



JI-WI-001-001

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

BRIAN, Individually and on behalf
of all other persons similarly
situated,

Plaintiff,

Civil Action No.
79-C-188

vs.

CLINICARE CORPORATION, et al.,

Defendants.

DOCKET NUMBER
U.S. DISTRICT COURT WEST DIST. OF WISCONSIN FILED
SEP-9-1980
JOSEPH W. SKUPNEWITZ, CLERK
CASE NUMBER

CONSENT DECREE

The complaint in this action was filed on May 1, 1979 where plaintiff claimed that he and a class he purports to represent had been deprived of certain of their rights under the United States and Wisconsin Constitutions and under the Wisconsin statutory and common law. Defendants CLINICARE CORPORATION and EAU CLAIRE ACADEMY, an unincorporated association operated by Clinicare Corporation (hereinafter referred to collectively as "CLINICARE") and defendants GENE A. WIGGINS, Individually and in his capacity as Director of Clinicare Corporation, THOMAS B. LITHERLAND, Individually and in his capacity as Administrator of Eau Claire Academy, RAYMOND F. MOELLER, Individually and in his capacity as Director of Social Services at Eau Claire Academy, A.W. DIESSNER, Individually and in his capacity as Medical Director/Psychiatrist at Eau Claire Academy, STEPHEN P. CHESS, Individually and in his

capacity as Clinical Psychologist at Eau Claire Academy, DOROTHY SWIFT, Individually and in her capacity as Director of Nursing at Eau Claire Academy (hereinafter referred to collectively as "INDIVIDUAL CLINICARE DEFENDANTS") have moved, pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure to dismiss this action for failure to state a claim upon which relief can be granted. Plaintiff has moved for a certification of the class consisting of "all juveniles who are or may be placed at Eau Claire Academy."

No orders have been entered with regard to defendants' motion to dismiss or with regard to plaintiff's motion to certify the class. The Court has not made any findings of fact or conducted any evidentiary hearings with regard to the merits of plaintiff's claim for damages or for injunctive and declaratory relief.

CLINICARE and INDIVIDUAL CLINICARE DEFENDANTS deny that they have violated the civil rights, constitutional rights, common law rights or statutory rights of the named plaintiff, Brian. These defendants similarly deny that they have violated any rights of any putative class members.

In order to effect an amicable settlement of the declaratory and injunctive aspects of this action, plaintiff, CLINICARE, and the INDIVIDUAL CLINICARE DEFENDANTS have fully agreed to the following Consent Decree.

Therefore, this Court does ORDER, ADJUDGE and DECREE the following:

A. JURISDICTION

This Court has jurisdiction of the subject matter herein, and of all the parties hereto. The class represented by plaintiff, namely all juveniles who are or who may be placed at Eau Claire Academy, is recognized only for the purpose of enforcing this Decree.

B. USE OF CONFINEMENT

Eau Claire Academy shall comply with the following standards and procedures when using rooms or wards for confinement:

1. Maintain current discipline policies in writing. They shall be aimed at changing attitudes and conduct and at helping the child understand and conform to established standards of behavior through inner control rather than by external pressure.
2. Prohibit physical and verbal abuse, corporal punishment, ill treatment and harsh and humiliating punishment.
3. Determine discipline on an individual basis and prohibit punishment of a group for an individual's offense.
4. Not create a negative attitude for work by using it as an inappropriate disciplinary measure.
5. Prohibit the withholding of meals, mail or family visits as methods of discipline.
6. Not permit a child to punish another child or group of children.
7. Not use confinement except as a therapeutic measure, when the child is currently in danger of harming himself or the group, or is currently in a condition of aggravated and acute disturbance.

If confinement is used:

- A. Rooms used for confinement shall be constructed and equipped so that therapeutic

use is maximized and risk of injury to children is minimized:

1. Windows shall be covered with psychiatric screening.
 2. Steam or hot water radiators shall be covered.
 3. Because confinement rooms are considered to be places of detention, the buildings in which they are located must be of fire resistant construction.
 4. Doors shall be equipped with a window through which the occupant of the room can be observed.
- B. Written policies for the use of confinement shall be prepared, and included in in-service training.
- C. The agency shall maintain a log or record book on the use of confinement. This record shall include information on the circumstances leading to confinement, the period of time any child was confined and specific reasons for periods of confinement extending beyond one hour.
- D. Periods of time during which children are confined shall be kept at a minimum. While a child is confined, periodic visits at intervals not to exceed fifteen (15) minutes shall be made to talk to the child and assess the condition of the child. The child shall be released when he or she no longer meets the standards for confinement.
- E. The agency administrator shall designate appropriate members of the staff who may authorize confinement of a child. The administrator or his designate must approve if confinement extends beyond one (1) hour. If the confinement includes any entire eight-hour shift, notice of such confinement shall be provided by CLINICARE to the Wisconsin Department of Health & Human Services at weekly intervals.

8. "Confinement," for purposes of this agreement, means placing a child in a locked room or ward within the facility.
9. Rules regarding confinement will be reviewed with each new resident as a part of his or her orientation and made available in writing to parents or residents who request copies.

C. USE OF PSYCHOTROPIC OR NEUROLEPTIC DRUGS.

CLINICARE shall follow the following procedures with respect to the administration of prescription medications to residents at Eau Claire Academy:

1. A general consent for unspecified medical treatment signed by the resident and by his or her parent(s) or guardian(s) shall be sufficient to allow CLINICARE or its employees or medical personnel retained by it to administer medication or render treatment to a resident at Eau Claire Academy consistent with the laws relating to the scope of the practice of the individuals involved and in keeping with good practice for such employees or other medical personnel. This form will state that a psychotropic or neuroleptic drug may be given for emergency use.
2. Psychotropic or neuroleptic drugs may be given to residents based upon the general consent form described above only for emergency use.
3. Psychotropic or neuroleptic drugs shall be administered to residents as part of a planned or routine program of treatment only when consent of the resident and his or her parent(s) or guardian(s) has been given pursuant to the following procedures:
 - A. The physician who is recommending use of any psychotropic or neuroleptic drug shall conduct a physical examination of the resident and confer with the resident and with his or her parent(s) or guardian(s) (preferably jointly, but separately if it is necessary or expedient). At this conference, in a manner consistent with good medical/psychiatric practice, the physician shall explain:

- i. The name of the medication;
 - ii. The planned period of treatment;
 - iii. The planned dosage;
 - iv. The reason for his/her recommending its use including anticipated or possible benefits; and
 - v. Possible or anticipated side effects or adverse reactions.
- B. The resident and his or her parent(s) or guardian(s) shall be afforded the opportunity to ask questions and receive explanations of the information set forth in A. above.
- C. The resident and his or her parent(s) or guardian(s) will, if they consent to the program of treatment, sign a consent form in the same or substantially similar form as attached hereto as Exhibit A. Copies of the signed form will be provided to the child and his or her parent(s) or guardian(s) and will be retained in the resident's permanent file.
4. For purposes of this Consent Decree, "emergency use" shall mean a single, non-recurring incident in which, consistent with good medical/psychiatric practice, it is necessary to administer a psychotropic or neuroleptic medication to a resident in order to prevent the resident from harming himself or others and no other less intrusive intervention will provide this protection. Emergency use of psychotropic or neuroleptic medication will be made at the direction of the medical director.
- D. DISMISSAL, CONTINUING JURISDICTION, FINAL JUDGMENT
 1. Plaintiff, CLINICARE, and the INDIVIDUAL CLINICARE DEFENDANTS agree, and this Court approves, that the INDIVIDUAL CLINICARE DEFENDANTS are hereby dismissed with prejudice and without costs. The court retains jurisdiction over plaintiff and CLINICARE and its officers and employees solely to enforce or to amend the provisions of this Consent Decree. Defendant CLINICARE is hereby ordered to give notice of this Consent Decree to its officers, employees and assigns.

2. This Court hereby finds, pursuant to Rule 54(b), Federal Rules of Civil Procedure, that as to defendants CLINICARE and the INDIVIDUAL CLINICARE DEFENDANTS that there is no just reason for delay in the enforcement or appeal of this Consent Decree.

ENTERED: September 8, 1980 Barbara B. Crabb
District Judge, BARBARA B. CRABB

AGREED:

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HAROLD L. HARLOW

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and the Individual Clinicare
Defendants.

DATE: _____

EXHIBIT "A"

CONSENT FOR ADMINISTRATION OF PSYCHOTROPIC
AND NEUROLEPTIC MEDICATION

As a resident of the Eau Claire Academy, I, _____
_____ ("Resident"), and _____
_____ [parent(s) or guardian(s)] have discussed with Dr. _____
_____ ("Physician") the medication _____.

The physician has conferred with us as to the reasons why this medication might be beneficial to the resident. The physician has explained his reasons for recommending its use, including its anticipated or possible benefits and has explained the possible or anticipated side effects or adverse reactions. We understand that the resident will be receiving the medication _____, during a period of _____ to _____ weeks, at an estimated dosage level of _____.

After conferring with Dr. _____, we hereby give our consent for continued treatment, including the use of this medication.

(Resident) _____ (Date)

(Witness) _____ (Date)
Parent or legal guardian:

(Date)

(Witness) _____ (Date)

Physician Signature:

(Date)

(Witness)