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Closed

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF CALIFORNIA; GEORGE DEUKMEJIAN, Governor of the State of California; CALIFORNIA DEPARTMENT OF MENTAL HEALTH; LYNN WHETSTONE, Acting Director, California Department of Mental Health; RICHARD P. FRIDAY, Executive Director, Napa State Hospital,

Defendants.

C 90 2641 EFL

Civil Action No.

4 cs

CONSENT DECREE

Introduction

1. This case was instituted by the United States on Sept. 13, 1990, pursuant to the Civil Rights of Institutionalized Persons Act ("the Act"), 42 U.S.C. § 1997 et seq.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. Venue in the Northern District of California is proper pursuant to 28 U.S.C. § 1391, insofar as all claims set forth in plaintiff's Complaint arose in said District.

4. The United States is authorized to institute civil actions, under 42 U.S.C. § 1997a, and has met all prerequisites for the initiation of such action prescribed by the Act.

5. Defendants are the State of California, the California Department of Mental Health and the following individuals who are sued in their official capacities: the Honorable George Deukmejian, Governor of the State of California; Lynn Whetstone, Acting Director of the California Department of Mental Health; and Richard P. Friday, Executive Director, Napa State Hospital.

6. Individually-named defendants have authority and responsibility for the operation of Napa State Hospital (NSH), Imola, California, and are officers of the Executive Branch of the State of California.

7. On July 17, 1985, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of California, the Attorney General of California and the Executive Director of NSH of his intention to commence an investigation of alleged unlawful conditions of confinement at NSH, pursuant to the Act.

8. On May 28, 1986, following a thorough investigation, the Attorney General, by and through the Assistant Attorney General,

Civil Rights Division, informed the Governor of California, the Attorney General of California, and the Executive Director of NSH of the alleged conditions that were depriving persons residing in or confined to NSH of rights, privileges or immunities secured or protected by the Constitution of the United States, the facts supporting the alleged conditions and the minimum measures which he believed would remedy the conditions and pattern or practice of resistance to the full enjoyment of those rights, privileges or immunities.

9. On November 20, 1989, following additional investigative tours of NSH, the Attorney General of the United States, by and through the Acting Assistant Attorney General, Civil Rights Division, again informed the Governor of California, the Attorney General of California, and the Executive Director of NSH that persons residing in or confined to NSH were being subjected to conditions that deprived them of rights, privileges or immunities secured or protected by the Constitution of the United States.

10. The parties agree that the care, confinement and treatment of residents at NSH implicate rights of these residents which are secured and protected by the Constitution of the United States. The parties entering into this Consent Decree recognize these constitutional interests and, for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

11. In entering this Consent Decree, defendants do not admit to any violation of law and this Consent Decree may not be

used by the United States as evidence of liability in any other proceeding.

12. The provisions of this Consent Decree are a reasonable, lawful and fundamentally fair resolution of this case.

13. This Consent Decree shall be applicable and binding upon all parties, their officers, agents, employees and successors.

I. DEFINITIONS

As used in this Consent Decree, the following definitions shall apply -

A. Physician: A medical doctor licensed to practice medicine.

B. Psychiatrist: A physician who either is certified by or is eligible for certification by the American Board of Psychiatry and Neurology or who has successfully completed an approved residency program in psychiatry and upon completion of post-residency requirements will become eligible for examination for such certification.

C. Psychologist: A person who has attained at least a masters degree in the field of psychology.

D. Direct Care Worker: Staff, including psychiatric technicians, who are immediately responsible for implementing specific therapeutic procedures, techniques and treatments, for administering medications, or for providing other care or treatment to residents. Persons performing housekeeping and/or custodial functions are not included within this category.

E. Qualified Professional: A person competent, whether by education, training or experience, to make the particular decision at issue.

F. Professional Judgment: A decision by a qualified professional that is not such a substantial departure from accepted professional opinion, practice or standards as to demonstrate that the person responsible did not base the decision on such professional opinion, practice or standards.

G. Bodily Restraints: (1) Any physical or mechanical device used to restrict the free movement of a resident or the movement or normal function of any portion of a resident's body, excluding those devices prescribed in writing by a physician to be used only to provide support for the achievement of functional body position or balance and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and (2) chemical substances used solely for the purpose of controlling the behavior of a resident, and not for treatment purposes.

H. Seclusion: Placement of an individual alone in a locked room or a room from which the resident is physically prevented from egress.

I. Treatment: Therapeutic steps and activities, including psychological and psychiatric treatment and medication, determined by qualified professionals consistent with professional judgment to be necessary to protect a resident from unreasonable

risks to personal safety and necessary to enable a resident to function free from undue bodily restraint.

J. State: The Executive Branch of the Government of the State of California, specifically including the Governor of the State of California, the California Department of Mental Health, the administration of NSH and any and all of their officials, agents, employees and the successors in office of such officials, agents or employees.

II. PURPOSES AND OBJECTIVES

The parties to this action stipulate and agree that the purposes and objectives of this Consent Decree are to accomplish as promptly as practicable the following conditions at NSH in order to ensure that residents at the facility are accorded rights, privileges or immunities secured or protected by the Constitution of the United States:

A. Treatment by qualified professionals which is designed to reduce or eliminate unreasonable risks to personal safety or unreasonable use of bodily restraints must be afforded to all residents who it is determined by qualified professionals are in need of such treatment in order to reduce or eliminate such risks.

B. That degree of care must be provided which is sufficient to protect all residents from unreasonable risks to their personal safety by the conduct of staff and of other residents, and from the unreasonable use of bodily restraints.

C. Adequate medical care must be available to all residents pursuant to the exercise of professional judgment by qualified professional staff.

D. Psychotropic and other medications must be prescribed and administered to residents pursuant to the exercise of professional judgment by qualified professionals and shall not be used as punishment, for the convenience of staff or for purposes other than treatment.

E. Bodily restraints and seclusion, when appropriate, must be administered safely and pursuant to the exercise of professional judgment by a qualified professional.

F. The physical environment of NSH shall be maintained to ensure that it poses no unreasonable risks, including fire safety risks, to the personal safety of residents.

These purposes and objectives shall be achieved at NSH by implementing the requirements set forth in Parts III and IV, and by developing and implementing the plans described in Part V of this Consent Decree.

III. MEASURES REQUIRING IMMEDIATE ACTION

A. Medication Practices

Psychotropic medications and other medications shall be prescribed and administered to residents only pursuant to the exercise of professional judgment by a qualified professional. To this end, within 60 days, the State shall:

1. Review the record of each resident receiving psychotropic medication and ensure that the medication

is appropriate in type and dosage for (a) the resident's mental illness diagnosis and (b) the resident's "problem list" appearing in the record.

2. Evaluate each resident receiving psychotropic medication for drug-induced side effects, including tardive dyskinesia.

3. Review the record of each resident receiving Haloperidol in both oral and decanoate forms to ensure that physicians/psychiatrists add both dosages to determine whether maximum daily dosages are being exceeded.

4. Ensure that professional judgment is exercised by qualified professionals when psychotropic medication is prescribed and/or administered to a resident on a PRN ("as needed") basis, especially when the medication so prescribed and/or administered is from the same class as other psychotropic medication being prescribed and/or administered to that resident.

B. Restraint and Seclusion

Bodily restraint and seclusion are to be administered only pursuant to the judgment of a qualified professional. To this end, within 60 days, the State shall:

1. Revise guidelines to ensure that (a) during the day shift, a physician completes a clinical assessment of a resident within one hour after the resident has been placed in restraint or seclusion pursuant to a verbal order; and (b) during the evening and night shift, a physician performs

a clinical assessment of a resident within two hours after the resident has been placed in restraint or seclusion pursuant to a verbal order.

IV. STAFFING

A. By no later than one year from the date of entry of this Consent Decree, the State shall ensure that a sufficient number of physicians, licensed practical nurses, psychologists and direct care workers are employed and on duty to provide direct care at NSH to ensure attainment and consistent maintenance of at least the ratios of staff-to-residents and of other personnel delineated below, each day of the week:

1.	Physicians	1:100
2.	Psychologists	1:30
3.	Direct Care Workers (excluding: the "charge nurse"; the person who dispenses medication during the shift; and registered nurses, except to the extent that the number of registered nurses exceeds the number required by Part IV, paragraph C, below).	
a.	1st shift	1:8
b.	2nd shift	1:8
c.	3rd shift	1:12

B. By no later than two years from the date of entry of this Consent Decree, the State shall ensure that a sufficient number of psychiatrists are employed and on duty to provide

direct care at NSH to ensure attainment and consistent maintenance of at least the following ratios, each day of the week: acute care, 1:15; adolescent care, 1:20; and continuing care, 1:28.

1. In addition to the 51 psychiatrists currently at Napa, the State shall hire or otherwise obtain the services of: (a) eight psychiatrists, by no later than one year from the date of entry of this Consent Decree; and, (b) by no later than two years from the entry of this Consent Decree, all additional psychiatrists required to fulfill the requirements of Part IV, paragraph B.

C. By no later than three years from the date of entry of this Consent Decree, the State shall ensure that a sufficient number of registered nurses are employed and on duty to provide direct care at NSH to ensure attainment and consistent maintenance of at least one registered nurse, per unit, per shift, each day of the week.

1. In addition to the 161 nurses currently at NSH, the State shall hire or otherwise obtain the services of: (a) 20 registered nurses, by no later than one year from the date of entry of this Consent Decree; (b) an additional 25 registered nurses, by no later than two years from the entry of this Consent Decree; and, (c) by no later than three years from the entry of this Consent Decree, all additional registered nurses required to fulfill the requirements of Part IV, paragraph C.

D. Within six months of the entry of this Consent Decree, no less than 40 clerical staff will be employed to provide professionals and direct care workers with support in completing required paperwork, typing and other administrative functions.

E. Within one year of the entry of this Consent Decree, no less than two physicians, one of whom shall be a psychiatrist and the other a professional qualified to provide primary medical care to residents, shall be physically present and on duty at NSH during the night and evening shifts.

F. At the State's discretion, the ratios may be attained by hiring additional staff or by reducing the resident population at NSH. The State agrees that, if it decides to reduce the population of the hospital by discharging residents, the determination as to which residents shall be discharged shall be made by qualified professionals.

V. PLANS

A. In addition to the requirements specified above, the State agrees to file with the Court and serve on the United States not later than 90 days from the date of entry of this Decree by the Court its plan(s) for implementing the Decree. In its plan(s), the State shall set forth the following:

1. The steps that the State will take to meet the staff-to-resident ratios required under the terms of this Decree. Appropriate steps may include release of residents, changes in personnel policies, hiring standards and employment practices, adjustments in salaries or pay levels,

enhanced recruitment efforts or other outreach techniques, and other measures calculated either to attract and retain qualified staff, or to reduce the resident population, or both.

2. The number and categories of staff that will be utilized to implement plans required by paragraphs 3 through 11 below.

3. The procedures to be utilized to provide regular, periodic professional comprehensive evaluations/assessments of each resident in order to identify individual needs for medical or psychiatric treatment.

4. The procedures to provide a sufficient number of treatment program hours to each resident for whom such treatment is necessary.

5. The procedures to be utilized to provide for increased consultation and communication of relevant information between and among personnel regarding residents' care, medical and psychiatric treatment needs, as well as the increased communication of such information to staff who provide residents with care or treatment.

6. Recordkeeping systems and administrative procedures, with respect to each resident's care, medical and psychiatric treatment, that shall be utilized to maintain and make readily available in each resident's record and elsewhere, as necessary, such information as is professionally necessary to permit the exercise of professional

judgment in that resident's care, medical and psychiatric treatment.

7. The policies and procedures that will govern the use of medications, including policies and procedures concerning the handling and storage of medications, monitoring and review of whether the medications prescribed for and administered to each resident are appropriate for the needs of that resident, monitoring of residents for drug side effects, evaluation of drug dosage levels, and the review of the use of two or more drugs in combination, telephone orders and PRN prescriptions.

8. The policies and procedures that will be utilized to ensure that bodily restraints and seclusion are (1) administered only pursuant to the judgment of qualified professionals; and (2) not used as punishment, in lieu of treatment programs prescribed by a qualified professional, or for the convenience of staff. It is understood by the parties that restraint and seclusion may be used, when appropriate, to control residents when they engage in isolated incidents of violence and/or dangerous behavior. Said policies and procedures shall provide that the decision to place a resident in restraints or seclusion shall be recorded promptly in the resident's records and shall be reviewed by a qualified professional at specified reasonable intervals to determine whether or not continued restraint or seclusion is professionally justified.

9. The policies and procedures that will be utilized to ensure that residents will be protected from unreasonable risks of bodily harm to their personal safety by the conduct of staff or other residents, including requirements for staff to report incidents of bodily harm or allegations of such harm. Said policies and procedures shall include requirements for investigation of such incidents or allegations, and sanctions to be imposed on staff found to have caused or been responsible for causing harm to any resident, as well as procedures to ensure adequate staff supervision of residents and security measures designed to protect residents from unreasonable risks of bodily harm.

10. The enforcement mechanisms to be used, including disciplinary measures and sanctions where appropriate, to ensure staff compliance with all policies, rules and standards of job performance and behavior which are related to resident care and treatment.

11. Training and continuing in-service training program(s) that will be provided to enable all staff to fully implement the requirements of this Consent Decree.

B. Each plan shall: (1) set forth in specific terms and reasonable detail the actions to be taken by the State, including the dates for such actions; (2) include the full text of the procedures, regulations and protocols promulgated and issued by the State in the course of implementing the plan and Decree, or

utilized or adopted by NSH to fulfill its obligations under the plan and Decree; and (3) identify the name and qualifications of the professional consistent with whose professional judgment the plan has been prepared and submitted.

C. Each plan shall state a specific date or dates by which the plan shall be implemented in toto, but in no event shall the final implementation date of any plan required in paragraph A.1 of Part V be later than three years from the date of entry of this Consent Decree by the Court, and, with respect to all other plans required by Part V, two years from the date of entry of this Decree by the Court.

VI. CONSTRUCTION AND IMPLEMENTATION

In construing and implementing the terms of this Consent Decree, the following are agreed to by the parties:

A. Defendants shall file the plan(s) required by Section V with the Court and the United States within 90 days of the entry of this Consent Decree. The United States shall have 60 days from receipt of any plan in which to file a response to the plan with the Court. If the United States objects to any plan or portion thereof filed by the State, the parties shall confer in a good faith effort to resolve their differences. If the parties are unable to resolve their differences through negotiation, the adequacy of the contested portions of the proposed plan shall be determined by the Court. Defendants shall have the burden to persuade the Court that the plan is adequate.

B. If, after a plan is approved, State officials decide to modify that plan or any portion thereof, State officials shall notify the Court and the United States of the proposed modification. The United States shall have 60 days from the receipt of any proposed modification in which to file a response to the proposed modification with the Court. If the United States objects to the modification sought, the parties shall confer in a good faith effort to resolve their differences concerning the proposed modification. If the parties are unable to resolve their differences through negotiation, the adequacy of the proposed modification shall be determined by the Court. Defendants shall have the burden to persuade the Court that the modified plan is adequate.

C. Plans submitted to the Court, including modifications of plans, to which the United States does not timely object, shall be deemed approved by the Court.

D. All plans submitted under Part V of this Consent Decree, if approved by the Court, shall be issued as orders of the Court and shall be enforceable as such.

E. Defendants shall submit quarterly compliance reports to the United States and the Court regarding the status of the State's compliance with the requirements of this Consent Decree. These compliance reports will commence for the three-month period beginning _____, 1990, and will be submitted to the United States and the Court within 15 days of the end of each period.

These quarterly reports shall continue until the parties agree otherwise or until dismissal of this action.

F. Each compliance report shall specifically describe the actions the State has taken during the reporting period to comply with each provision of Parts III and IV of this Decree and each plan submitted pursuant to Part V of this Decree. For the last full month of each reporting period, the compliance reports shall also include the following information:

1. The average daily resident population and any projected resident population figures;

2. The number of residents with acute and continuing care needs;

3. An analysis which translates the ratios set forth in Part IV of this Consent Decree into numbers of staff for each employee category specified in Part IV.

4. The number of staff in each employee category specified in Part IV of this Consent Decree who are actually in a full-time or part-time employment status at NSH.

G. Each compliance report shall specifically describe the steps the State has taken during the preceding 120 days to meet the required staffing ratios specified in Part IV.

H. The State agrees to provide to the United States, within 30 days of their receipt, written responses to written questions from the United States regarding information provided in the compliance reports or other matters that relate to the State's compliance with the provisions of this Decree.

I. The United States and its attorneys, consultants and agents shall have reasonable access to the facilities, records, residents and employees of NSH upon reasonable notice to the State for the purpose of ascertaining compliance with this Consent Decree. Such access shall continue until this Consent Decree is terminated.

J. All parties shall bear their own costs, including attorney fees.

VII. TERMINATION OF DECREE

A. The parties contemplate that the State shall have fully and faithfully implemented all provisions of this Consent Decree, along with all plans herein required to be submitted to and approved by the Court, and will achieve the purposes and objectives of Part II of this Decree, on or before three years from the date of entry of this Decree by the Court.

B. The Court shall retain jurisdiction of this action for all purposes under this Consent Decree until the State shall have fully and faithfully implemented all provisions, purposes and objectives of the Consent Decree, along with plans submitted pursuant thereto, and until the judgment is discharged.

C. On or after the date on which defendants shall have fully and faithfully implemented all provisions of this Consent Decree and plans submitted thereto, defendants may move that the injunctions entered herein be dissolved, the judgment discharged, jurisdiction terminated, and the case closed and dismissed with prejudice on grounds that defendants have fully and faithfully

implemented and maintained all provisions of the Consent Decree and plans submitted pursuant thereto.

D. Dismissal shall be granted unless, within 60 days after receipt of defendants' motion, the United States objects to the motion. If such an objection is made with particularity, the Court shall hold a hearing on the motion and the burden shall be on the United States to demonstrate that defendants have not fully and faithfully implemented all provisions of the Consent Decree or any approved plan(s) or any part thereof and, if objection is based upon failure to implement any plan or part thereof, that such plan or part thereof is essential to the achievement of one or more of the purposes and objectives in Part II of this Consent Decree. If the United States fails to meet this burden, the injunctions shall be dissolved, the judgment shall be discharged, jurisdiction shall be terminated forthwith, and the case shall be closed and dismissed with prejudice.

CONSENTED TO BY THE UNDERSIGNED:

FOR THE STATE OF CALIFORNIA

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Attorney General
State of California

RALPH M. JOHNSON
Deputy Attorney General
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FOR THE UNITED STATES OF AMERICA

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WHEREFORE, the parties to this action having agreed to the provisions in the Consent Decree set forth above, and the Court being advised in the premises, the Court finds that the Consent Decree is a reasonable, lawful and fundamentally fair resolution of this case and hereby enters the Consent Decree as the JUDGMENT of the Court.

IT IS SO ORDERED, this 17 day of September, 1990, at San Francisco, California.

UNITED STATES DISTRICT JUDGE