U.S. Department of Justice

Civil Rights Division

U.S. v. Arizona

MR-AZ-001-001

*Office of the Assistant Attorney General*

ARIZONA ASH

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DEC 14 1990

Honorable Rose Mofford
Governor
State of Arizona
State Capitol
Phoenix, AZ 85007

Re: Investigation of the Arizona State Hospital

Dear Governor Mofford:

On September 25, 1989, we informed you that we were commencing an investigation of the Arizona State Hospital (ASH) pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997. As you are aware, we have carefully examined conditions at ASH during the intervening months. We toured ASH in November 1989 with a psychiatrist and a nurse and then again in January 1990 with a psychologist. Each consultant toured the facility, observed patients, interviewed staff and reviewed patient records. During each tour, we were treated graciously by Dr. Lippman and the staff at ASH.

Although there have been improvements made at the hospital in recent months, we identified several conditions during our investigation which pose health and safety risks to ASH patients, thereby denying them their constitutional rights to adequate medical care and a reasonably safe environment. See Youngberg v. Romeo, 457 U.S. 307 (1982). These conditions, detailed below, must be corrected in order to assure that the constitutional rights of patients at ASH are protected.

1. Use of Bodily Restraints. We found that many residents in the geriatric units at ASH were locked in posey restraints in their beds during the night. This practice poses a serious threat to the safety of ASH patients. Since patients are unable to unlock the restraints to escape and there is no nurse-call system in place which bed bound geriatric patients can use to summon assistance, such locked restraining devices pose direct, unreasonable risks to the safety of patients in the event of a fire or medical emergency. It would be virtually impossible for staff to safely unlock and free patients to enable them to be

evacuated during a fire. Moreover, a geriatric patient suffering a cardiac arrest cannot contact a nurse or remove himself from the restraint. ASH must cease using locked posey restraints on geriatric patients at night. Our consultant recommends the use of non-lock posey restraints to the extent such devices are necessary. The use of these locked posey restraints is a very serious deficiency that warrants immediate attention.

2. Medical Care. While physician coverage appears adequate, there is a lack of adequate nursing coverage which our consultant psychiatrist has characterized as both "chronic and severe." An adequate number of RNs is necessary to provide needed data collection, diagnosis, planning, intervention and evaluation of patient care and treatment. The lack of registered nurses has a significant, adverse impact on the ability of ASH to provide needed medical care and other measures necessary to maintain patients' health. For example, incontinent patients are bathed only two times each week -- a schedule insufficient to prevent skin breakdown and avoid the risk of developing decubiti. Current staff is inadequate to ensure timely identification of patients' medical problems or ensure appropriate involvement of nurses in patient care plans that serve to identify the critical nursing care needs of patients.

We note that 30% of all injuries occurring at ASH are the result of patient movement, self-injury or falls. There are insufficient numbers of nurses to properly assess and monitor ASH's high risk patients, including geriatric patients who have exhibited patterns of frequent falls. It is important that steps be taken to prevent falls in a geriatric population because falls by the elderly frequently result in fractures and other severe medical complications.

Lack of adequate nursing staff is responsible for ASH's heavy reliance on "float" and "pool" nurses to provide nursing coverage. Our nurse consultant found that undue reliance on the use of such nurses to be an unsafe practice because "float" or "pool" nurses are not responsible for patients' treatment plans. Unfamiliarity with a patient can result in treatment errors or omissions or patient symptoms being ignored or misinterpreted. ASH must take steps to ensure that nursing staff are assigned to patients with whose care they are familiar in order to provide adequate nursing care.

Inadequate nursing staffing is likewise responsible for the facility's use of psychiatric technicians as "primary" nurses for many patients. Psychiatric technicians do not have sufficient education and training to allow them to perform the tasks that should be performed by an RN. Indeed, our nurse consultant found that these psychiatric technicians are not trained and are not competent to perform patient assessments, recognize clinical changes in a patient's condition or establish a plan of care that

RNs are trained to provide. Psychiatric technicians are thus rendering decisions with respect to patient care that are not professional judgments -- a serious deficiency.

Infection control procedures and adaptive equipment for physically handicapped patients are inadequate. ASH must provide adequate handwashing facilities and ensure that proper sanitary procedures are followed to prevent the spread of infections.

Finally, ASH must provide patients with properly fitted and maintained adaptive equipment. Some geriatric patients at ASH did not have appropriate wheelchairs. For example, on one geriatric ward, we found wheelchairs that did not have footrests on them, leaving patients' legs dangling. This can result in the development of foot drop or swelling in patients' legs which can have serious adverse long-term effects.

3. Psychiatric Care and Treatment Programs. Treatment programs at ASH are seriously compromised by the shortage of nurses as well as insufficient numbers of psychologists and psychiatric technicians. Indeed, our consultant psychiatrist opined that such shortages "preclude" many treatment efforts. In sum, treatment programs at ASH need to be strengthened to ensure that patients are afforded reasonably safe conditions of confinement and are free from undue restraint.

Records reviewed indicated that many treatment plans lacked evidence of adequate psychological intervention or adequate psychology staff involvement. Some behavioral plans are not sufficiently individualized, describe patient problems in global rather than specific terms, and fail to reflect modifications, as appropriate, according to patient progress or the lack thereof. In several cases, plans did not contain any training or treatment programs. The failure to provide such programs for mentally retarded persons at ASH results in medication being the only means used to control their behavior problems. Absent any justification for such an approach, such plans represent a substantial departure from generally accepted professional standards and practice. Finally, observations by our consultants and a review of records raised serious questions whether training and treatment programs are being consistently implemented.

4. Minimum Remedial Measures. The administration and staff at ASH appear committed to providing patients appropriate care in a safe environment. Nevertheless, as discussed above, ASH patients are being subjected to conditions that deprive them of their constitutional rights. Set forth below are the minimum remedial measures that we believe the State of Arizona must implement at ASH to remedy the deficiencies cited above:

1) Cease the use of locked posey restraints to secure geriatric patients in their beds at night;

2) Increase the number of registered nurses to ensure the provision of appropriate care, treatment, and monitoring of patients, and ensure that only qualified staff perform nursing functions;

3) Provide patients with properly fitted adaptive equipment;

4) Develop appropriate infection control procedures and ensure ready access to handwashing facilities by staff;

5) Increase psychology staff, as appropriate, to ensure the timely development and implementation of necessary treatment and training programs for patients, giving priority to the development and implementation of training programs for mentally retarded persons at ASH.

We are cognizant of the fact that ASH is currently a facility in transition. Medicare certification has been regained, accreditation by the Joint Commission on Accreditation of Hospitals has been obtained and the current superintendent is working diligently to improve services provided by ASH. In light of these circumstances, we consider it appropriate to allow state officials an additional period of six months to remedy the deficiencies outlined above. Accordingly, we plan to tour ASH to review and evaluate conditions at the facility at the end of this period. Specifically, we will be evaluating the State's progress in addressing the matters identified in this letter, including implementation of the recommendations listed above, and whatever other steps the state officials may have taken to protect the constitutional rights of patients confined at ASH. However, in view of the danger to which geriatric patients are exposed when placed in bed at night in locked body restraints, I would appreciate your advising me within 30 days of the steps you have taken to address this problem.

Information about Federal financial assistance which may be available to assist with the remedial process can be obtained through the United States Department of Health and Human Services' Regional Office (Director, Intergovernmental and Congressional Affairs), and through the United States Department of Education by contacting the individuals listed in the attached information guide.

In closing, we wish to thank the entire hospital staff for their cooperation in this matter and their efforts at ASH. I

hope and trust we can resolve this matter in the cooperative spirit envisioned under CRIPA.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Robert Corbin
Attorney General
State of Arizona

John Migliaro, Ph.D.
Superintendent
Arizona State Hospital

Linda A. Akers, Esq.
United States Attorney