UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF ILLINOIS, JAMES R. EDGAR, Governor of the State of Illinois; JESS MCDONALD, Director, Illinois Department of Mental Health and Developmental Disabilities; KATHLEEN A. MUNIZ, Superintendent, W.A. Howe Developmental Center, Defendants.	Civil Action No. 92-C-0694 Honorable Paul E. Plunkett Judge Presiding

CONSENT DECREE

Introduction

1. This case was instituted by the United States on January 28, 1992, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. Section 1997 et seq.

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

3. Venue is appropriate pursuant to 28 U.S.C. Section 1391(b).

4. The United States is authorized to institute this civil action by 42 U.S.C. Section 1997a and has met all the prerequisites for the institution of this civil action prescribed by the statute.

5. The defendants are the State of Illinois; the Honorable James R. Edgar, Governor of the State of Illinois; Jess McDonald, Director, Illinois Department of Mental Health and Developmental

Disabilities ("DMHDD"); and Kathleen A. Muniz, Superintendent, W.A. Howe Developmental Center ("Howe"); who are sued in their respective official capacities.

6. The individual defendants who are officers of the Executive Branch of the State of Illinois have authority and responsibility for the operation of Howe.

7. On April 18, 1986, the Attorney General of the United States, through the Assistant Attorney General, Civil Rights Division, notified the Governor of Illinois, the Illinois Attorney General, and the Director of DMHDD of his intent to investigate allegations of unconstitutional conditions at Howe pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. Section 1997.

8. Following a thorough investigation, on July 31, 1989, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of Illinois, the Illinois Attorney General, the Director of DMHDD, and the Superintendent of Howe that he had determined that persons residing in or confined at Howe were being subjected to conditions that deprived them of rights, privileges and immunities secured by the Constitution of the United States.

9. The parties agree that the care, conditions of confinement and training of Howe residents implicate rights of these residents that are secured or 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.

10. In entering into this Consent Decree, Defendants do not admit any violation of law and this Consent Decree may not be used as evidence of liability in any other legal proceeding. The terms of this Consent Decree are not applicable to any other center for developmentally disabled citizens operated by the State of Illinois.

11. Any violation of provisions of this Consent Decree does not create a private right of action. This Consent Decree is enforceable only by the parties.

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

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

I. DEFINITIONS

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

A. "Behavior Modifying Medications": Drugs which are prescribed or administered for the purpose of modifying behavior. Included are the major and minor tranquilizers and anti-depressants when prescribed or administered for the purpose of modifying behavior. Excluded are drugs that may have behavior modifying effects such as anti-convulsant medications, unless they

are prescribed or administered for the purpose of modifying behavior.

B. "Bodily Restraint": Any physical action or mechanical device used to restrict the movement of a resident or the movement or normal function of any portion of the resident's body, excluding those devices designed by a qualified professional and approved 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.

C. "Direct Care Worker": Staff immediately responsible for implementing a resident's training program and providing care to residents.

D. "Functional Analysis": An assessment of a resident's behavior which includes, at a minimum: (1) a description of the behavior(s); (2) an assessment of behavioral intensity, frequency, topography and duration; (3) as determined to be necessary by professional judgment, an evaluation of the antecedents, function and consequences of the behavior(s); and (4) as determined to be necessary by professional judgment, an assessment of any medical conditions related to the behavior(s).

E. "Physician": A medical doctor lawfully entitled to practice medicine in Illinois.

F. "Professional Judgment": A decision by a qualified professional that comports with accepted professional opinion, practice or standards.

G. "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.

H. "Psychologist": A person who has attained at least a master's degree in the field of psychology.

I. "Qualified Professional": A person who is employed by or under contract with Defendants, and who is competent, whether by education, training, or experience, to make the particular decision at issue.

J. "Resident": A person residing at Howe who is receiving services from DMHDD.

K. "Time Out": A behavior management technique, including quiet training as currently defined by Howe policy and procedure, which removes a resident from a situation for a period of time for the purpose of modifying a specific inappropriate behavior.

L. "Training Program": A program or schedule of steps and activities, including behavior management and the teaching of self-care and communication skills, determined by qualified professionals consistent with professional judgment to be necessary to protect a resident from unreasonable risks to personal safety, to facilitate his or her ability to function free from undue bodily restraint and from unreasonable use of behavior modifying medications, and/or to prevent, where possible, the

deterioration/regression of a resident's self-care and communication skills.

II. REMEDIAL MEASURES

A. Assessment, Evaluation and Training

Defendants shall provide each resident a training program designed by qualified professionals to reduce or eliminate unreasonable risks to personal safety or unreasonable use of bodily restraints to all residents who qualified professionals determine need such programs to reduce or eliminate such risks. In order to fulfill this requirement, Defendants shall:

1. Within 90 days from the entry of this Consent Decree, have qualified professionals conduct appropriate evaluations and assessments, including functional analyses, of all residents exhibiting self-injurious, aggressive, and/or pica behaviors, who have received no such evaluation within 180 days prior to the entry of this Consent Decree, to determine their individual needs for training to reduce or eliminate those behaviors.

2. Within 120 days from the entry of this Consent Decree, have qualified professionals conduct appropriate evaluations and assessments, including functional analyses, of all residents exhibiting other maladaptive behaviors, who have received no such evaluation within 180 days prior to the entry of this Consent Decree, to determine their individual needs for training to reduce or eliminate those behaviors.

3. With respect to: (a) all residents covered by Subparagraphs A.1 and A.2 above; and (b) all residents not covered

by those subparagraphs for whom a training program has not been developed or reviewed within one year prior to the entry of this Consent Decree, within 180 days from the entry of this Consent Decree, and at least yearly thereafter, develop and implement for each resident a professionally based training program that provides for sufficient hours of training to enable full implementation of the training program. Each training program shall contain, at a minimum:

(a) Training objectives developed by an appropriately constituted interdisciplinary team ("IDT") and based upon assessments and evaluations required by Subparagraphs A.1 and A.2 above. All such training objectives shall comport with currently accepted professional standards;

(b) Specific instructional methods to be utilized by those with responsibility for implementing the training program; such methods shall emphasize positive approaches and positive behavioral interventions which promote functional skill development and socially acceptable behaviors in the resident;

(c) A specific training schedule to be followed; the number of hours of training to be provided shall be sufficient to permit the resident to have a reasonable opportunity to reach the identified behavioral training objectives; and no schedule shall provide for fewer than 40 hours of structured training or activities each week;

(d) Data collection procedures sufficient to permit a qualified professional to evaluate the effectiveness of the training program or any part of the training program and to monitor the implementation of the training program and enable its modification, as necessary; and,

(e) Identification of persons responsible for the consistent implementation of the program.

4. Within 180 days from the entry of this Consent Decree, ensure that all staff directly responsible for implementation of a resident's training program receive regular, periodic training on the elements of the training program of each resident under their

care, including target behaviors and appropriate responses thereto, and thereafter have such staff implement the training program.

5. Within 30 days from the entry of this Consent Decree, implement procedures to assess and evaluate each resident not less than once annually, and evaluate the data reflecting the conduct of each behavior program not less than quarterly, in order to ascertain the adequacy and effectiveness of the behavior programs.

6. Within 30 days from the entry of this Consent Decree, implement procedures to collect and maintain such data as a qualified professional would deem necessary to render a professional judgment on the effectiveness of each resident's training program.

7. Within 60 days from the date of entry of this Consent Decree, implement systems for: (1) observing each resident's behavior to determine the effectiveness of the resident's training program and recording of those observations and, (2) verifying that the recorded data are reliable. Within 30 days of verification that recorded data are reliable, have qualified professionals review and appropriately modify any resident's training program where he or she determines that the resident has exhibited no measurable progress for a 90-day period of time.

8. Within 60 days from the entry of this Consent Decree, develop and initiate a system to regularly train all direct care workers in collecting and maintaining the data necessary to be

collected and maintained in order to assess the effectiveness of any behavior program.

9. The Behavior Intervention Committee ("BIC"), including the primary care physician, shall every four months during the first year from the entry of this Consent Decree and semi-annually thereafter review those aspects of each resident's training program relating to the resident's maladaptive behavior(s) and relevant progress notes for each resident: (a) who exhibits self-injurious behavior or causes injury to self or others through aggressive behavior and whose training program includes bodily restraint or behavior modifying medication, or (b) for whom bodily restraint procedures are utilized three or more times within any six-month period, or who receives behavior modifying medication. In addition, where a resident suffers a serious or significant self-inflicted injury or inflicts a serious or significant injury on another resident, the psychologist assigned to the resident shall conduct an immediate review of such behavior(s) and report, as appropriate, the results of such review to the BIC. In the case of a resident whose training program has been reviewed within the 120 days prior to the entry of this Consent Decree, his or her training program shall be reviewed within four months of their last review. In all reviews conducted by the BIC pursuant to this paragraph, the BIC shall ascertain whether (1) there is sufficient behavioral data recorded, (2) such data are reliable, and (3) the continuation of the current training or treatment program is justified, or the program,

including medication, should be modified. Where inadequate or unreliable data are found, or the continuation of the training or treatment program is otherwise not justified, the matter shall be referred to the appropriate IDT which shall, within 30 days from the referral, modify the existing training program in accordance with the judgment of qualified professionals, including the primary care physician, psychologist and psychiatrist, as appropriate.

10. With regard to the review required under Subparagraph A.9 above, where a training program includes the use of a behavior modifying medication, the BIC shall include a psychiatrist who shall determine and specifically advise the BIC whether the proposed use of the medication is supported by a diagnosis of mental illness (or other medical reason), whether the diagnosis is justified by the resident's history as set forth in his/her written record, and whether the medication and dosage are necessary and appropriate. In making these determinations, the psychiatrist shall have observed the resident, examined relevant portions of the resident's medical and behavioral record, and consulted with the resident's primary care physician and psychologist.

11. Within 90 days from the entry of this Consent Decree, Defendants shall: (a) assess and evaluate each deaf resident, or hearing impaired resident with a profound bilateral hearing impairment for whom amplification is not effective, to determine his/her knowledge of sign language or capacity to learn sign

language, unless such an evaluation has been completed within the 180 days prior to the entry of this Consent Decree; (b) have at least one staff person capable of communicating in sign language on duty at Howe on a 24-hour basis; and, (c) for those residents determined to be capable of learning sign language and who cannot otherwise communicate with staff, provide appropriate training to develop their sign language communication skills.

B. Bodily Restraint and Time Out

Defendants shall ensure that bodily restraints, including emergency restraints and time out, are administered only pursuant to the judgment of a qualified professional and that they are not used as punishment, in lieu of a training program, or for the convenience of staff. In order to fulfill this requirement, Defendants shall:

1. Within 180 days from the entry of this Consent Decree, protect residents from unreasonable risks to their personal safety from both the conduct of staff and other residents, and from unreasonable use of bodily restraints.

2. Within 60 days from the entry of this Consent Decree, initiate and implement a system which requires that every behavior program that utilizes restraint or time out specifies:

(a) the behavior that initiates the use of the restraint or time out;

(b) behaviors to be taught to the resident to replace the behavior that initiates the use of the restraint or time out

or other program to reduce or eliminate the use of the bodily restraint or time out;

(c) the restriction, i.e., restraint or time out, authorized, including the restriction's duration;

(d) the professional responsible for the program and the direct care workers authorized to implement it; and,

(e) the frequency with which behavioral data is to be recorded by direct care workers.

3. Within 60 days from the entry of this Consent Decree, Defendants shall justify the use of any restrictive procedure by written evidence in the resident's record that other, less restrictive techniques have been systematically tried as part of a professionally designed training program and have been demonstrated to be ineffective.

4. Within 90 days from the entry of this Consent Decree, appropriate psychology staff shall conduct a monthly review of each use of bodily restraint and each use of time out if either a single use of time out equals or exceeds 15 minutes or the cumulative use of time out during a day equals or exceeds one hour, occurring in the previous 30 days, to ascertain whether each use was or was not pursuant to the exercise of professional judgment or the behavior program of the resident subjected to the use. The results of these monthly reviews, including the conclusions of the psychology staff, will be promptly reported to a doctoral level psychologist who will review these results and present them to the BIC, which will determine whether appropriate

action was taken by the IDT and recommend any further action to be taken by the IDT, within 30 days of the completion of the monthly review. These recommendations shall be transmitted to the appropriate IDT which shall be responsible for ensuring that the action recommended by the BIC is taken within 30 days.

C. Medical Care

1. Within 180 days from the entry of this Consent Decree, Defendants shall provide and continue to provide Howe residents with adequate medical care, including adequate medical specialty services.

2. Within 60 days from the entry of this Consent Decree, primary care physicians shall be responsible for and oversee the provision of coordinated health care for the residents for whom they are responsible. Primary care physicians shall, in a timely manner: (a) conduct comprehensive evaluations of all residents for whom they are responsible; (b) determine what specialized medical services are required for the residents for whom they are responsible and ensure that such services are timely obtained; (c) review and respond to all recommendations of outside medical specialists and laboratory findings, documenting what action has been taken and the reasons therefor; and, (d) communicate directly with contract and other medical providers.

3. Within 60 days from the entry of this Consent Decree, at least one primary care physician shall be on duty on the grounds at Howe every day during the hours of 4:00 p.m. through 8:00 a.m. the following morning.

4. Within 30 days from the entry of this Consent Decree, a registered nurse or physician shall monitor infection control. The registered nurse or physician shall: (a) review all culture reports and physician orders for antibiotics; (b) review and assure the quality of management plans for infections occurring in individual residents or groups of residents; and, (c) develop comprehensive training materials and, thereafter, train the medical and direct care workers on proper infection management procedures.

5. Within 90 days from the entry of this Consent Decree, Defendants shall provide all staff physicians, registered nurses ("RNs"), licensed practical nurses ("LPNs"), Supervisors, Administrator I's, and Technician III's who regularly provide services on-grounds at Howe, with systematic, periodic training in emergency procedures, including the proper way to administer cardio-pulmonary resuscitation. Thereafter, Defendants shall evaluate, through the use of drills, the competence of all participating staff to perform emergency medical procedures that they are required by law, policy, or professional standards to know, document such evaluations and provide such additional training as the evaluations indicate are necessary to ensure staff competence in emergency procedures.

6. Within 30 days from the entry of this Consent Decree, Defendants shall make medication and equipment to be used in case of emergency readily available to qualified staff in each residential unit.

7. Within 30 days from the entry of this Consent Decree, Defendants shall implement a protocol requiring Howe staff to obtain from any acute care hospital a timely, comprehensive record of the diagnosis, course of treatment while at the hospital, and prescribed treatment for each Howe resident who may be transferred and treated at such hospital.

8. Within 120 days from the entry of this Consent Decree, each resident with orthopedic or neuromuscular disabilities shall be evaluated by a qualified physician to determine whether physical therapy or services should be initiated, or whether an existing plan should be modified, to prevent contractures, physical degeneration, inappropriate body growth and/or deformity. This provision shall not apply to any resident who has received such an evaluation within 180 days prior to the entry of this Consent Decree. Any resident identified as needing additional services shall promptly be referred to a registered physical therapist ("RPT"). Within 30 days of such referral, the RPT shall assess and evaluate the resident and develop an individualized physical therapy or positioning plan, and thereafter, review and modify any such plan as required by professional judgment. If there is a decision not to provide therapy to a particular resident, the basis for that decision shall be documented. Physical therapy services will be implemented promptly after any physical therapy or positioning plan is developed and will be supervised by qualified physical therapy staff.

9. Within 90 days from the entry of this Consent Decree, Defendants shall have a registered speech or occupational therapist assess each resident who has neuromuscular dysfunction, obstructive lesions, or other physical impairment, or psychological factors or a combination of two or more of these that interfere with eating, to determine whether to initiate a feeding program or protocol for the resident or to modify an existing one. Within 30 days of the assessment, the registered speech or occupational therapist shall develop a written feeding program for each of those residents for whom such a need is identified, and thereafter review and modify the program as required by professional judgment. Each such program shall be implemented by qualified staff not later than 30 days thereafter.

10. Within 60 days from the entry of this Consent Decree, Defendants shall initiate regular, inservice training for direct care workers in how to position physically handicapped residents in wheelchairs and other devices, transfer them from one place or position to another, and implement such aspects of residents' physical therapy programs that such staff are otherwise qualified and expected to do. Such training shall be conducted by RPTs, Rehabilitation Nurses or physiatrists.

11. Within 60 days from the entry of this Consent Decree, Defendants shall provide regular periodic inservice training for direct care workers on proper methods of feeding residents who have feeding programs. Such training must be conducted by

certified speech pathologists, occupational therapists or other qualified professionals.

12. Within 90 days from the entry of this Consent Decree, unless an assessment has been previously completed on or after November 1, 1991, Defendants shall have an orthopedist(s) or physiatrist(s) assess each resident with physical disabilities to determine whether he/she needs medical, surgical, rehabilitative, or therapeutic services, including therapeutic equipment, to prevent contracture, physical degeneration, or inappropriate body growth and deformity and record the results of these examinations or treatment in the resident's medical record. Thereafter, orthopedist(s) and physiatrist(s) shall: (a) timely evaluate and diagnose Howe residents who are referred to them by primary care physicians; (b) reexamine and treat, with a frequency determined by their professional judgment, residents with physical handicaps, especially chronic physical handicaps such as contractures and scoliosis; (c) confer with the referring primary care physician on a regular basis; and, (d) promptly record progress notes in the residents' medical records explaining fully the results of the examination, the diagnosis, the recommended course of treatment or recommendation not to treat.

13. Within 120 days from the entry of this Consent Decree, neurologist(s) shall examine each Howe resident receiving anti-convulsant medication who has not been examined by a neurologist in the 180 days prior to the entry of this Consent Decree to determine whether the medication treatment is justified.

Thereafter, neurologists shall evaluate and diagnose Howe residents who are referred to them by primary care physicians and: (a) examine, not less than once annually, and recommend treatment for residents receiving two or more anticonvulsant medications or who have had five or more seizures in the preceding 12-month period; (b) examine and recommend for treatment, with a frequency determined by their medical judgment, other residents receiving medication to control seizures; and, (c) recommend treatment for all residents who are diagnosed as having other neurologic disorders. In performing these duties, the neurologist(s) shall confer with the referring primary care physician and, as appropriate, with the assigned psychiatrist and promptly record notes in the resident's medical records that reflect the neurological diagnosis, recommended course of treatment, and results.

14. Upon the entry of this Consent Decree, Defendants shall, periodically but not less than once annually, obtain the services of expert medical specialists who shall train Howe primary care physicians and nursing staff in the diagnosis and treatment of medical problems typically associated with persons with developmental disabilities, including: (a) neurologic disorders, including seizures and specifically the prescription of medication to control seizures; (b) orthopedic and physiatric conditions; (c) gastroenterologic disorders and proper nutrition; and, (d) behavioral and psychiatric disorders, including the psychopharmacologic treatment of such disorders, and side effects

of behavior modifying medication. Defendants shall document that such training occurred, including maintaining a list of those in attendance as well as clinical areas covered.

15. Within 90 days from the entry of this Consent Decree, Defendants shall initiate regular, periodic training for all direct care workers on: (a) how to recognize seizures and the action to take in the event a resident has a seizure in their presence, and (b) the common side-effects of behavior modifying medication in use at the facility.

D. Medication

1. Within 30 days from the entry of this Consent Decree, Defendants shall ensure that prescription medications are prescribed for and administered to residents pursuant to the exercise of judgment by a qualified professional and that they shall not be used as punishment, in lieu of a training program, or for the convenience of staff. In order to fulfill this requirement, Defendants shall:

(a) Within 60 days from the entry of this Consent Decree, initiate and implement a system which requires that every behavior program that utilizes behavior modifying medication specifies: (1) the behavior and/or symptom that requires initiation or use of the behavior modifying medication; and (2) the behaviors to be taught to the resident to replace the behavior that initiates the use of the behavior modifying medication or other program to reduce or eliminate the use of the behavior modifying medication.

(b) Within 60 days from the entry of this Consent Decree, justify the use of the behavior modifying medication by written evidence in the resident's record that other, less restrictive techniques have been systematically tried as part of a training program and have been demonstrated to be ineffective.

2. Within 30 days from the entry of this Consent Decree, Defendants shall: (a) administer prescription medication only upon order of a physician and behavior modifying medication only upon order of a physician after consultation with a psychiatrist, except in case of an emergency use of behavior modifying medication, in which case consultation must be had within 24 hours of the order being written; (b) establish procedures to review the drug regimen of each resident every 30 days; (c) require that no prescription is valid for more than 30 days; (d) have a physician note in the record of each resident receiving behavior modifying medication the mental illness diagnosis or other medical reason for which the medication is prescribed and the justification for the dosage level; (e) evaluate each resident receiving behavior modifying medication for drug induced side effects, including tardive dyskinesia and neuroleptic malignant syndrome, at professionally determined intervals; (f) permit to administer medication only those staff qualified under State law to do so; (g) report and record in each resident's record and separately to appropriate professional staff any medication error or adverse drug reaction; (h) ensure that behavior modifying medications are prescribed or discontinued pursuant to professional judgment; (i)

ensure that all residents with a seizure disorder are prescribed the fewest number of different medications appropriate for effective seizure management, consistent with professional judgment.

3. Within 30 days from the entry of this Consent Decree, a psychiatrist shall, upon request of the IDT or at the psychiatrist's own request, serve on the IDT of any resident whose individual plan of service includes the use of behavior modifying medication or for whom such has been recommended.

E. Recordkeeping

1. Within 180 days from the entry of this Consent Decree, Defendants shall establish and maintain a record for each resident that shall contain current information with respect to his/her care, medical treatment, and training, and shall be organized so as to enable those using it to render professional judgments in providing care, medical treatment and training to the resident, including the incorporation into each resident's record, in a prominent and visible location, of a document identifying the resident's principal treatment and training issues in all areas. The latter document shall be updated every 180 days to reflect any changes in these areas. Further, Defendants shall require staff to utilize such records in making care, medical treatment and training decisions.

2. Within 60 days from the entry of this Consent Decree, entries made by primary care physicians, nurses, and medical specialists in resident records shall be timely and accurate, and

describe the resident's physical condition and course of treatment.

3. Within 180 days from the entry of this Consent Decree, Defendants shall develop and, thereafter, implement and document quality assurance procedures that include a systematic review of:

(a) Samples of residents' behavioral data required to be recorded by professional or direct care workers to ascertain whether there is sufficient data recorded and to verify that such data are reliable;

(b) Samples of tests and assessments given to residents, including the Motivational Assessment Scale, to ascertain whether they have been conducted in accordance with professional standards, and that the results are reliable; and,

(c) Samples of medical records to ascertain whether entries made therein are, or are not, timely, relevant and accurate.

4. Where, as a result of any quality assurance activity, inadequate, untimely or unreliable data or information are found, Defendants shall refer the matter to Howe professional staff for appropriate and prompt remedial action which may include arranging for specialized staff training in data collection, and increasing supervision and monitoring of staff as they collect such data. In any such case, new data or information, verified to be reliable, shall be collected and recorded within 30 days.

III. STAFFING

A. Within 225 days from the entry of this Consent Decree, Defendants shall assure that a sufficient number of physicians,

psychologists, registered physical therapists, and direct care workers are employed to assure attainment and consistent maintenance of the ratios of such staff to residents at Howe delineated in Subparagraphs 1 and 4-6 below. By no later than July 1, 1994, Defendants shall assure that a sufficient number of registered and licensed practical nurses are employed to assure attainment and consistent maintenance of the ratios of such staff to residents at Howe delineated in Subparagraphs 2 and 3.

1.	Physicians	1:100
2.	Registered Nurses	1:25
3.	All nurses (RNs and LPNs) on duty involved in resident care:	
	Weekdays	
	Day Shift	1:30
	Evening Shift	1:30
	Night Shift	1:60
	Weekends and Holidays:	
	Day Shift	1:45
	Evening Shift	1:45
	Night Shift	1:60
4.	Psychologists	1:40
5.	Direct Care Workers, on duty:	
	Day shift	1:5
	Evening Shift	1:5
	Night Shift	1:10
6.	Physical therapy staff (e.g., RPTs; Certified Physical Therapy Assistants; Physical Therapy Aides; Rehabilitation Nurses.)	1:35 (Residents with physical disabilities, but not less than one-third of physical therapy staff shall be RPTs.)

B. Staff whose primary responsibilities are administrative and who do not provide direct service to residents on a regular,

routine basis and staff who are assigned to perform one-to-one monitoring of a resident shall not be counted in computing the ratios required by Section III, Paragraph A, above.

C. Defendants currently employ and shall continue to employ at least one psychologist possessing a Ph.D. in psychology and with demonstrated experience in the field of behavioral psychology, licensed or certified by the State, who shall have primary responsibility for supervising, monitoring, and coordinating all psychological services at Howe.

D. Within 90 days from the entry of this Consent Decree, Defendants shall employ or contract for the equivalent of at least one psychiatrist to provide full-time services at Howe. Should Defendants choose to meet this requirement by providing more than one psychiatrist serving part-time, then each psychiatrist shall be assigned an identifiable group of specific residents as his/her patients.

E. Within 90 days from the entry of this Consent Decree, Defendants shall have a physiatrist providing physiatric services to Howe residents at least eight hours per week.

F. Within 90 days from the entry of this Consent Decree, Defendants shall have an orthopedist providing orthopedic services to Howe residents at least 16 hours per month.

G. Within 180 days from the entry of this Consent Decree, direct care workers shall not routinely perform such support functions as housekeeping, laundry, maintenance and meal preparation, where the performance of said functions will preclude

or interfere with the direct care workers' primary responsibilities to supervise and care for recipients. This shall not preclude direct care workers from training residents in these functions pursuant to a written training program developed in accordance with established procedures.

IV. CONSTRUCTION, COMPLIANCE MONITORING AND USE OF JOINT EXPERTS

In construing, implementing and monitoring Defendants' compliance with the terms and provisions of this Consent Decree, the parties agree to the following:

A. All staff training required by this Consent Decree shall be conducted by individuals with demonstrated expertise in the particular field, documented both as to time, duration, attendance and results, and, with the exception of training required by Section II, Subparagraph C.14, be task-analyzed and competency-based.

B. (1) The issues of whether professional judgment has been exercised and the adequacy of implementation of the provisions of this Consent Decree shall be monitored by a panel of experts, one each in the fields of psychology, medicine and physical management, all of whom have been jointly selected and agreed upon by the parties (hereafter the "Joint Experts"). The experts that have been jointly selected and agreed upon by the parties are as follows:

Psychology: Johnny L. Matson, Ph.D.
Medicine: Robert B. Kugel, M.D.
Physical Management: Karen M. Green-McGowan

(2) In the event the United States determines that compliance with the provisions of the Consent Decree regarding medication practices or use of behavior modifying medications at Howe require monitoring or evaluation by a psychiatrist, the parties shall jointly select and agree upon an additional expert in the field of psychiatry, who shall inspect and evaluate compliance in this area under the same terms and conditions applicable to the Joint Experts under this Consent Decree.

C. (1) As part of the Joint Experts' monitoring function, each expert shall evaluate conditions at Howe to determine whether Defendants are implementing those provisions of the Consent Decree relating to the expert's area of expertise that require the exercise of professional judgment, and to determine the adequacy of the services relating to the expert's area of expertise that are being provided by Defendants and their contractors and consultants pursuant to this Consent Decree.

(2) Prior to the first evaluation conducted by the Joint Experts, the parties shall jointly designate the provisions of the Consent Decree that each expert will be asked to monitor and evaluate. This evaluation shall include at a minimum: (a) on-site inspection of Howe; (b) interviews with Howe staff, contractors and residents; (c) detailed review by each expert of no less than 30 resident records, 10 to be chosen by the United States, 10 to be chosen by Defendants and 10 to be chosen by the Joint Expert; and, (d) review of facility documents as determined by each Joint Expert to be relevant to his/her evaluation under

this Consent Decree. The parties shall be permitted to have counsel or other representatives present at any inspection conducted at Howe by the Joint Experts.

(3) The first such evaluation by the Joint Experts shall occur between 180-240 days after the entry of this Consent Decree by the Court, and subsequent evaluations shall take place thereafter as determined by each Joint Expert, provided that each expert shall inspect the facility no less than once annually and no more than twice annually. The on-site inspections shall be no greater than three days in duration (excluding travel time) and shall be arranged on dates and at times mutually agreeable to the parties and the Joint Experts.

(4) Notwithstanding the provisions of Section IV, Subparagraph C.3 above, in the event the United States believes that emergency conditions exist at Howe related to compliance with a provision or requirement of this Consent Decree that place residents at risk of serious and imminent harm, the United States may request from Defendants access to the facility to conduct an inspection. Defendants shall respond to this request within three days. If Defendants deny such access, the United States shall have the right to petition the Court for access. If granted access either by Defendants or the Court, the United States shall, within 30 days of the grant of access, conduct an inspection of Howe accompanied by any expert(s) retained by the United States, or upon the parties' agreement, the appropriate Joint Expert(s). All costs associated with the use of experts other than the Joint

Experts for such inspection(s) shall be borne by the United States. Such inspection, which shall be limited to evaluation of the conditions giving rise to the emergency, may include on-site inspection of Howe, interviews with Howe staff, contractors and residents, and detailed review of resident records and facility documents.

D. (1) Each Joint Expert shall make recommendations as to actions or measures that, in his/her opinion, need to be taken to achieve compliance. In addition, the Joint Experts shall, if they are able, provide oral findings and/or recommendations to the parties on the last day of each on-site inspection in an exit conference or debriefing session.

(2) Each Joint Expert shall also present his/her evaluation, findings and recommendations in a written report, which shall be provided to the parties. In these reports, each Joint Expert shall make specific findings with respect to each provision of the Consent Decree for which he/she is responsible, as determined by the parties pursuant to Section IV, Subparagraph C.2 above and the factual bases for the findings. Each Joint Expert shall provide his/her report within 45 days of the completion of each on-site tour.

E. Prior to any monitoring tour, each Joint Expert shall be permitted to request copies of Howe documents and records he/she determines to be relevant to the expert's review. Defendants shall provide the documents to the requesting Joint Expert and the United States within 30 days of the request, which shall be in

writing. The parties may recommend to each Joint Expert documents they deem relevant to the Joint Expert's review.

F. In the event that any of the Joint Experts identified in Section IV, Paragraph B above is unable to serve or continue serving as a Joint Expert, or in the event the parties for any reason jointly agree to discontinue the use of any Joint Expert, the parties shall meet or otherwise confer within 15 days of being notified of the incapacity or the decision to discontinue use of the Joint Expert to agree upon an alternate Joint Expert. The parties shall jointly select an alternate expert, except that if the parties are unable to agree within 15 days of their first meeting or conference as to this selection, they shall immediately and jointly petition the Court to make the selection. In this petition, each party will be permitted to propose two alternate Joint Experts in the field of expertise. The procedure described in this paragraph shall apply to the selection of all successive Joint Experts.

G. Defendants shall bear the costs of the Joint Experts' monitoring fees, including report-related fees and expenses, and travel expenses arising out of their responsibilities under this Consent Decree, as well as the same fees and expenses for any psychiatric expert retained pursuant to Section IV, Subparagraph B.2 and the costs of document and record copying and delivery arising out of the monitoring provisions of this Consent Decree. The parties shall otherwise bear their own costs, including attorneys' fees.

H. With respect to communication between the Joint Experts and the parties regarding Howe: (1) the parties shall notify each other in advance of any oral communication with any Joint Expert, including the substance of the anticipated communication, and afford the other party a reasonable opportunity to participate in any such conversation; and (2) the parties shall provide each other with copies of any written communication with any Joint Expert.

V. ENFORCEMENT AND TERMINATION OF DECREE

A. The parties contemplate that Defendants shall have fully and faithfully implemented all the provisions of this Consent Decree within two years of its entry by the Court.

B. The Court shall retain jurisdiction of this action for all purposes under this Consent Decree until Defendants shall have fully and faithfully implemented all provisions of the Consent Decree and until this action is dismissed.

C. On or after the date on which Defendants shall have fully and faithfully implemented all provisions of this Consent Decree, Defendants or the parties jointly may move that the case be closed and dismissed with prejudice on grounds that Defendants have fully and faithfully implemented and maintained all provisions of this Consent Decree. Such motion shall attach the most recent findings of each of the Joint Experts and any psychiatric expert retained pursuant to Section IV, Subparagraph B.2.

D. In the event of any filing of a motion to terminate this Consent Decree, the United States shall, upon its request, be

permitted access for reasonable periods of time to the facilities, records, residents and employees of Howe within 45 days after the filing of such motion, for the purpose of ascertaining compliance with the Consent Decree. In conducting this review, the United States may retain and be accompanied on-site by experts of its choosing, with costs of such experts to be borne by the United States.

E. (1) Provided that no evaluation has been conducted by the Joint Experts within 90 days prior to the filing of Defendants' motion, the Joint Experts shall conduct an evaluation within 45 days after the filing of motion, on the same terms and conditions as followed during their monitoring tours. As before, each Joint Expert shall produce a written report containing his/her findings relating to the provisions of the Consent Decree for which he/she has monitoring responsibility, as determined by the parties pursuant to Section IV, Subparagraph C.2, within 45 days from the last day of his/her inspection of Howe. In the event that an evaluation was conducted by the Joint Experts within 90 days prior to the filing of the motion, no subsequent evaluation shall be required.

(2) In any determination regarding the appropriateness of termination of this Consent Decree, the findings of the Joint Experts and any psychiatric expert retained pursuant to Section IV, Subparagraph B.2 shall be accorded a presumption of correctness, which may only be rebutted by a clear and convincing showing to the contrary. The parties reserve the right, however,

to request a hearing before the Court in order to present evidence to rebut the presumption of correctness accorded the findings of the Joint Experts.

(3) In the event the United States disagrees as to Defendants' compliance at the time that a motion to terminate is filed, the parties shall jointly move the Court for a hearing on the motion to terminate, at which time the United States shall be permitted the opportunity to rebut the presumption of correctness accorded to the findings of the Joint Experts and any psychiatric expert retained pursuant to Section IV, Subparagraph B.2 under this Consent Decree. At such a hearing, the parties shall be entitled to present any evidence, in addition to the testimony and reports of the Joint Experts and any jointly selected psychiatric expert, that was gathered, developed or obtained independent of the monitoring process provided for in this Consent Decree, including the testimony, affidavits or reports of experts other than the Joint Experts and any jointly selected psychiatric expert. With respect to the Joint Experts' and any jointly selected psychiatric expert's findings, only their written reports or their testimony at a hearing before the Court shall be accepted as evidence as to their findings or opinions.

F. Dismissal shall be granted if Defendants have implemented each of the provisions of the Consent Decree.

G. The United States may seek enforcement of this Consent Decree or any other appropriate remedy from the Court, at any time, in the event that it determines that Defendants have failed

to comply with any provision of this Consent Decree. As similarly provided in Section V, Subparagraphs E.2 and E.3 above, in any hearing regarding any such request by the United States, the Joint Experts' and any jointly selected psychiatric expert's findings shall be accorded a presumption of correctness and the parties shall be entitled to present evidence to rebut this presumption, including the testimony, affidavits or reports of experts other than the Joint Experts and any jointly selected psychiatric expert.

H. The Parties reserve the right to withdraw their consent to this Consent Decree in the event that this Consent Decree is not approved by the Court in its entirety.

CONSENTED TO BY THE UNDERSIGNED:

FOR THE DEFENDANTS

JESS MCDONALD
Director
Illinois Department of Mental Health and Developmental Disabilities

JAMES S. MONTANA, JR.
Counsel to the Governor of Illinois

FOR THE PLAINTIFF

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section
Civil Rights Division

BENJAMIN P. SCHOEN
Deputy Chief
Special Litigation Section
Civil Rights Division

PAMELA K. CHEN
JUDITH C. PRESTON
ROBERT H. STERN
Trial Attorneys
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C.