements.

In the case of the Community Mental Health Centers, for example, the range of services are to include emergency services, screening and evaluation, ambulatory treatment, day care, partial hospitalizations, advice and rehabilitation assistance and community education. Once these services are fully provided, it should have a direct impact on the Hospital's capacity to comply with the Stipulations. These effects should be felt once the projected plan is implemented to transform the San Patricio External Clinic into a Mental Health Center because San Patricio is the principal source of patients referred to the Hospital.

As in the case of the Mental Health Centers, the services to be provided by the Hospital are defined in terms of what the Hospital is to become. The continuum of care to be provided includes PIC (Psychiatric Intervention Center), PICU (Psychiatric Intensive Care Unit), Acute and Subacute Wards, and Day Hospital-Inn, which provides a resocialization and pre-vocational program. To meet the needs of the

persistently aggressive patient, a specialized ward is planned. In addition, the Hospital will continue to provide a small infirmary for non-mental illnesses.

The Plan will appreciably strengthen existing services and provide additional needed services. Especially notable is the prescription for establishing separated but coordinated units for screening incoming potential patients (CCEP, the new acronym for PIC) and the promised intensive care unit (PICU). PICU should enhance compliance with the Stipulation's standard of least restrictive environment, as those who benefit from its program will only spend up to twelve treatment days in the Hospital. The program for persistently aggressive patients is also a welcome innovation.

In addition to providing for services to assure the involvement of patients' families, the Plan describes the different levels of treatment/rehabilitation and the different areas of service. The programs of the Psychosocial Centers, the network of post hospital residences, and the rehabilitation services of the mental health centers, should reduce the need for hospitalization and should appreciably shorten hospitalization stays.

To deal with the persistent unresolved problems of particular MBH patients the Plan proposes "Residential Facilities for Patients, with Persistent Symptoms of Prolonged Institutionalization". The "Casita" is to be the first of those facilities and should serve as the pilot project for filling out the network of post-hospital facilities needed to keep the Hospital permanently deinstitutionalized.

Section III of the Plan: Recruitment and Training of Personnel

This section consists of general principles and recommendations on the need to recruit, retain and continuously train the specialized professionals needed to implement the Plan. The implementation of its general recommendations is the ASSMCA's responsibility.

Section IV of the Plan: System of Evaluation

The Plan recognizes the need to establish systematic structures and procedures to evaluate its performance. The Plan proposes three evaluation instruments: the monitoring of programs, quality control and the evaluation of results.

The Plan requires two types of monitoring: internal and external. The internal would be the responsibility of the Plan's "Implementor/Monitor," a high ranking official reporting directly to ASSMCA's Administrator. How well this official executes his or her functions will be one of the decisive factors determining the success of the Plan. The second monitoring will be undertaken by AIT after the close of the first year's implementation. The AIT will report to the Court on the Plan's implementation. Following the first year's report, the Court will determine whether additional reports are necessary.

Section V of the Plan

This section of the Plan provides that implementation is to be achieved in stages. The Plan does not explicitly specify any action beyond its first year. Phase I of the Plan calls for actions to be taken by ASSMCA, development of the necessary infrastructure, preparation of manuals for each unit of service, recruitment of essential

personnel, evaluation and reconditioning of physical plant, and acquisition of equipment and maintenance. Phase II provides for orientation at every level of administration and service of the Plan's provisions, formation of the interdisciplinary teams, and design of the instruments for monitoring and determining quality. In Phase III the Plan is to be implemented in the Hospital, the newly formed Mental Health Center in San Patricio, the program of residences and the psychosocial centers. Phase III also provides for a monitoring of the implementation and a determination of whether quality assurance has been achieved. The final stage, Phase IV, is devoted to an evaluation of results.

Each activity at each stage is assigned to ASSMCA officials, the Hospital, particular service units or to AIT. The entire process is included in a flow chart which depicts who is responsible for what activities. The time frames and action required to implement the four service units directly related to the Hospital's compliance efforts are also described. These four units are the program of post- hospital residences, the "Casita" for patients with persistent systems or prolonged institutionalization, the San Patricio Mental Health Center, and the Psychosocial Centers.[3]

[3] Exhibit 15 describes the services to be provided by the San Patricio facility. Deputy Special Master, attorney Rita Rodríguez Falciani, AIT member Carmen Colón, and Dr. María Román of the Hospital's psychiatric faculty developed the "Casita" post-hospital facility. The tripartite report on conditions in the Psychosocial Centers, and recommendations for remedial action was chaired by AIT member Dra. Néctar Torregrosa, while the study on the Program of Residences was undertaken by AIT member Dr. Cynthia Rodríguez Parés, at the request of ASSMCA's Administrator Mrs. Astrid Oyola. In gathering the data for the latter report, Dr. Rodríguez was assisted by seven social workers.

Section VI of the Plan

This section sets out the staffing patterns for each unit of direct service. For the Hospital, this section specifies the composition of the professional staff, the daily hourly schedule, the maximum lengths of stay in each stage of treatment, the guidelines for interrelations between service units, and the maximum number of patients to be treated in each unit. The proposed staffing patterns have a connection with the stipulations. The December 8, 1988, Order eliminated stipulation 40-b, the agreed on staffing patterns in 1977, and ordered defendants to form a task force for the purpose of submitting revised staffing patterns in keeping with changes in the Hospital. Defendants have yet to form this task force. The parties in their negotiations on possible modifications of the 1977 stipulations should consider stipulating that the Plan's staffing pattern should also become modified stipulation 40-b.

The detailed provisions in Section VI on staffing, maximum stays, maximum occupancy and hourly service periods include two categories: provisions which have been successfully used in the past and newly formulated requirements which have yet to be tested. The success of this provision will be determined through the evaluation system set forth in Section IV.

VII. Budget

The Court does not have before it sufficient information on the question of whether there will be a budget for fiscal year 1996-97 adequate to implement the Plan. A budget proposal prepared July 20, 1995 by Mrs. Sixta Concepción, Director of the Area of Rehabilitation Services, was revised August 9, 1995 by Mr. Juan M.

Ortiz Jackson, ASSMCA's Director of the Budget Division. The July 20, 1995 proposal is a budget of 7.7 million dollars. The August 9, 1995 revision has no total. Additionally, a petition-letter, dated January 10, 1996, to the Director of Management and Budget, the Secretaries of the Treasury and Health, together with ASSMCA's Administrator, requested eight million dollars to implement the Plan, in addition to the Hospital's proposed budget of 14.2 million dollars. The letter-petition was endorsed by the Special Master in his January 26, 1996 letter to OMB's Director transmitted through the Secretary of the Treasury.

To form a judgment on the adequacy of the Plan's budget the Court must know whether the Governor's budget submitted to the Legislature on February 8, 1996, includes sufficient funds to implement the Plan or whether a special appropriation measure is being considered to assure implementation. More precisely, the Court must be provided with assurance that the budget will provide the funds required by Section V on "Implementation by Stages" and Section VI on "Staffing Pattern." Without such resources the Plan's promise of contributing substantially to resolving this case becomes entirely illusory and chimeric. The present budgetary confusion must be clarified. On the assumption that the necessary budgetary support will be provided, the Court is convinced that the Plan is viable.

ORDER

Having carefully reviewed the "Plan for a System of Mental Health Treatment/Rehabilitation Services" and having considered the Special Master's

recommendation, the Court accepts and adopts the Plan, subject to the following conditions:

1. The Special Master is instructed to establish a monitoring system to keep the Court informed on the progress being made to implement the Plan.

2. The Special Master's monitoring reports will be submitted to the Court every 90 days.

3. The Special Master will submit the AIT's evaluation of the Plan's first year of implementation within 60 days following the last trimester report.

4. Within 30 days defendants will file with the Court a detailed statement of the budget for fiscal year 1996-97 to implement the Plan. Thereafter, the Special Master will report to the Court on the question of the Plan's adequate funding.

In closing, the Court reiterates its praise to the parties for the efforts they have taken in order to develop the Plan through a tripartite process. If the parties can maintain this effort throughout the implementation of the Plan, this lengthy case should finally be resolved.

IT IS SO ORDERED.

San Juan, Puerto Rico, February 27, 1996.

HECTOR M. LAFFITTE
U.S. District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	**CIVIL NO. 74-1301 (HL)**
	*	
HON. PEDRO ROSSELLO GONZALEZ,	*	
	*	
et al.,	*	
	*	
Defendants.	*	
	*	

* *

JOINT STIPULATION AND ORDER
OF DISMISSAL WITHOUT PREJUDICE
TO REINSTATEMENT ON OR BEFORE
OCTOBER 15, 2001, ON CERTAIN CONDITIONS

COME NOW ALL PARTIES to this lawsuit by their undersigned counsel of record, in accordance with Rules 23(e) and 42(a)(2), Fed. R. Civ. P., and respectfully submit this joint stipulation.

1. The parties request that this Court dismiss this lawsuit without prejudice to its reinstatement on or before October 15, 2001, under the conditions specified below.

2. Before October 15, 2001, the plaintiffs shall be able to reinstate this lawsuit and seek appropriate relief without filing a new lawsuit in the event that:

   a. There is not substantial compliance with the Consent Decree submitted by the parties on January 31, 1997 (docket #432) and herein adopted by the Court, and the Order dated March 9, 2000 (docket #476), excepting that the Consent Decree

s/c D Lopez C Garcia C Fax A Burd 8/14/00

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Exhibit 2

submitted to the Court on January 31, 1997 (docket #432) is hereby modified as follows:

i. In section II.1.c. (at page 3): the language reading "The defendants shall submit to the court, no later than December 31, 1998, a plan to accept hospital patients at other facilities when a patient is discharged from the Hospital, as part of the necessary measures to bring the Hospital in conformity with the stipulations," shall be amended to read: "The defendants shall maintain in place the plan to accept hospital patients at other facilities when a patient is discharged from the Hospital, as part of the necessary measures to bring the Hospital in conformity with the stipulations.", and

ii. In section II.1.d. (at page 3) the language reading, "The defendants shall endeavor to obtain accreditation by the Joint Commission for the Accreditation of Health Care Organizations (J.C.A.H.O.) by December 31, 1998," shall be amended to read: "The defendants shall maintain the Hospital's accreditation by the Joint Commission for the Accreditation of Health Care Organizations, (J.C.A.H.C.O.).", and/or

b. Credible evidence is offered that the defendants are violating the federal constitutional rights of persons who voluntarily or involuntarily receive treatment at the Doctor Ramón Fernández Marina Psychiatric Hospital (also known as the Rio Piedras Psychiatric Hospital).

3. Thirty days prior to moving the Court for reinstatement of the present lawsuit, the plaintiffs agree to deliver to the Court and all defendants through Charles S. Fax, lead

counsel for defendants, at his address set forth below (or to his successor, at his office, as notified by Mr. Fax in writing to plaintiffs' counsel), written notice of their intent to do so, setting forth that (a) there is not substantial compliance with the material terms of the Consent Decree submitted by the parties on January 31, 1997 (docket #432) and herein adopted, as modified above, by the Court, and the Order dated March 9, 2000 (docket #476); and/or (b) evidence that the defendants are violating the constitutional civil rights of persons who voluntarily or involuntarily receive treatment at the Doctor Ramón Fernández Marina Psychiatric Hospital (also known as the Rio Piedras Psychiatric Hospital). Such notice shall be sufficient if provided in letter form with a summary of the alleged grounds for intended reinstatement.

4. No less than thirty (30) days following delivery of notice of intent to reinstate, but not later than October 15, 2001, the reinstating party shall file a formal motion for reinstatement, with the grounds therefor set forth in sufficient detail to permit any opposing party to file a substantive response thereto. After appropriate discovery as necessary, the matter shall be set down for hearing and the Court shall rule on the motion.

5. The reinstating party shall not be required to serve a summons or amended pleading on any other party to effect reinstatement, excepting that an amended complaint shall be served upon all adverse parties through Charles S. Fax, lead counsel for defendants, at his address set forth below (or to his successor, at his office, as notified by Mr. Fax in writing to plaintiffs' counsel) when circumstances require the articulation of amended allegations, and an original summons and complaint shall be served on any new defendant party added to the suit.

6. If this suit has not been reinstated by October 15, 2001, in accordance with the terms hereinabove, then the Court shall promptly enter an Order dismissing this suit with prejudice, effective October 15, 2001. Failure of the Court to promptly enter such Order shall not be grounds for seeking to reinstate this suit after October 15, 2001.

7. Plaintiffs' agreement to this stipulation is not and shall not be construed as a waiver of any argument for reinstatement of this lawsuit that plaintiffs or any of them may wish to assert before October 15, 2001, including but not limited to:

   a. Defendants are failing to provide patients at the Hospital with a level of care and treatment that meets the requirements of constitutional law;

   b. Defendants are failing to comply with the proposed Consent Decree submitted by the parties on January 31, 1997 (docket #432) and herein adopted, as modified above, by the Court, and the Order dated March 9, 2000 (docket #476);

   c. Defendants are failing to hold Implementation Committee meetings and/or Hospital Governing Board meetings intended to address the issues addressed in the steering committee meetings previously conducted following the Opinion and Order of the Court dated February 26, 1996, on a monthly basis or as often as reasonably necessary to implement and monitor remediation at the Hospital;

   d. Defendants are failing to keep written minutes of the meetings identified in subparagraph c above, and/or are failing to timely deliver copies of such minutes to plaintiffs' counsel and the Court;

   e. The annual authorized and appropriated budget for the Hospital has fallen below $18,929,000.00 or such other sum as the defendants demonstrate to the reasonable

satisfaction of the plaintiffs is adequate to provide for the health, welfare, safety and treatment of the patients at the Hospital as required by law;

f. Defendants have failed to evaluate the feasibility of incorporating the use of seclusion and/or isolation rooms at the Hospital, and the failure to employ the use of seclusion and/or isolation rooms violates patients' rights to be free from unreasonable bodily restraint;

g. Defendants have failed to install air conditioning in the Hospital, and the absence of air conditioning violates patients' rights to reasonable safety;

h. Defendants have failed to employ a reasonable procedure for the reporting and management of patient complaints and incident reports, and such failure violates patients' rights to reasonable safety;

i. Defendants have failed to employ a reasonable procedure for utilization of identification badges on staff, and such failure violates patients' rights to reasonable safety;

j. Defendants are failing to deliver to plaintiffs' counsel copies of ORYX reports regarding the use of physical restraints, restrictions, isolation rooms or seclusion rooms (if applicable) on a monthly basis;

k. Defendants are failing to deliver to plaintiffs' counsel copies of all documents pertaining to patient complaints, complaints by patients' relatives or guardians, and incident reports on a monthly basis.

Plaintiffs' preservation of all arguments, including but not limited to those arguments set forth at subsections 7f, 7g, 7h and 7i above, and defendants' agreement that plaintiffs have preserved such arguments, does not constitute defendants' admission or

acquiescence thereto, and defendants reserve the right to oppose any arguments by plaintiffs for reinstatement of this litigation on whatever constitutional or non-constitutional grounds exist.

8. Plaintiffs' counsel shall have the right (a) of reasonable access to the Hospital to interview patients regarding the matters that are the subject of this lawsuit, and (b) to conduct inspections of any area of the Hospital, on twenty-four (24) hours' advance notice or other reasonable advance notice given to the Executive Director of the Hospital. During Hospital inspections, plaintiffs' attorneys shall be escorted by a member of the administrative staff designated by the Medical Director or the Executive Director of the Hospital. The staff member so designated shall be authorized to enter any area of the Hospital.

9. Notwithstanding anything hereinabove to the contrary, until October 15, 2001, plaintiffs shall have the right to petition the Court to reinstate this lawsuit for the limited purpose of allowing discovery under the Federal Rules of Civil Procedure. Defendants shall have the right to object. Upon good cause shown the Court may reinstate this lawsuit for that limited purpose.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 8th day of August, 2000.

Hon. Angel E. Rotger Sabat
Attorney General,
Commonwealth of Puerto Rico

By: _____
Dennise N. Longo de Morgan
Special Assistant to the Attorney General
USDC No. 211408
Department of Justice
P.O. Box 9020192

Civil Action and Education Corporation
Suite 720, Mercantil Plaza Building
2 Ponce de León Avenue
San Juan, Puerto Rico 00918
Tel. (787) 753-6999
Fax (787) 764-7666

By: _____
Carlos V. García Gutiérrez
USDC No. 120902

Tel. (787) 721-7700 Ext. 2111
Fax (787) 724-4770

Charles S. Fax
Shapiro and Olander
36 South Charles Street
Baltimore, Maryland 21201
Tel. (410) 385-4271
Fax (410) 384-1216

Counsel for Defendants

By: _____
Alejandra Bird López
USDC No. 213911

By: _____
Jacqueline N. Font Guzmán
USDC-PR No. 212107

Counsel for Plaintiffs

SO ORDERED, this 11th **day of** August**, 2000.**

Hon. Héctor Laffitte
Chief Judge
United States District Court
for the District of Puerto Rico

DATE: 8-11-00

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	**CIVIL NO. 74-1301 (HL)**
	*	
HON. PEDRO ROSSELLO GONZALEZ,	*	
	*	
et al.,	*	
	*	
Defendants.	*	
	*	

* *

NOTICE OF PROPOSED SETTLEMENT,
DISMISSAL OF LAWSUIT WITHOUT PREJUDICE
TO REINSTATEMENT ON CERTAIN CONDITIONS,
AND OPPORTUNITY FOR CLASS MEMBERS TO OBJECT

TO: All persons who voluntarily or involuntarily now receive and/or will receive treatment at the Doctor Ramón Fernández Marina Psychiatric Hospital (also known as the Rio Piedras Psychiatric Hospital); and

The legal guardians of all persons who voluntarily or involuntarily now receive and/or will receive treatment at the Doctor Ramón Fernández Marina Psychiatric Hospital (also known as the Rio Piedras Psychiatric Hospital).

PLEASE BE ADVISED AS FOLLOWS:

1. Persons who voluntarily or involuntarily now receive and/or will receive treatment at the Doctor Ramón Fernández Marina Psychiatric Hospital (also known as the Rio Piedras Psychiatric Hospital) are members of the plaintiff class in the lawsuit named *Roberto Navarro Ayala, et al.*, plaintiffs, v. *The Governor of Puerto Rico, et al.*, defendants, United States District Court for the District of Puerto Rico, Civil Action No. 74-1301. The case is assigned to Chief Judge Hector Lafitte, whose offices are located at the United States Courthouse on Carlos Chardón Avenue, Hato Rey, Puerto Rico 00918.

dc
D. Lopez-Galarza
C. Fastlich
A. Bird
8/11/00

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Exhibit 3

2. In this lawsuit, the plaintiffs claimed that the conditions of residency and treatment violated the civil rights of the Hospital's patients guaranteed under the Constitution and the laws of the United States. The defendants in this lawsuit are the Governor of Puerto Rico and various officials of the Commonwealth of Puerto Rico responsible for management of the Hospital. This lawsuit has been in litigation since 1974.

3. Since 1974 the defendants have endeavored to meet the standard of care and treatment that the parties and the Court agreed satisfied constitutional requirements. In the opinion of the Court, the defendants have succeeded in substantially complying with the stipulations that have governed the course of remediation in this case, such that any deviations in the standard of care and treatment do not rise to the level of constitutional violations. Nevertheless, the class members are entitled to object to the proposed dismissal of the case, in the manner and within the time limits set forth in paragraph 7 below.

4. Due to the improvement of conditions of residency and treatment at the Hospital since 1974, the parties in this case have agreed that the lawsuit should be dismissed, subject to reinstatement in the event that the Hospital fails to comply with constitutional requirements in the foreseeable future. The details of the parties' agreement are set out in the attached document – Exhibit A. PLEASE READ THE ATTACHED DOCUMENT (Exhibit A) CAREFULLY.

5. In the event that the Hospital remains in compliance with the terms set forth in the attached Exhibit A, and this suit is not reinstated, on or before October 15, 2001, effective that date the suit shall be dismissed with prejudice, meaning that the same suit cannot be reinstated after that date.

6. This notice and the attached proposed stipulation (Exhibit A) shall be translated into Spanish. Both documents shall be published in English and in Spanish in one English language newspaper and one Spanish language newspaper, each of island-wide circulation, once a week for two weeks. In addition, a sufficient number of copies shall be available at the Hospital for individuals currently receiving treatment there and their families. Defendants shall bear the costs of providing this notice to the class, including the costs of translation of the notice and attached proposed stipulation (Exhibit A).

7. **PROCEDURE FOR MAKING OBJECTIONS:**

IF YOU OBJECT to the proposed stipulation (Exhibit A), please follow these steps:

a. Prepare a written statement of your objections, including:

   i. your name, address, and telephone number,

   ii. the name, address, and telephone number of the person on whose behalf the objection is being filed;

   iii. the relationship between the person on whose behalf the objection is being filed and the person preparing the objection;

   iv. a statement of the reasons for the objection.

b. When: These written statements must be delivered (or if mailed, post-marked) to the addressees named in sub-paragraph c immediately below, on or before October 9, 2000.

c. To Whom: The written statement should be delivered or mailed to the following persons:

   i. The Honorable Clerk of Court; U.S. District Court; Room 150; Federal Building; Carlos Chardón Avenue; San Juan, Puerto Rico 00918; and

ii. Carlos V. Garcia Gutiérrez; Attorney for the *Navarro Ayala* Plaintiff Class; Civil Action and Education Corporation; Mercantil Plaza Building; Suite 720; 2 Ponce de León Avenue; San Juan, Puerto Rico 00918-1611.

d. Objections that are filed with the Clerk of Court will be taken into consideration by the Court in determining whether to (1) approve the stipulation of dismissal without prejudice in the form submitted by the parties through their counsel, or (2) require modification of the stipulation by the parties before approving it, or (3) deny the entry of any stipulation of dismissal of the suit without prejudice.

8. If you or any family member of a person who voluntarily or involuntarily now receives and/or will receive treatment at the Doctor Ramón Fernández Marina Psychiatric Hospital (also known as the Rio Piedras Psychiatric Hospital) has ANY QUESTIONS OR CONCERNS regarding the meaning of this notice or the attached document (Exhibit A), please contact the lawyer who represents the Plaintiff class at the following address and/or telephone number:

CARLOS V. GARCIA GUTIERREZ
ATTORNEY FOR THE *NAVARRO AYALA* PLAINTIFF CLASS
CIVIL ACTION AND EDUCATION CORPORATION
MERCANTIL PLAZA BUILDING, SUITE 720
2 PONCE DE LEON AVENUE
SAN JUAN, PUERTO RICO 00918-1611
TEL. (787) 753-6999
FAX. (787) 764-7666

DATED this 17th day of August, 2000.

Hon. Héctor Laffitte
Chief Judge
United States District Court
for the District of Puerto Rico

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1/28/02

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA, et al,
Plaintiffs,

v.

GOVERNOR OF PUERTO RICO, et al
Defendants.

Civil No. 74-1301 (HL)

ORDER

I. Brief History

In 1974, twenty-eight years ago, Roberto Navarro Ayala, a mentally retarded patient at the Río Piedras Psychiatric Hospital (RPPH), filed a civil rights class action in this Court. The complaint rightfully asserted that the federally protected constitutional rights of the patients were being violated by overcrowding, inadequate care, and harsh conditions at RPPH.

On April 20, 1977 this Court approved a stipulated consent decree which included eighty-six standards that the parties consented to observe at the Hospital. Between 1977 and 1984 this case remained in a semidormant state with little or no activity. In February 1985 the Court appointed Dr. David M. Helfeld, former Dean of the University of Puerto Rico Law School, as a Special Master. The Court directed the Special Master to ensure that the parties comply with the 1977 stipulation agreement and to file periodic reports to the Court. Taking his commission to heart, the Special Master filed with the Court forty voluminous and thorough reports recommending improvements and reforms at the RPPH, as well as other facilities.

The 1974 complaint named as defendants: Rafael Hernández Colón, then Governor of Puerto Rico; José Alvarez de Choudens, then Secretary of Health; Eric Santos, then the Director of the Hospital; and Concepción Pérez, then Administrator of the Hospital. The various changes of administration in Puerto Rico led the Court to change the title of the case to Navarro Ayala v. Governor of Puerto Rico, since this litigation is brought against

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Exhibit 4

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defendants not in their personal capacities but in their official capacity. Santiago v. Corporación de Renovación Urbana y Vivienda de P.R., 554 F.2d 1210, 1213 (1st Cir. 1977) (holding that a successor in office is automatically substituted under F.R.Civ.P. 25(d)). Thereafter, a series of contested and litigated issues followed. There were periods of progression and regression, many resulting from the changes in the administration, delays in appointment of administrators, substitution of counsel, and in many occasions, what appeared to be idiosyncratic attitudes.

In 1993, the Governor attended a meeting at this Court to discuss the status of the case with the undersigned Judge, the Special Master, and counsel. Subsequently, the Governor designated Manuel Díaz Saldaña, then Secretary of the Treasury, to see to it that the reforms that had to be fulfilled were carried out within the shortest period possible. Thereafter, Secretary Díaz Saldaña gave his undivided attention to this case, cooperating fully with the Court and the Special Master's recommendations to achieve compliance with the stipulations and the Court's orders.

II. Progress and Compliance

During the long and tortuous path of this institutional litigation to vindicate plaintiffs' constitutional rights as patients at RPPH, the Court was compelled to assess monetary fines in the amount of $95,000.00 to achieve compliance with the Court's order and stipulations.

On June 18, 1997, following a formal hearing where the Governor, then Secretary of Health Carmen Feliciano, the Special Master, and counsel appeared and addressed the Court, the Court entered an order finding that it was satisfied that compliance priorities were recognized by all to be overcrowding, de-institutionalization, physical plan remodeling, the need for a compliance plan, and the development of an adequate pre-and-post-Hospital support system (the "Rehabilitation plan"). The Court found, and still finds, that pre-and-post-Hospital support systems are essential to keep and maintain the Río Piedras Psychiatric Hospital de-institutionalized and constitutionally healthy. The 37th and

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40th Special Master's reports recognized that defendants had made tremendous progress in complying with the 1977 stipulations; that the much-needed reforms have been institutionalized; and that substantial compliance with the stipulations embodied in the Consent Decree have been accomplished. In consideration of the progress accomplished, the Court ordered that the $95,000 in fines be returned to the Secretary of the Treasury. The funds were ordered earmarked for the specific purpose of promoting and enhancing the therapeutic environment at the RPPH for the benefit of the patients and their families. Pursuant to the Court's order recreational facilities, structures, illumination, signs, and subscriptions for a reading room were provided to the patients.

III. Accreditations

In January and March 1999 RPPH received accreditations by the Joint Commission for the Accreditation of Health Care Organizations (J.C.A.H.C.O.) and by Medicare, respectively. Whereupon the Court entered on March 9, 2000, the following order:

> **All monies received by or credited to the Puerto Rico Department of Health, the Mental Health and Anti-Addiction Services Administration, or the Dr. Ramón Fernández Marina Psychiatric Hospital ("Hospital") from Medicare or any private entities in payment or reimbursement for medical or psychiatric services rendered at the Hospital shall be allocated by the Government of Puerto Rico to the Hospital's operational account(s) and used as operating funds. Until further orders of the Court, such monies shall not be used by the Department of Health, the Mental Health and Anti-Addiction Services Administration, the Hospital, or any other Puerto Rico governmental agency or instrumentality for any purpose other than as specified herein. (Docket no. 476.)**

On August 11, 2000, the parties filed a Joint Stipulation and Order of Dismissal asserting substantial compliance with the Consent Decree, pledging to maintain the J.C.A.H.C.O. accreditation, and agreeing to maintain a yearly appropriated budget of at least $18,929,000.00 to adequately provide for the health, welfare, safety and treatment of the patients at the RPPH. The parties further stipulated that defendants shall continue to hold meetings of the Implementation Committee and of the Hospital Governing Board, the

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latter as successor to the Steering Committee. The Court adopted and entered the order. Docket no. 494.

In January 2001 a new administration took office in Puerto Rico. The Court held in abeyance any rulings on the joint stipulation so that the new administration could familiarize itself with this institutional litigation and demonstrate its willingness and commitment to the constitutional rights of the RPPH's patients. Dr. Johnny Rullán, the present Secretary of Health, promptly showed his commitment to, and good faith in, complying with the stipulations and the Court's order. Dr. Rullán sought and obtained a meeting with the Court on March 28, 2001 to discuss the status of the case. Thereafter, Dr. Rullán an his staff have seen to it that the Hospital continues to comply with the Consent Decree and the Court's order, including holding meetings of the Governing Board, the Implementation Committee, and notifying the Court with copies of the minutes.

Finally, on December 13, 2001 the undersigned Judge attended a special meeting of the Governing Board, and thereafter inspected the facilities accompanied by counsel and the former Special Master. The Court is now ready to rule upon the joint motion to finaliz this lengthy and at times frustrating litigation. The efforts, energy, and time devoted to vindicate the patients' constitutional rights at the RPPH have not been in vain.

The Court would be remiss if it did not acknowledge the Special Master, Dr. David Helfeld, the Deputy Special Master, Rita Rodríguez Falciani, the Advisory Interdisciplinary Team, Manuel Díaz Saldaña, and then-Secretary of Health Carmen Feliciano for their accomplishments in bringing the conditions at the RPPH to constitutional standards. This group dedicated their time and efforts over the past years to improve the life of the mentally ill at the RPPH. Together they have accomplished a noteworthy feat. Special recognition goes to Dr. Helfeld. Transforming the Hospital into a modern institution for the mentally ill has not merely been a job but a passionate personal goal. On behalf of the Court, the parties, and, most importantly, the patients in the Hospital who suffered under what were medieval living conditions before this case began, the Court thanks Dr. David Helfeld for his work. The Court of Appeals as early as

December 18, 1991 noted the progress made in this institutional reform litigation and recognized that "the district judge and the court-appointed master have done an outstanding job performing the role of policy planners and managers to see that the complex legal goals inherently part of this litigation come about . . . ." Navarro-Ayala vs. Hernández Colón, 951 F.2d 1325, 1346 (1st Cir. 1991).

The Court also acknowledges the dedication and leadership of Secretary of Health Johnny Rullán and his staff in assuring compliance with the stipulations and Court's orders, and his pledge to continue the incredible transformation of the Río Piedras Psychiatric Hospital from its medieval state to a well organized, well respected accredited institution which carefully treats and respects the constitutional rights of its patients.

Conclusion

The reward and satisfaction for providing a less restricted environment, adequate treatment, a therapeutical environment for mental patients – a vulnerable class – at RPPH is priceless. A sense of fairness and respect for human dignity require no less. Because there no longer appears to be overcrowding, understaffing, poor living conditions or inadequate care and treatment of patients at the Río Piedras Psychiatric Hospital as the complaint originally asserted, and given the stipulation for dismissal filed by the parties, the Court hereby approves the joint stipulation and hereby orders this case dismissed. The Court's order of March 9, 2000 (docket no. 476) and the Joint Stipulation and Order of Dismissal of August 11, 2000 (docket no. 494) shall remain in effect to ensure the continued constitutional protection of the patients of the RPPH.

IT IS SO ORDERED.

San Juan, Puerto Rico this 28th day of January, 2002.

HECTOR M. LAFFITTE
Chief, U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ROBERTO NAVARRO-AYALA, et al.,
Plaintiffs,

v.

PEDRO ROSSELLO GONZALEZ, et al.,
Defendants.

Civil No. 74-1301 (HL)

ORDER

Upon the parties' Joint Stipulation Concerning Application of Medicare Funds Received by the Rio Piedras Psychiatric Hospital, Dkt. No. 474, the Court hereby orders and decrees the following:

> All monies received by or credited to the Puerto Rico Department of Health, the Mental Health and Anti-Addiction Services Administration, or the Dr. Ramón Fernández Marina Psychiatric Hospital ("Hospital") from Medicare or any private entities in payment or reimbursement for medical or psychiatric services rendered at the Hospital shall be allocated by the Government of Puerto Rico to the Hospital's operational account(s) and used as operating funds. Until further orders of the Court, such monies shall not be used by the Department of Health, the Mental Health and Anti-Addiction Services Administration, the Hospital, or any other Puerto Rico governmental agency or instrumentality for any purpose other than as specified herein.

IT IS SO ORDERED
In San Juan, Puerto Rico
This 9th day of March, 2000

HECTOR M. LAFFITTE
Chief United States District Judge

s/c Grace DOJ 3/9/00

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AO 72A
(Rev.8/82)

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA, et al,

Plaintiffs,

v.

GOVERNOR OF PUERTO RICO, et als,

Defendants.

CIVIL NO. 74-1301 (HL)

MOTION TO SUBMIT THE FINAL DRAFT OF A PROPOSED CONSENT DECREE

COME NOW the parties by their respective, undersigned attorneys and respectfully inform the Court that the parties tender with this motion the Final Draft of a proposed Consent Decree as required by the Court by Order dated and filed on December 23, 1996.

Respectfully submitted at San Juan, Puerto Rico, this 31st day of January 1997.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date I have served this motion by mailing a true and exact copy hereof to: **Carmen Priscilla Figueroa,** Esq., Director, Federal Litigation Division, PO Box 9020192, San Juan, PR 00902-0192; **Etienne Totti del Valle, Esq.,** Totti & Rodríguez-Díaz, PO Box 191732, San Juan, PR 00919-1732; **Gretchen Coll Martí, Esq.,** Director, PR Legal Services, PO Box

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Exhibit 6

11877, Fernández Juncos Station, San Juan, PR 00910; **Dr. David M. Helfeld,** Special Master, PO Box 22712, UPR Station, San Juan, PR 00931; **Luis M. Villaronga, Esq.**, PO Box 23362, UPR Station, San Juan, PR 00931-3362.

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2 Ponce de León Avenue
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JOSE A FUENTES AGOSTINI
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Federal Litigation Division

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ETIENNE TOTTI DEL VALLE
USDC-PR 119101

~~JOSE JAVIER SANTOS MIMOSO~~
~~USDC-PR 208207~~

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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA,
et al,

Plaintiffs,

v.

GOVERNOR OF PUERTO RICO,
et als,

Defendants.

CIVIL NO. 74-1301 (HL)

FINAL DRAFT OF A PROPOSED CONSENT DECREE

I. INTRODUCTION

In 1974, Roberto Navarro Ayala, a patient at the Psychiatric Hospital of the Commonwealth of Puerto Rico filed a complaint under 42 U.S.C. § 1983 before this Honorable Court on behalf of himself and all others at the Hospital, asser1ting that the inhumane conditions there violated plaintiff's constitutional rights. Included as defendants were the Governor and other Commonwealth officials having control over the Hospital.

In 1977, the parties, executed, and this Honorable Court approved, a stipulation geared towards the termination of the suit.

In the ensuing nineteen (19) years, defendants have taken many steps under the supervision of the Honorable Court to comply with the terms of the stipulation. Nonetheless, further improvement may and must be achieved for defendants to substantially comply with the stipulation.

However, due to the many years that have passed since the original stipulation was agreed upon and approved by this Honorable Court, the parties understand that some modifications are in order to reflect the actual situation of the mental health services at the Institution.

Thus, the parties have agreed to the following terms and conditions so that they may substitute those contained in the stipulation filed in 1977.

II. TERMS AND DEFINITIONS

1. HOSPITAL / INSTITUTION:

   a. The Dr. Ramón Fernández Marina Psychiatric Hospital. The hospital will engage in treatment of psychiatric patients at the acute inpatient level of care. An exception to this category is the detection of chronicity in particular patients who, once admitted, due to the particular nature of their condition and non-responsiveness to the usual and customary treatment modalities, and who, in the judgement of a staff psychiatrist in consultation with an external psychiatrist appointed by the Medical Director of the Hospital, are found to meet the following criteria:

      i) a reasonable degree of treatment outside of a psychiatric hospital setting cannot be contemplated, or

ii) for whom no alternative facility is available in Puerto Rico.

b. All services delivered at the hospital will comply with the generally recognized health care standards in an institution that provides services for acute patients.

c. The defendants shall submit to the court, no later than December 31, 1998, a plan to accept hospital patients at other facilities when a patient is discharged from the Hospital, as part of the necessary measures to bring the Hospital in conformity with the stipulations.

d. The defendants shall endeavor to obtain accreditation by the Joint Commission for the Accreditation of Healthcare Organizations (J.C.A.H.O.) by December 31, 1998.

2. CLASS MEMBERS/PATIENTS

All persons who voluntarily or involuntarily now receive and/or will receive treatment at the hospital.

3. QUALIFIED HEALTH PROFESSIONAL:

a. A qualified health professional shall meet all licensing and certification requirements of the Commonwealth of Puerto Rico for persons engaged in the practice of the same profession elsewhere in the Commonwealth. All qualified health

professionals who have not had at least one year prior experience treating the mentally ill or mentally handicapped shall receive in-service education activities relevant to their position after commencing to work in the Institution. All qualified health professionals shall be provided with continuous education in treating the mentally ill or mentally handicapped.

b. PSYCHOLOGIST

Must have a Master's or Doctor's Degree in Psychology from a duly accredited and licensed university or college, and must be licensed by the Psychology Examining Board of the Commonwealth of Puerto Rico to practice Psychology as a profession. The Psychologist should be able to provide services to groups as well as individuals. This includes the application of methods and principles to predict and influence changes in conduct related to learning, perception, motivation, thought, emotions and interpersonal relationships.

c. SOCIAL WORKER

Intervenes, but is not limited to, working with individuals, family, groups and communities to improve the utilization of the resources available to the patient. Also intervenes so the patient and the family can effectively deal with the difficulties

he/she faces in the interaction with his/her surroundings by applying and using theorical knowledge and technics of human conduct and social work. Must have a Master's Degree in Social Work and be duly licensed when required by law.

d. OCCUPATIONAL THERAPIST

Must have a Bachelor's Degree in Occupational Therapy and be duly licensed. The occupational therapist is a health professional with four years of college and a bachelor's degree. This professional is responsible for evaluating the functioning and necessary skills for the patient performance of activities of daily living. Also, he/she designs and implements an intervention plan that promotes functioning in the areas of activities of daily living, play and rest, and through the use of methods and techniques of occupational therapy. This includes: activities with purpose, therapeutic exercises, reality orientations, groups oriented toward tasks and other activities of human beings in the sensomotor, cognitive and psychological dimensions.

e. OCCUPATIONAL THERAPIST ASSISTANT

Must have an Associate's Degree in Occupational Therapy and be duly licensed. Person who assists the Occupational Therapist in selective activities and tasks which do not require the ability,

judgment or extensive knowledge required from his superior. His/her work is carried out under the immediate supervision of the Occupational Therapist.

f. MEDICAL DOCTOR/PHYSICIAN

A professional with a doctor's degree in medicine from an accredited school of medicine who is duly licensed to practice medicine in the Commonwealth of Puerto Rico. Must be qualified to diagnose, dispense, administer treatment, prescribe, cure and prevent any illness, pain, deformity or human condition, mental or physical, by way of the use of drugs, physical and chemical agents, prothesis, manipulation, or any other method in accordance with the generally recognized professional standards of the medical practice.

g. PSYCHIATRIST

A medical doctor/physician, as defined by this stipulations, who has a specialty in psychiatry by an accredited institution and is duly authorized to practice psychiatry as a specialty in the Commonwealth of Puerto Rico. The psychiatrist evaluates, diagnoses, treats and prevents mental, emotional and conduct disorders and promotes the emotional stability of his/her patients'.

h. PROFESSIONAL NURSE

A person who provides direct nursing care to individuals, as well as orientation to his/her family and the community. Is responsible for the planning, executing, delegating and evaluating of the nursing care offered by practicing nurses and other personnel assigned to the nursing area. Must be duly licensed to practice as a Professional Nurse in Puerto Rico. Possesses additional training in psychiatry, as well as the necessary leadership to carry out assignments at the supervision level.

i. PRACTICING NURSE

A person who carries out selective assignments which do not require the ability, judgment or extensive knowledge required from Professional Nurses and can only work under the direct supervision of a professional nurse. Must be duly licensed to practice as a Practicing Nurse in Puerto Rico.

j. RECREATIONAL THERAPIST

A professional who programs a series of active and passive recreational activities with the purpose of offering a varied and interesting program that stimulates the patient's participation and promotes his/her mental health. The individual program of

each patient will be formulated according to his/her needs and interests and will be evaluated periodically.

k. AUXILIARY PERSONNEL (Care Worker)

Any other employee of the Hospital who is not qualified as a health care professional and whose responsibilities include contact with and custody of the patients. Each such employee will be supervised by a qualified health care professional.

l. SUPPORT SERVICES

The hospital shall maintain the following services:

i. Administrator and technicians of clinical records.

ii. Dietitian

iii. Pharmacist and Auxiliary Pharmacist

iv. Health Services Administrator

v. Recreational Leader

vi. Medical Resident

All support services professionals, must have completed studies in their respective professions and be certified as such by an accredited school. When required by law support services professionals must be licensed to practice their profession in Puerto Rico.

4. GUARDIAN

A person named by a Puerto Rico Court of Law to take charge of the custody and care of the person and property of a mentally ill person after the corresponding court order on his mental incompetence has been handed down by the Part of the Court of his domicile.

5. INTERDISCIPLINARY TEAM

Includes qualified professionals organized as a clinical task group to assess/evaluate, elaborate and revise individual treatment plans. Its decisional processes occurs through active participation of each of its members, to share diagnosis, collaborate and reach consensus. The Interdisciplinary Team is led by a psychiatrist who is the one ultimately responsible for the individual treatment plan of the patient.

6. TREATMENT

Therapeutic measures taken to re-establish the patient's mental condition to his/her pre-existent non-acute status. Treatment includes, but is not limited to, emergency services, examinations, hospitalization, diagnosis, evaluation, care, training, psychotherapy, pharmacotherapy, acute care discharge plan and any other services provided for patients by an acute care mental health facility according to the generally recognized professional standards of the health care practice.

7. INDIVIDUALIZED TREATMENT PLAN

a. An individualized treatment plan is a course of action designed by an Interdisciplinary Team of qualified health care professionals who are to diagnose, treat, contextualize and appraise in a realistic manner the necessary interventions to enhance the probabilities of restoring the patient to his/her present non-acute state in the shortest possible time, taking into consideration his/her personal conditions and socio-cultural milieu.

b. As part of his or her individualized treatment plan, each patient shall have an individual post-institutionalization plan in which, upon discharge, the patient and his or her family will be instructed about the need to continue ambulatory treatment, and appointments will be provided for such purpose.

c. An individualized treatment plan shall be prepared at the earliest opportunity and no patient shall be discharged without a treatment plan.

8. INFORMED CONSENT

A decision, based upon full disclosure of facts, taken voluntarily and without any coercion by a patient who fully understands the

information given to him/her, when accepting or rejecting treatment or decisions related to it.

9. INVOLUNTARY PATIENT

Patients admitted and treated at the institution without their consent.

10. VOLUNTARY ADMISSION

An informed decision by the patient to voluntarily enter any mental health facility to receive care or treatment of his/her illness.

11. INVOLUNTARY ADMISSION

Admission of a person by a Court order to a mental health facility for treatment of his/her mental health illness, where there is no element of consent on the part of an individual for such action.

12. ASSMCA

At the time of the signing of the stipulation the Administration of Mental Health and Anti-Addiction Services is the agency responsible to carry out programs for the prevention, treatment, mitigation and solution of problems concerning mental health or addiction to substance dependency, in order to promote, preserve and restore the bio-psychosocial health of the people of Puerto Rico

III. STIPULATED AGREEMENT

13. All patients shall have a right to medical treatment and care suited to their needs, regardless of race, color, sex, birth, origin or social

condition, political or religious beliefs as required by the patients physical or mental condition.

14. No patient shall be admitted to the institution unless a psychiatrist has made a prior determination that it is the least restrictive setting feasible for that person.

15. The institution shall formulate a written statement of therapeutic objectives for each patient that is consistent with his or her rights and needs. No patient shall be discharged from the hospital without an individualized treatment plan.

16. Patients shall have a right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet the generally recognized professional standards of the medical practice.

17. Patients shall have a right to be free from unnecessary or excessive medication. The patients records shall state the effects of psycho-active medication on the patient. When dosages of such medications are changed or other psychoactive medications are prescribed, an annotation shall be made in the patient's record concerning the effect of the new medication or new dosages and the behavior changes, if any, which occur.

18. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a rehabilitation program, or in quantities that interfere with the patients therapeutic program.

19. All patients shall have a right to dignity and humane care. Their privacy rights shall be preserved to the maximum extent allowed by their condition. The psychiatrist, utilizing input from the interdisciplinary team, must make the determination of the degree of privacy allowed at a particular moment, in keeping with safety factors.

20. Patients shall lose none of the rights enjoyed by persons in Puerto Rico and of the United States solely by reason of their admission or commitment to the institution, except as expressly determined by an appropriate court of law.

21. No person shall be presumed mentally incompetent solely by reason of his admission or commitment to the institution.

22. The opportunity for religious worship shall be accorded to each patient who desires such worship. Reasonable provisions for religious worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be coerced into engaging in any religious activity. Visiting religious group representatives will receive orientation and education from the medical director or his representative on rules and general procedures of the institution, security issues and a detailed

discussion on the correct handling of religious services in the psychiatry environment. The rights granted herein may be restricted by a Psychiatrist by written order in which the reasons for restrictions and its duration shall be established.

23. Patients shall have a right to receive visits except to the extent that a Psychiatrist writes and order imposing special restrictions and explains the reasons and duration of any such restrictions. This right to receive visits shall be exercised according to a reasonable visiting schedule established by the Hospital.

24. Patients shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the institution to facilitate the exercise of this right. They will also be permitted reasonable access to the use of telephones. The rights granted herein may be restricted by a Psychiatrist by written order in which the reasons for the restriction and its duration shall be established.

25. The Institution shall provide, under appropriate supervision, suitable opportunities for a patient to socially interact with members of the opposite sex, except where the psychiatrist in charge of his or her care writes and order to the contrary and explains the reasons therefor and its duration.

26. Corporal punishment is prohibited. The institution shall also continue to prohibit mistreatment, neglect or abuse in any form of the patients is also prohibited. Any violation will be reported immediately to the medical director. A note of the incident will appear in the patient's file and a record of any such incident shall be kept.

a) The record will contain the investigation carried out and the findings and recommendations of the committee on security.

b) A register of reports of incidents, accidents, their evaluations and the actions taken will be maintained. The family or representatives of the patient will be informed of the findings and intervention after each incident.

c) The policy of the Institution regarding this particular shall be circulated among the personnel and be posted in all wards.

27. Patients shall have a right to regular physical exercise several times a week. It shall be the duty of the institution to provide both indoor and outdoor facilities and equipment for such exercise. An extended hours recreational program shall be available and in continuous development.

28. Patients shall have the right to be outdoors daily in the absence of medial or psychiatric considerations to the contrary, and weather permitting.

29. Patients will not have to carry out maintenance and institution operation tasks, nor care for other patients. Patients will only carry out therapeutic tasks as part of his/her treatment plan, which will be duly documented therein by the psychologist, occupational therapist or recreational therapist. Patients will not work for the institution.

30. Nourishing, well balanced diets shall be provided to all patients. Satisfying menus will provide the recommended daily dietary allowance. Provisions will be taken for special therapeutic diets for the patients who need them. Patients shall be fed in dining rooms, unless medically contraindicated.

31. Each patient shall have the right to keep and use his own personal possessions, except insofar as such clothes or personal possessions may be determined to be dangerous, either to himself or to others and/or against hospital policy by a psychiatrist or professional nurse. A locker or other place for safekeeping of personal possessions easily accessible to each patient will be provided

    a. Patients who are not capable of self-grooming will be assisted in learning normal grooming practices with

individual toilet articles, including soap, tooth-brush, and toothpaste which will be made available to each patient.

b. Teeth shall be brushed daily, unless there are medical orders that the patient's condition requires an alternative manner of dental hygiene. Individual brushes shall be properly marked, used and stored.

c. Each patient shall have a shower daily, unless medically contraindicated.

d. Patients will be regularly scheduled for hair cutting and styling. There will be four hair stylists at the Hospital.

e. For patients who require such assistance, cutting of toe nails and finger nails will be scheduled at regular intervals.

32. Wherever he or she may be located, patients have a right to a humane physical environment within the institutional facilities. These facilities shall be designed or used to make a positive contribution to the efficient attainment of the treatment goals of the institution.

33. Patients shall be furnished with a comfortable bed with adequate changes of linen, a closet or locker for his/her personal belongings, and appropriate bedside furniture, unless contraindicated by a psychiatrist

who shall state, in the patients medical record, the reason for such restrictions.

34. Lounging areas. There shall be lounging areas attractively and adequately furnished with reading lamps, tables, chairs, television, radio and other recreational facilities.

35. Linen Servicing and Handling. The institution shall make arrangements for the expeditious handling of clean and soiled bedding and other linen, provided that after soiling by an incontinent patient, bedding and linen shall be immediately changed and removed from the living unit and immediately replaced with clean linen. Soiled linen and laundry shall be removed from the living unit immediately.

36. Housekeeping. Regular housekeeping and maintenance procedures which will ensure that the institution is maintained in a safe, clean and attractive condition, shall be developed and implemented.

37. In accordance with a maintenance routine and a repairs program, the physical plant shall be conserved in a continuous state of good repair and operation, so as to ensure the health, comfort, safety and well being. Adequate ventilation systems and equipment shall be afforded and shall be able to remove offensive odors.

38. The medical faculty will establish the criteria for admission and discharge to and from the various hospital services. Defendants shall

establish procedures to assure that patients referred by the Mental Health Centers will be accompanied by a preliminary evaluation done by qualified personnel each time they refer patients to the Hospital. All admissions to the hospital will be processed through the screening and Psychiatric Evaluation Center (C.C.E.P). The C.C.E.P. will be attended by qualified personnel and its procedures will be carried out as specified in the Bylaws of the Medical Faculty and in accordance with the generally recognized standards of the medical practice.

39. Admissibility to the Hospital will be determined by the psychiatrist who will consult with the interdisciplinary team of the Screening and Psychiatric Evaluation Center (C.C.E.P.) to determine the least restrictive setting possible according to the patient's need. A Resident in Psychiatry may not order or deny a patient's admission to the Hospital unless he/she has previously consulted with the on duty psychiatrist. The consultation shall be documented in the patient's clinical file and confirmed in writing by the on duty psychiatrist within twenty-four (24) hours.

40. Patients referred to the Hospital by a Puerto Rico Court of Law must be guaranteed their constitutional rights at all times.

41. The patients admitted to the Hospital will be evaluated within the timetable required by the Bylaws of the Medical Faculty and in

accordance with the generally recognized professional standards of the health care practice by the following personnel: medical doctor, nurse, psychiatrist, social worker, occupational therapist and psychologist, working as a interdisciplinary team, and, when necessary, the patient shall also be referred to a Rehabilitation Counselor and/or any other health professional as part of his evaluation. A physical exam shall also be made. Patients, furthermore, shall have a right to receive prompt and adequate medical treatment for any physical ailment and for the promotion of good, general health.

42. The Medical Faculty and the interdisciplinary team will have manual of rules, regulations and protocol for the treatments to be offered to the patients and for the management of special situations which must comply with the generally recognized professional standards of the health care practice.

43. The Interdisciplinary Treatment Plan shall include:

a. Identification data of the patient

b. Diagnosis of the patient.

c. Medical History summary and relevant symptomatology.

d. Short term objectives with corresponding course of action.

e. Estimate of educational needs.

f. Discharge Plan.

g. Consent and participation of the patient and/or person in charge.

44. The interdisciplinary team in each ward, led by a psychiatrist, will be responsible for the review and implementation of the individualized treatment plan, for the documentation in the patient's file of the progress reached and the reformulation of the plan at the moment a patient is moved to another ward so that the continuity of the clinical intervention in progress is guaranteed. The Interdisciplinary Treatment Plan will be reviewed with the regularity that the patient's condition requires and in accordance with the Bylaws of the Medical Faculty of the Hospital and the standards established by J.C.A.H.O. (Joint Commission for the Accreditation of Healthcare Organizations) at the moment of evaluation.

45. When appropriate, family members will be invited to participate from the first intervention in the design of the patient's treatment plan and orientated and educated on the patient's condition, the patient's discharge goals, pertinent therapeutic services, and about their responsibilities towards the general well being of the patient. Family participation will be documented as part of the progress notes in the patient's file.

46. A complete record for each patient shall be kept and made available to those health care professionals who are authorized to have access to the patient's record and are directly involved with the patient's care. The Clinical files shall have the documentation required by the Bylaws of the Medical Faculty, as stipulated by the Medical Records Committee and required by the accreditation agencies such as:

a. Identification Data, including legal aspects/requirements.

b. Social history of the patient, physical exam, medical and psychiatric history, broad evaluation by members of the interdisciplinary team, and test results.

c. Original individualized treatment plan, a nursing care plan that responds to the individually treatment plan, and a listing of problems which will serve as a guide so that the personnel in charge of care may carry out its tasks.

d. Findings of the periodic reviews of the Interdisciplinary Treatment Plan, patient progress and the necessary modifications of the plan.

e. Seclusion and restraint orders signed by the psychiatrist and the pertinent observations made by the personnel during these periods.

f. Documentation regarding condition, treatment and follow-up received by patients as a result of an incident or accident. (The hospital will maintain a report of the incident as an administrative record. This report will not be part of the clinical file of the patient).

g. Copy of the discharge summary, with progress notes and objectives reached, follow up and treatment recommendations, ambulatory appointments and any other useful observation.

h. Documentation of the patient's visits and summary of family intervention.

i. A summary of the conduct observed and the reaction of the patient. (Progress Notes).

j. Consultations, follow-up and medical diagnosis of physical conditions presented by the patient.

47. Each time a patient is transferred to a different ward, the reasons for the transfer and the treatment recommendations will be duly documented. Each time a patient arrives to a ward the condition in which he/she arrives and the interventions carried out will be documented. The interdisciplinary team will review the treatment plan within forty eight (48) hours the patient arrives at a ward or

service. During this inspection any necessary adjustments or modifications will be made in accordance to the provisions stated herein and with the approval of a psychiatrist.

48. Any entry to the clinical file shall inform the name, title, signature and license number of the person writing the entry, as well as the date and time of the entry. The discharge note must be completed at the moment of discharge. The discharge summary must be completed within ten (10) days of the date of discharge.

49. The information in the clinical file will be considered confidential and will only be available to qualified personnel as established in the Bylaws of the Medical Faculty in accordance with the generally recognized standards of the healthcare practice, the patient, and any person designated by the patient as his/her representative who has the patient's written consent for the divulgation.

50. November medication shall be administered unless at the written order of a physician.

51. A notation of each patient's medication shall be kept in his medical record. At least weekly the attending physician shall review the drug regimen of each patient under his care. All prescriptions shall be written with termination date, which shall not exceed 30 days.

52. Pharmacy services at the Hospital shall be directed by a pharmacist.

53. The pharmacist shall perform duties which include but are not limited to the following:

a. Receiving the original, or direct copy of the physician's drug treatment order;

b. Reviewing the drug regimen, and any changes, for potentially adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test medications and advising the physician of any recommended changes, with reasons and with an alternate drug regimen. The Pharmacy Committee shall meet as required by the rules and regulations of the Medical Faculty as stipulated by the Pharmacy Committee and required by the accreditation agencies.

c. Maintaining for each patient a profile record of all medications (prescriptions and nonprescription) dispensed, including quantities and frequency refills:

d. Participating when appropriate, in the continuing interdisciplinary evaluation of individual residents for the purpose of initiation, monitoring, and follow-up of individualized rehabilitation programs.

54. Only duly authorized staff shall be allowed to administer drugs.

55. A restraint refers to the use of a physical or mechanical device to involuntarily restrain the movement of the whole or a portion of a patient's body as means of controlling physical activities to protect the patient or others from injury. Devices used to protect the patient, such as bed rails, tabletop chairs, protective nets, helmets, or the temporary halter-type or soft chest restraints and mechanisms such as orthopedic appliances, braces, wheelchairs, or other appliances or devices used for postural support of the patient or assist in obtaining and maintaining normal bodily functions, are not considered restraint interventions.

a. Restraints shall be used as a therapeutic measure to prevent the patient from harming himself, others or property. Under no circumstances shall a restraint be used for the convenience of personnel in the facility.

b. Restraints must be used in a humane and therapeutic manner and will only be used as a last option.

c. Restraints procedures shall meet the generally recognized professional standards of the medical practice.

56. Isolation refers to the involuntary confinement of a patient alone in a room, which the patient is physically prevented from leaving, for any period of time. Seclusion does not include involuntary confinement for

legally mandated, but nonclinical purposes, such as confining a person facing serious criminal charges or serving a criminal sentence, to a locked room

a. Isolation shall only be used as a therapeutic measure to prevent a patient from harming himself, other persons or property. Under no circumstances shall isolation be used as a punishment or disciplinary measure, nor shall it be used for the convenience of the facility's personnel. Isolation will only be used as a last option.

b. Isolation procedures shall meet the generally recognized professional standards of the medical practice.

57. The psychiatrist will document his observations regarding the patient's conduct within the time frame established by the Rules and Regulations of the Medical Faculty and in accordance with the recognized professional standards of the medical practice.

58. In case of emergency, the professional nurse may initiate the process of isolation or restraint which shall not last for more than the time frame established by the By-Laws of the Medical Faculty and in accordance with the recognized professional standards of the medical practice.

59. While the patient is either in isolation or restrained, he/she will be observed according to the time frame established by the By-Laws of the Medical Faculty and in accordance with the recognized professional standards of the medical practice. The psychiatrist in charge of the patient will evaluate the use of these measures daily.

60. While in seclusion or under restraint, the patient's sanitary condition must be strictly controlled. No patient will be allowed to remain in soiled condition.

61. a. Qualified staff in numbers sufficient to administer adequate treatment shall be provided.

b. The ratio of a qualified health care professionals per patient shall be established by the Rules and Regulations of the Medical Faculty and in accordance with the recognized professional standards of the health care practice.

c. The Department of Health of the Commonwealth of Puerto Rico will actively seek to hire the personnel to fill the staffing ratios without freezing any available positions.

62. The Hospital will run an organized program of Quality of Service, Risk Management, and Utilization, which will coordinate the activities planned for the improvement of the patient's care services and organizational functioning, based on the vision and mission of the

Hospital. The department directors of each unit in the Hospital will tend to and provide support for the program and their departments in order to promote a continuous improvement environment.

RESPECTFULLY SUBMITTED. etc

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ROBERTO NAVARRO AYALA, et al,

Plaintiffs,

v.

GOVERNOR OF PUERTO RICO, et al.

Defendants.

Civil No. 74-1301 (HL)

ORDER

I. Brief History of the Case:

In 1974, Roberto Navarro Ayala, a mentally retarded patient at the Río Piedras Psychiatric Ward Hospital (RPPH), filed a civil rights class action in this Court. The complaint rightfully asserted that the federally protected constitutional rights of the patients were being violated by overcrowding, inadequate care, and harsh conditions at RPPH. In April of 1997, the Court approved a stipulated consent decree which included eighty-six standards that the parties consented to observe at the Hospital. Thereafter, in February of 1985, the Court appointed Dr. David M. Helfeld, former Dean of the University of Puerto Rico Law School, as a Special Master, in order to ensure the parties compliance with the 1977 stipulation agreement, and to provide the Court with reports on the Hospital's progress. Slowly but

Exhibit 7

surely, the Hospital made tremendous improvements throughout the long and tortuous path of this institutional reform litigation. For example, on June 18, 1997, the Court entered a an order finding that significant progress had been achieved at RPPH. In March of 1999, RPPH received accreditations by the Joint Commission for the Accreditation of Health Care Organization (J.C.A.H.C.O.) and by Medicare, respectively. Thereafter, on August 11, 2000, the parties filed a Joint Stipulation and Order of Dismissal, which the Court adopted, asserting substantial compliance with the Consent Decree, pledging to maintain the J.C.A.H.C.O. accreditation, and agreeing to maintain a yearly appropriated budge of at least $18,929,000.00, to adequately provide for the health, welfare, safety and treatment of the patients at RPPH. (See Docket No. 494). Finally, on January 28, 2002, the Court **dismissed the case** and issued an order providing, in relevant part, that its "order of March 9, 2000 (docket no. 476) and the joint Stipulation and Order of Dismissal of August 11, 2000 (docket no. 494) shall remain in effect to ensure the continued constitutional protection of the patients of the RPPH." (See Docket No. 503.)

II. The 2003-04 investigation:

In March of 2003, the Court received communications from various sources alleging violations of the Court's January 28, 2002 order, specifically that: (1) the budget for the Rio Piedras Hospital for the forthcoming fiscal year had been reduced from the $18,929,000.00 required by the Court's order; (2) that during the present and past fiscal years funds budgeted for the Hospital were transferred to cover costs not related to the Hospital's operations; and

(3) that the decision to close down the San Patricio Mental Health Clinic was in violation of the Court's findings that the existence of *pre* and *post* Hospital support systems were essential to ensure and safeguard the RPPH's patient's constitutional rights. After conducting a status conference with the parties, the Court reappointed Dr. Helfeld on April 29, 2003, as Special Master, to conduct an investigation relative to the allegations of non-compliance by the RPPH. (See Docket No. 508). Contrary to the parties' assumptions, the Court did not reopen the case, but rather utilized its inherent powers to appoint the Special Master to investigate the allegations and report his findings to the Court. Thereafter, the Court conducted numerous status conferences with the parties and received a total of five (5) voluminous and comprehensive reports by Dr. Helfeld detailing certain deteriorating conditions at the RPPH. Defendants, in turn, responded to Dr. Helfeld's reports, detailing the administrative and fiscal measures that the Hospital had implemented in its efforts to address the Court's concerns as to the deteriorating conditions at the Hospital. The plaintiff class also had an opportunity to file a reply to the Special Master's Fifth and Final Report. (See Docket No. 594). Dr. Helfeld's mastership expired on August 30, 2004.

The Court has reviewed Dr. Helfeld's reports and the responses of all the parties, and concludes that at this time the RPPH is in substantial compliance with the consent decree and the January 28, 2002 order. First, it appears from the information contained in the Special Master's Second Report, and the motions filed by the Commonwealth defendants, that the budget for the RPPH was not reduced from the $18, 929,000.00 required by the Court's order

of January 28, 2002, but was increased to $21,429,000.00. In addition, the information presented to the Court shows that the Commonwealth defendants have no intention to close down the San Patricio Mental Care Health Center, and that the funds budgeted for the Hospital had not been diverted to cover any costs other than those related to the Hospital's operations. In addition, the Court finds that the Commonwealth defendants have taken a series of administrative and fiscal measures to address the RPPH's ***pre*** and ***post***-Hospitalization services. The RPPH is also in the process of ensuring its compliance with the requirements for the upcoming J.C.A.H.C.O. accreditation scheduled in March of 2005.

Plaintiffs have requested that the Court "close" this case. Since the case has not been "reopened," the Court takes plaintiffs' motion as a request to cease further federal judicial intervention in this matter, given that the RPPH's current conditions are consonant with constitutional mandates. (See Plaintiffs' Response to the Special Master's Fifth and Final Report, Docket No. 594). The Court is satisfied that the Commonwealth defendants are cognizant of the importance of safeguarding the constitutional rights of the patients at the RPPH. The Court expects the Commonwealth defendants to comply with all the requirements necessary to ensure the Hospital's renewed accreditation this upcoming March, and continue complying with ***pre*** and ***post***-Hospitalization continuum. In an effort to ensure the Hospital's continued compliance with the consent decree, the Court hereby **increases** it previous

budgetary mandate of $18, 929,000.00 to **$23,000,000.00** per fiscal year.[1]

In summary, the Court hereby ratifies its prior order of January 28, 2002 (Docket No. 503), incorporating the order of March 9, 2000 (Docket No. 476), and the joint stipulation of dismissal of August 11, 2000 (Docket No. 494). **Whereupon, the Court hereby ORDERS that:**

> **(1) All monies received by or credited to the Puerto Rico Department of Health and Anti-Addiction Services Administration or its successor, or the monies received by RPPH from Medicare or any private entities in payment or reimbursement for medical or psychiatric services rendered at the Hospital shall be allocated by the Government of Puerto Rico to the Hospital's operational account(s) and used as operating funds. Until further order of the Court, such monies shall not be used by the Department of Health, the Mental Health and Anti-Addiction Services Administration, the Hospital, or any other Puerto Rico governmental agency or instrumentality for any purpose other than as specified herein; and (2) that in accordance with the joint stipulation, the Commonwealth pledges to maintain the J.C.A.H.C.O. accreditation, and shall henceforth maintain a yearly appropriated budget of at least $23,000,000.00 to adequately provide for the health, welfare, safety and treatment of the patients at the RPPH.**

In conclusion, the Court finds that there is currently no evidence of constitutional violations at the RPPH that would warrant further federal judicial involvement in this case. As the First Circuit Court of Appeals has recently stated in another institutional reform litigation case in this District, the court's oversight of the RPPH "cannot –and should not– last

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[1] It is a fact that the Commonwealth defendants had already afforded more funds to RPPH's yearly budget as a response to the institution's new financial reality

forever." See e.g., Morales Feliciano v. Rullan, 378 F.3d 42, 60 (1st Cir. 2004). Copy of this Order shall be notified to the Secretary of Health, the Director of the Commonwealth's Budget Bureau, the Hospital's Medical Director, and the Hospital's Executive Director.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 10th day of January 2005.

S/ HECTOR M. LAFFITTE
U.S. District Judge