IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF INDIANA; ROBERT ORR, Governor of the State of Indiana; INDIANA DEPARTMENT OF MENTAL HEALTH; DENNIS JONES, Commissioner, Indiana Department of Mental Health; STATE BUDGET AGENCY; JUDITH PALMER, Director, State Budget Agency; INDIANA DEPARTMENT OF ADMINISTRATION; ORVAL D. LUNDY, Commissioner, Indiana Department of Administration; INDIANA DEPARTMENT OF PERSONNEL; THOMAS J. BEASLEY, Commissioner, Indiana Department of Personnel; JEFFREY H. SMITH, Superintendent, Logansport State Hospital; RUTH STANLEY, Superintendent, Central State Hospital,

Defendants.

Civil Action No.

IP84 411C

MOTION TO ADOPT CONSENT DECREE AND SETTLEMENT AGRREMENT AS INCORPORATED THEREIN

The United States respectfully moves for adoption and entry of the accompanying proposed Consent Decree and the Settlement Agreement, incorporated therein, as the judgment of this Court.

Respectfully submitted,

WM. BRADFORD REYONLDS
Assistant Attorney General

ARTHUR E. PEABODY, JR.
JOHN P. MACCOON
ROBINSUE FROHBOESE
ALAN HELD
JAMES HENDRIKSEN
EDITH MARSHALL
Attorneys
U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

SARAH EVANS BARKER
United States Attorney
Southern District of Indiana

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF INDIANA; ROBERT ORR, Governor of the State of Indiana; INDIANA DEPARTMENT OF MENTAL HEALTH; DENNIS JONES, Commissioner, Indiana Department of Mental Health; STATE BUDGET AGENCY; JUDITH PALMER, Director, State Budget Agency; INDIANA DEPARTMENT OF ADMINISTRATION; ORVAL D. LUNDY, Commissioner, Indiana Department of Administration; INDIANA DEPARTMENT OF PERSONNEL; THOMAS J. BEASLEY, Commissioner, Indiana Department of Personnel; JEFFREY H. SMITH, Superintendent, Logansport State Hospital; RUTH STANLEY, Superintendent, Central State Hospital,

Defendants.

Civil Action No.

IP84 411C

STIPULATION

The undersigned counsel hereby acknowledges receipt of the Complaint and Settlement Agreement on behalf of all of the defendants in the above captioned case and hereby waives any requirements under the Federal Rules of Civil Procedure for service of process.

Signed this 16th day of March, 1984.

Linley E. Pearson

LINLEY E. PEARSON
Attorney General
State of Indiana

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 1984, a copy of the foregoing Motion to Adopt Consent Decree and Settlement Agreement as Incorporated Therein was served in person upon Linley E. Pearson, Attorney General, State of Indiana, at Indianapolis, Indiana.

Arthur E. Peabody, Jr.
Attorney
U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF INDIANA; ROBERT ORR, Governor of the State of Indiana; INDIANA DEPARTMENT OF MENTAL HEALTH; DENNIS JONES, Commissioner, Indiana Department of Mental Health; STATE BUDGET AGENCY; JUDITH PALMER, Director, State Budget Agency; INDIANA DEPARTMENT OF ADMINISTRATION; ORVAL D. LUNDY, Commissioner, Indiana Department of Administration; INDIANA DEPARTMENT OF PERSONNEL; THOMAS J. BEASLEY, Commissioner, Indiana Department of Personnel; JEFFREY H. SMITH, Superintendent, Logansport State Hospital; RUTH STANLEY, Superintendent, Central State Hospital,

Defendants.

Civil Action No.

IP 84 411C

SETTLEMENT AGREEMENT

Introduction

On June 16, 1982, and on October 6, 1983, the United States Department of Justice, by and through Assistant Attorney General Wm. Bradford Reynolds, Civil Rights Division, gave notice to Governor Robert D. Orr of its intention to investigate alleged unconstitutional conditions of confinement at Logansport State Hospital, Logansport, Indiana, and Central State Hospital, Indianapolis, Indiana, respectively, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997.

State officials cooperated in all respects with each aspect of these investigations and have, from the outset, indicated a willingness to remedy long outstanding deficiencies at each facility.

State and federal officials have now determined as a result of these investigations that the interests of the citizens of the State of Indiana can best be served by entering into an agreement for needed improvements at these facilities as opposed to engaging in adversarial litigation.

It is recognized that Governor Robert D. Orr has voluntarily come forward with a program designed to address longstanding problems in the Indiana mental health system and that progress has been made during the past three years in improving institutional conditions. The Governor's Commission on Directions in Mental Health has acted to establish the goals of the Indiana mental health system. New leadership has been recruited for the Department of Mental Health as well as for six of the eleven state hospitals. Master plans are being developed at each state hospital for staffing, services, and needed capital improvements.

It is recognized that the 1983 session of the General Assembly appropriated the largest increase in funding for operations ever received by the mental health system, an increase of over $44 million for the biennium. An additional $28 million was appropriated for capital projects in state hospitals.

It is recognized that the development of community residential opportunities for the mentally ill is progressing rapidly.

It is recognized that state officials have committed themselves to undertake needed improvements by which all mental hospitals are expected to achieve accreditation by the Joint Commission on Accreditation of Hospitals by 1990.

It is specifically recognized that state officials are acting in good faith and have voluntarily undertaken this commitment to bring about needed improvements throughout the Indiana mental health system and specifically at Logansport and Central State Hospitals.

Moreover, it now appears that state and federal officials generally concur regarding the need for improvements and that any need for litigation has been obviated. State and federal officials have determined that this Agreement, which shall be legally binding and judically enforceable, is in the best interests of the mentally ill citizens of Indiana.

In entering into this Settlement Agreement state officials do not admit to any violation of law nor may this Agreement be used as evidence of liability in any other civil proceeding. This Agreement is, however, intended to assure certain conditions of care, confinement and treatment at the subject facilities and shall be read in light of that purpose.

I. DEFINITIONS

As used in this Agreement, the following definitions apply to the terms below:

1. "Acute Care Residents": Those residents admitted to the hospital within the last 30 days, or exhibiting an active psychosis or otherwise manifesting a need for reassessment of medical or mental status, diagnosis, or treatment needs, as indicated by aggressive behavior, or other behavior or symptoms requiring regular supervision, use of restraint or seclusion within the last 60 days, or administration of psychotropic medications on an emergency or "PRN" basis.

2. "Continuing Care Residents": All residents other than those meeting the above definition of acute care residents.

3. "Emergency": Any behavior or circumstance which poses a likely risk of imminent physical harm to the resident or other persons.

4. "Hospitals": Central State Hospital (CSH) and Logansport State Hospital (LSH), located respectively in Indianapolis and Logansport, Indiana.

5. "Physician": A medical doctor licensed to practice medicine in the State of Indiana.

6. "PRN": A treatment modality ordered on a pro re nata or "as needed" basis.

7. "Psychiatrist": A physician (a) who is certified by or eligible for certification by the American Board of Psychiatry and Neurology, or (b) who has successfully completed an approved

residency program in psychiatry and upon completion of requisite post-residency experience will become eligible for examination for such certification.

8. "Psychotropic Medication": Chemical substances used in the treatment of mental illness which exert an effect on the mind and are capable of modifying mental activity.

9. "Resident": Any patient residing at either of the hospitals or any patient of the hospitals who is absent due to a community visit or medical leave, or who is otherwise temporarily absent from either of the hospitals but who is expected to return to inpatient status.

10. "Resident Care Workers": Attendants, licensed practical nurses, nurses aids, psychiatric technicians, and other comparable direct care employees assigned to residents' living units.

11. "Restraints": Any device applied to a patient that substantially restricts the free movement of any part of the body, except:

a. Devices used to provide support for the achievement of functional body position or proper balance;

b. Devices customarily used on a short-term basis for specific medical and surgical treatment;

c. Safety devices to prevent in injury from incoordination or loss of consciousness,

such as ties or tying jackets, seizure helmets, seat belts, and bed rails;

d. Seat belts in a motor vehicle.

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

13. "The State": The Executive Branch of the government of the State of Indiana specifically including the Governor of the State of Indiana, the State Budget Agency, the State Department of Personnel, the State Department of Administration, the Indiana Department of Mental Health, any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees, or assigns.

14. "Treatment": Any therapeutic modality including those prescribed by or requiring the approval or review of a physician or psychiatrist, and specifically including any medication administered or the use of seclusion or restraints.

II. GENERAL PRINCIPLES

The State and the United States, by and through the Attorney General, agree to the following general principles:

1. With respect to all hospital residents, treatment decisions must be made and treatment must be rendered consistent with the exercise of professional judgment by appropriately qualified professional staff.

2. All residents of the hospitals must be consistently afforded daily medical and custodial care sufficient to guarantee

their constitutional rights to freedom from unreasonable risks of harm to their personal safety and from unreasonable bodily restraints.

3. The physical environment of the hospitals must be maintained so as to afford residents protection from unreasonable risks of harm to their personal safety.

In order to assure compliance with the above-stated general principles, the State will perform the actions required by Sections III, IV, and V below.

III. STAFFING

The State agrees to employ additional staff at the hospitals aimed at achieving the staff-to-resident ratios set forth below:

1. By no later than June 30, 1987 (except with respect to psychiatrists and physicians at LSH by no later than June 30, 1988), the State shall use its best efforts to employ a sufficient number of psychiatrists, physicians, master's level psychologists, registered nurses, and social workers to assure attainment and consistent maintenance on a hospital-wide basis of ratios of such staff to the total resident population of each hospital as indicated in this Section with respect to each designated group. It is understood that these ratios do not prevent the adjustment of individual professional caseloads according to the specific treatment and medical care needs of the residents.

a) Psychiatrists and Physicians: 1:30 (combined)

b) Master's Level Psychologists: 1:35 acute care residents

1:70 continuing care residents

c) On Duty Registered Nurses: (On the day and evening shifts only): 1:25 acute care residents

1:40 continuing care residents

d) Social Workers: 1:25 acute care residents

1:50 continuing care residents

2. Beginning no later than June 30, 1984, at least three registered nurses will be consistently maintained on duty on each night shift at each hospital, and shall be readily accessible to all units on an as-needed basis.

3. The State will continue to employ and retain a sufficient number of resident care workers on duty to assure consistent maintenance of a ratio of such workers to the resident population as indicated below:

a) Day and Evening Shifts: 4 to 25 acute care residents

3 to 25 continuing care residents

b) Night Shift: 2 to 25 residents but not less than 2 resident care workers per unit.

4. In addition, the State will employ by June 30, 1985, and thereafter retain on the staff of each hospital, at least two psychologists possessing Ph.D's in the field of psychology, and at least two registered nurses possessing graduate degrees in psychiatric nursing.

5. At least two thirds of the total number of psychiatrists and physicians to be achieved at CSH and LSH by June 30, 1987, and June 30, 1988, respectively, shall be psychiatrists.

6. By June 30, 1985, LSH shall have 4 full-time equivalent psychiatrists' positions filled and CSH shall have 11 full time equivalent psychiatrists positions filled. Additional psychiatrists needed to achieve the above-referenced ratios will be hired as quickly as possible.

7. A sufficient number of licensed practical nurses will be included within the category of resident care workers to assure constitutionally adequate custodial and medical care for residents.

8. By June 30, 1985, there shall be on the staff of each hospital at least one psychiatrist with primary responsibility for supervising, monitoring, and coordinating all psychiatric care activities and operations at the respective hospitals, and who possesses at least the following minimum qualifications:

a. Demonstrated skills and competence in both clinical psychiatric practice and supervision of other psychiatrists and physicians in an institutional setting.

b. Certification by the American Board of Psychiatry and Neurology or Board eligibility in addition to a minimum of three years experience beyond the psychiatric residency.

9. No later than June 30, 1985, the State shall provide for a neurology consultant for a minimum of eight hours per week at each hospital. In addition to the eight hour minimum requirement, a neurologist will be readily available to both hospitals on an as-needed and emergency basis.

10. A sufficient number of maintenance personnel, food service workers, laundry workers, and housekeeping staff will be employed at each hospital to assure that adequate food, clothing, shelter and sanitation are provided at the hospitals.

11. All staff positions may be filled by one or more persons employed or on contract to the State to provide 40 hours of work per week or 2080 hours per year, which time includes the State's customary provisions for sick leave, holidays, and vacations.

IV. PLANNING OBJECTIVES

The State agrees to file with the Court as provided in Section V herein and implement a plan or plans of specific actions which will assure fulfillment of the following objectives:

1. That sufficient numbers of qualified medical professionals and other direct care staff are regularly in attendance at the hospitals to insure that the treatment accorded to each resident poses no unreasonable risk of harm to his or her personal safety.

2. That such systems, procedures, and requirements for record keeping, record maintenance, and record review are established and implemented with respect to each resident's

medical history and course of treatment so as to insure that sufficient information relevant to treatment decisions is maintained and kept available.

3. That the quality of resident care needed to protect residents from unreasonable risks of harm to their personal safety and from unreasonable bodily restraints is consistently maintained in all aspects of hospital operations.

4. That there is consultation and communication of information between and among staff personnel regarding residents' medical status and treatment needs.

5. That the physical environment of the hospital poses no unreasonable risks of harm to the personal safety of its residents.

6. That psychotropic medication is prescribed and administered pursuant to a professional judgment by appropriately qualified professional staff.

7. That restraints and seclusion are used appropriately and safely and are administered pursuant to a professional judgment by appropriately qualified professional staff.

V. PLANS

In order to assure fulfillment of the above-stated objectives, the State will file with the Court no later than June 1, 1984, with respect to the plan(s) referred to in paragraph 1 of this Section and July 1, 1984 with respect to the plan(s) referred to in the remainder of this Section, or

or such other date as may be expressly provided for herein, a plan or plans to be developed and implemented describing the specific actions it is required by this Agreement to undertake. Such plan(s) will address at least the following areas and items:

1. A description of the strategies that the State intends to implement in order to recruit and retain the additional qualified professional and other direct care staff called for under the terms of this agreement. Strategies should include, but need not be limited to, relevant information pertaining to personnel policies, hiring standards and practices; pay levels and their effects in terms of specific categories of employees; recruitment efforts and techniques; and other incentives that may be utilized to attract and retain qualified staff, with particular reference to the geographical locations of the hospitals.

2. A description of training programs to be established for all professionals and direct care staff.

3. A description of such systems, procedures and requirements for record keeping, record maintenance, and record review, including methods of implementation, as will be established at the hospitals to insure that sufficient information relating to each resident is maintained and will be made available in the making of treatment decisions.

4. A description of intended measures to effectively assure that the quality of resident care necessary to protect residents from unreasonable risks of harm to personal safety and unreasonable bodily restraint is maintained in all aspects of hospital operations, such as: implementation of an active and organized program of quality assurance including regular periodic review by appropriately qualified staff of resident care and treatment practices as reflected in resident records; and a description of enforcement mechanisms, including disciplinary measures and sanctions where appropriate, designed to insure that all hospital staff comply with applicable hospital policies, protocols, and standards of job performance and behavior.

5. A description of the systems and procedures that will be implemented to promote adequate consultation and communication of information between and among staff regarding residents' medical status and treatment needs.

6. A description of policies and procedures pertaining to the prescription and administration of psychotropic medications so as to insure that residents are protected against unreasonable risk of harm to their health and physical safety, including policies and procedures concerning the monitoring and review of drug side effects, dosage levels, and the use of two or more psychotropic drugs.

7. A description of policies and procedure apply to telephone orders for treatment to insur practice is utilized under circumstances fully p the resident's right to freedom from unreasonabl to personal safety.

8. A description of policies and procedures PRN prescriptions of psychotropic drugs are monit reviewed.

9. A description of policies and procedures will be implemented to insure that:

a. Restraints and seclusion are not used excessively, under unsafe conditions, as a form of punishment, or for the convenience of staff; and

b. Restraints and seclusion are not used on a PRN basis.

10. A description of immediate and long-term that the physical environment of the hospitals affo protection from unreasonable risks of harm to persor including the steps that will be taken to remedy imm the dangers created by the conditions described belc

a. Air vent structures in Bahr Building at CSH might allow resident injury by hanging.

b. Balconies at CSH in which inadequate obstac have been constructed to prevent harm to res from falling or jumping.

c. Walls at LSH covered with paint containing lead and posing a risk of poisoning to patients.

d. Missing vacuum breakers on sinks and tubs at LSH, creating a risk of back siphonage into sources of drinking water.

11. A description of the plans, including construction schedules, to assure that heating systems can be regulated to bring their temperature ranges within those which are necessary for the personal safety of residents, including those at LSH in the C.L. Williams Building Units VI and VII, Jayne English Unit, Admission/ Treatment Unit, and Men's Treatment Unit (Buildings 19, 25, 26 and 33).

12. A description of the plans, including construction schedules, to assure removal of fire and smoke safety hazards at the hospitals, including plans for:

a. Immediate replacement of all polyeurathane and flammable mattresses and all non-fire retardant draperies, pillows, and filled furniture with adequate fire safety mattreses and materials;

b. Immediate implementation of a procedure to insure regular inspection of smoke detection systems; and

c. Correction of fire and smoke safety deficiencies by complying with the 1973 Life Safety Code standards or by implementing such other safety precautions as are necessary to insure adequate

fire and smoke safety, which may include among other options any or all of the following:

1) Installing acceptably rated dampers on all vertical return air ducts or sealing up the ducts to eliminate return air venting through building corridors;
2) Installing smoke detectors;
3) Installing sprinkler systems;
4) Replacing doors to exit stairways with acceptably rated doors;
5) Replacing or sealing up existing doors that have transfer grills, undercuts, wooden glazing stocks, and/or louvers;
6) Replacing doors to storage and similarly hazardous areas with acceptably rated doors;
7) Ensuring that smoke doors operate properly;
8) Enclosing open storage supply areas;
9) Enclosing laundry and trash chutes with acceptable construction materials, repairing chute doors and/or sealing up chutes with acceptable construction materials; and
10) Securing or removing untacked ceiling tiles and painting cellulose ceiling tiles with a flame retardant paint or replacing them with mineral tiles.

13. The plan(s) for correction of fire and smoke safety deficiencies and improvements of necessary regulation of heating systems as referenced in paragraphs 11 and 12 above, shall be filed with the Court no later than July 1, 1984. The fire and smoke safety improvements which are necessary to remove hazardous conditions shall be completed at each of the following buildings no later than June 30, 1986.

C.L. Williams Medical Unit at LSH (Building 17);

Women's Treatment Unit at LSH (Building 10);

Jayne English Unit at LSH (Buiding 25);

Admission/Treatment Unit at LSH (Building 26)

Rehabilitation Unit at LSH (Building 101)

Alcoholic Treatment Unit at LSH (Building 32)

Bahr Building at CSH

Bolton Building at CSH

Evans Building at CSH.

Every effort shall be made to initiate and complete necessary improvements as soon as possible.

14. In the event that use of any of the above buildings for resident housing, treatment or activities is scheduled to cease or be "phased-out" in the forseeable future, the State's plans should specify the date on which such use of the building is expected to cease and the measures which will be taken to provide fire and smoke safety until that time. Assessments or determinations of the adequacy of the State's plan(s) for correction of fire and smoke deficiencies under

the terms of this Agreement will take into account such information as appropriate and consistent with residents' constitutional rights to safety from unreasonable risks of harm to their personal safety.

VI. CONSTRUCTION AND IMPLEMENTATION

In construing and implementing the terms of this Agreement, the following are agreed upon by the parties:

1. Except as otherwise expressly provided in this Agreement, the choice of the specific means to be employed to achieve compliance with the purposes and requirements set forth in the Agreement is a matter within the discretion of the State of Indiana.

2. The State and its Executive agencies and officials will take all necessary steps and exert all possible efforts to obtain adequate funding for the measures required in this Agreement through the Indiana General Assembly and the State budgetary authorization process.

3. All requirements set forth in this Agreement shall be complied with by the State to the extent of its capacity to comply with such requirements through good faith exertion of its best efforts. Noncompliance due to circumstances or events beyond the State's control that render compliance impossible will not be grounds for subsequent legal action by the United States.

4. State officials agree to draft and submit to the United States and the Court the plan(s) referenced herein by the dates designated herein. The United States shall have sixty (60) days to object or otherwise comment regarding the adequacy of the plan(s) to effectuate the terms of this Agreement. If the United States has any objection to any plan or part of any plan, state and federal officials shall meet in a good faith effort to resolve their differences. Only after a failure to resolve the matter amicably, shall any party seek relief from the Court. If following approval of any plan required herein, state officials determine the need to change or otherwise modify a plan or part thereof, state officials shall notify the United States of any such change. The procedural requirements described in this paragraph shall apply to any changes.

5. State officials will submit semiannual status reports to the United States on progress made toward implementation of this Agreement. These status reports will commence for the period beginning July 1, 1984, and will be submitted to the United States within 15 days of the end of each period. These semiannual reports shall continue until the parties agree otherwise or until dismissal of this action. The status reports shall, for the third and last month of each reporting period:

a. State the average daily resident population and any projected resident population figures;

b. State the number of residents with acute needs, as defined herein, and residents with continuing care needs, as defined herein;

c. Translate the ratios set forth in Section III of this agreement into numbers of staff for each category of professional or employee staff referenced in section III; and

d. State the number of staff for each category of professional or employee staff referenced in Section III of this agreement actually in employment status.

6. The U.S. Department of Justice will endeavor to arrange for those of its consultants who assisted in the investigation of CSH and LSH to assist and consult with state officials in their development of the plan(s) referenced in this Agreement if state officials determine, in their discretion, that such assistance would be useful.

7. Neither this Agreement nor any portion or term thereof shall be construed to establish or imply that compliance therewith will constitute fulfillment of programmatic or regulatory standards applicable to participants in the Medicare, Medicaid, or any other federally administered or funded program.

8. Calculations of the numbers of designated types of staff required to fulfill staffing ratios set forth herein shall be initially premised upon an assumption of approximately a 60% to 40% ratio of acute care residents to continuing care

residents in each hospital. This assumption may be altered provided documentation is provided to the mutual satisfaction of the parties to this Agreement.

Dated: March 16, 1984, in Indianapolis, Indiana.

FOR THE STATE OF INDIANA:

ROBERT ORR
Governor
State of Indiana

DENNIS JONES
Commissioner
Department of Mental Health

LINLEY E. PEARSON
Attorney General
State of Indiana

FOR THE UNITED STATES:

WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division

SARAH EVANS BARKER
United States Attorney
Southern District of Indiana

ARTHUR E. PEABODY, JR.
JOHN P. MACCOON
ROBINSUE FROHBOESE
ALAN HELD
JAMES HENDRIKSEN
EDITH MARSHALL
Attorneys
U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530