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DJ 168-70-22

May 12, 1995

The Honorable Don Sundquist
Governor
State of Tennessee
State Capitol
Nashville, Tennessee 37219

Re: Nat T. Winston Developmental Center

Dear Governor Sundquist:

On June 23, 1994, we advised Governor McWherter of this Department's intent to investigate conditions at the Nat T. Winston Developmental Center (NTWDC) in Bolivar, Tennessee, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. During the months of November 1994 and January 1995 we toured the facility with expert consultants to examine conditions of resident care and treatment at the facility. We want to thank the NTWDC staff and the representatives from the Department of Mental Health and Mental Retardation and the Attorney General's office for their cooperation during this investigation. Following each of our tours, we conveyed to the facility superintendent and other state officials an initial assessment of deficiencies at the facility.

As state officials are already aware, we found numerous conditions at NTWDC that violate the constitutional and federal statutory rights of the residents there. As we have set forth in previous findings letters to you, under the Fourteenth Amendment and relevant federal statutes, residents of state-operated facilities for the developmentally disabled and mentally retarded have a right to, inter alia, adequate medical care, reasonably safe conditions, and training sufficient to protect each resident's liberty interests, including training to permit each resident an opportunity to function as independently as possible. Programs must be provided to teach adaptive skills, including self-help, communication, and social skills. In addition, individuals with developmental disabilities must be provided

cc: Records Chrono Peabody Weinstein Bowman Hughes Jackson Yost Hold

services in community-based programs where appropriate. 1/ NTWDC is not in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq., as well as the regulations implementing these federal statutes. Our review also indicates that the rights of the residents guaranteed by Tennessee state law are also being violated. See, e.g., Tenn. Code Ann. § 33-3-104 and § 33-5-201.

Many of the deficient conditions and practices we identified at NTWDC are similar to those set forth in our earlier findings letters regarding conditions at the Clover Bottom Developmental Center and the Greene Valley Developmental Center. You may wish to review those letters in light of the findings contained in this letter.

The general facts that support our findings of unconstitutional conditions and violations of federal statutory rights at NTWDC are set forth below.

I. NTWDC Residents Are Being Subjected to Harm and Undue Bodily and Chemical Restraint Due to the Lack of Effective Behavioral Treatment Programs.

Many residents of NTWDC have behavioral disorders that require professionally developed behavior treatment programs in order to keep the residents safe from either self-inflicted injury or injury as a result of another resident's behavior, and to prevent the undue use of chemical or bodily restraints as a means of controlling residents. Effective behavioral treatment programs are completely lacking at NTWDC.

1/ See, e.g., Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12132, et seq. (and implementing regulations, 28 C.F.R. 35.130(b)(1), and 28 C.F.R. 35.130(d)); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq. (and implementing regulations, 42 C.F.R. §§ 483.420 - 480); Youngberg v. Romeo, 457 U.S. 307 (1982); United States v. Tennessee, No. 92-2062, slip op. (W.D. Tenn. Feb. 17, 1994); Halderman v. Pennhurst State School & Hospital, No. 874-1345, slip op. (E.D. Pa. March 29, 1994); Jackson v. Fort Stanton Hosp. & Training School, 757 F. Supp. 1243 (D.N.M. 1990), rev'd in part on other grounds, 964 F.2d 980 (10th Cir. 1992); Thomas S. by Brooks v. Flaherty, 699 F. Supp. 1178 (W.D.N.C. 1988), aff'd 902 F.2d 250 (4th Cir.), cert. denied, 498 U.S. 951 (1990); Clark v. Cohen, 613 F. Supp. 684 (E.D. Pa. 1985), aff'd, 794 F.2d 79 (3d Cir. 1986) cert. denied, 479 U.S. 962 (1986); Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976).

The foundation upon which all behavioral treatment is based is an adequate assessment of a resident's behavior to determine the cause of the behavior. At NTWDC, however, assessments do not address relevant factors, such as environmental or medical conditions, when considering reasons underlying resident behavior. Further, in those cases where assessments are performed, they are done only on an informal basis, without sufficient, reliable data being taken. Without reliable data, it is simply not possible to develop adequately individualized behavioral treatment programs designed to address the needs of NTWDC residents.

In the absence of adequate assessments, NTWDC typically proceeds on a "trial and error" basis in addressing residents' behavioral treatment needs. As a result of this approach, NTWDC is relying to an excessive degree on a variety of restrictive procedures to control problem behaviors. In fact, almost half of NTWDC's residents on behavioral programs have some form of restrictive procedures included in their programs. We noted that many of the programs were quite similar, containing "boilerplate" language and clearly lacking appropriate individualization.

The monitoring and reviewing of behavioral programs is also seriously deficient. NTWDC places residents on behavioral programs and continues residents on those programs despite the programs' obvious ineffectiveness. Although the psychology staff at NTWDC appear motivated to provide appropriate services, there are too few of them and they lack the necessary experience and training necessary for work with individuals with serious behavior issues or skill deficits. In addition, the psychology staff is not able to ensure that their programs are implemented as designed, which contributes to the ineffectiveness of programs at NTWDC.

NTWDC, because of the ineffectiveness of its behavioral programs, relies on physical and chemical restraints to control residents' behavior. For example, 119 of NTWDC's 150 residents are on neuroleptics for behavioral control. There is no evidence that NTWDC staff are attempting to integrate behavioral and psychopharmacological treatments and there was no one at NTWDC at the time of our tours sufficiently trained in the interactive effects of these different treatment modalities. As noted earlier, the absence of reliable data further prevents facility professionals from having sufficient knowledge about a resident's behavior to develop a program that appropriately interrelates medication and non-medication therapies.

Given the large number of residents at NTWDC with self-injurious or aggressive behaviors, NTWDC's failure to adequately address these behaviors is resulting in actual physical harm to residents. For example, NTWDC's own staff

have documented hundreds of incidents occurring at the facility, many of them serious behavior-related injuries to residents. Examples of injuries suffered by NTWDC residents include multiple bites, lacerations, broken bones, bruises and abrasions. One individual was injured 25 times, receiving lacerations 11 times, including one six inches long, in an eight-month period. Of 25 injuries another individual received in an eight-month period, 16 were self-inflicted and others resulted from fights with other residents. Several residents were found attempting to cut themselves with knives or razorblades.

Further, NTWDC's program for teaching residents new skills also fails to provide the training necessary for the health, safety and independence of the residents. For example, the current practice at NTWDC is geared toward residents reaching an arbitrary level of skill performance rather than teaching skills in a manner that would actually benefit a resident in living in the community.

We also identified inappropriate restraint practices at NTWDC. For example, some of the physical handling techniques employed by NTWDC, including the straight-arm maneuver, pose risk of injury to residents. Indeed, we examined the record of one resident who suffered a dislocated elbow after a take-down procedure. Although NTWDC may file an incident report for injuries occurring during the use of restraint, each such injury is not investigated as thoroughly as it should be investigated. Although we were informed that the use of time-out rooms will be discontinued, the rooms must be padded to prevent injury to residents during any continued use. Significantly, the facility also places residents face-down in the prone position while in restraint. This is an especially dangerous practice which we requested be terminated immediately at the time of our tour. Further, the facility does not adequately monitor its restraint practices.

In summary, NTWDC's practices in providing behavioral treatment and skill acquisition for its residents are seriously inadequate and violate the residents' constitutional and statutory rights.

II. Medical and Psychiatric Care at NTWDC is Deficient Due, In Large Part, to an Inadequate Number of Trained Medical Staff.

During our investigation of NTWDC, we found that medical staff personnel at the facility lack sufficient training and knowledge to provide adequate medical and psychiatric care to NTWDC residents. Our review of the qualifications of NTWDC medical staff demonstrated that the physicians lack training in treating persons with developmental disabilities and likewise

lacked expertise in psychopharmacology and neurology, critical deficits considering the resident population at NTWDC.

Further, we also identified numerous deficiencies in the medical services provided by the Medical Officer(s) on Duty (MOD). For example, we identified instances where MODs would order the hospitalization of a resident without ever seeing or examining the resident. NTWDC staff also told us that they often had difficulty locating a physician to attend to the needs of residents. Further, the facility also does not have an adequate medical quality management or physician peer review system in place.

We also identified the need for NTWDC to increase its ability to respond to emergency medical care needs. With regard to emergency medical care, we identified deficiencies in the training being provided NTWDC staff and undue delays in accessing emergency medical supplies. In addition, necessary documentation of residents' medical status was lacking; medical staff often failed to note critical changes in residents' medical status.

Despite the fact that NTWDC is used by the State of Tennessee as a facility for treating persons with a dual diagnosis i.e., mental retardation and a psychiatric illness or disorder, there is no consistent psychiatric service provider at the facility. Psychiatric services are provided sporadically at best by physicians who have no formal training in the unique problems associated in treating persons with dual diagnosis. Our medical consultant concluded that a full-time psychiatrist with experience in mental retardation is "urgently needed" at NTWDC. The vast majority of residents at NTWDC receive some type of psychotropic medications. Further, medications are often administered in unjustifiable combinations or dosage levels, are not adequately monitored, and are administered without sufficient target behaviors or specific goals identified. More intensive psychiatric care is required for the residents of NTWDC.

Therefore, we conclude that medical services at NTWDC, including basic and emergency medical care and psychiatric services, do not meet accepted professional standards.

III. Numerous Environmental Health and Fire Safety Deficiencies at NTWDC Pose Risks to Residents.

During our investigation, we identified numerous environmental health and safety deficiencies that expose residents and staff to health and safety risks. Many of the deficiencies were related to NTWDC's food service and preparation operations.

Sanitary conditions were very poor at the food facility. (Food for NTWDC is prepared in the same kitchen that prepares

food for the Western Mental Health Institute.) For example, we noted water leakage throughout the facility and some of the leaking water was contaminating food service equipment. Mold and mildew were prevalent throughout the refrigerators and coolers and peeling paint was noted in various areas. Food and utensils were also being improperly stored and there was mice infestation in dry food storage areas. Further, dishwashers were not working properly and we found dirty cookware, even though the items were supposedly clean. In general, the food service area was in poor repair.

We also noted that food was not served to residents at proper temperatures. Once food is prepared in the kitchen area, it is then transported to resident living areas. This process leads to undue delays in servicing the food, which allows the food to cool and exposes it to contamination. NTWDC must improve its food service practices.

We also identified other hazardous conditions such as improper plumbing configurations which could expose the drinking water to contamination. In one bathroom, the water ran an orange color from a sink for approximately one minute, suggesting some type of contamination which must be investigated.

NTWDC must revise and formalize its fire evacuation plans. Numerous inconsistencies and other problems were identified when we reviewed the evacuation plan provided us. Further, staff we spoke with had not been adequately trained on fire safety procedures, notably the proper use of fire extinguishers. We also noted that several doors necessary for fire and smoke separation were not properly maintained. Some of the emergency lights were not working and, at least in one case, there was an opening in the wall above a ceiling through which smoke could invade an adjacent hallway. Our expert was also concerned about the conditions of the emergency generator and whether adequate maintenance was being performed. In sum, a thorough fire safety review must be performed at NTWDC and identified deficiencies immediately corrected.

We also identified other conditions that pose risk to residents. For example, there were many cords hanging from blinds in residents' room and bureaus contained horizontal bars. These are especially dangerous considering the nature of the NTWDC resident population.

In sum, the deficiencies in the adequacy of sanitation and life and health safety conditions at NTWDC expose residents to undue risks to their health and safety.

IV. NTWDC's Institutional Environment Fails to Meet the Needs of the Residents.

In providing care and services to individuals with developmental disabilities, it is essential to furnish them with an acceptable and responsive environment that ensures safety and promotes learning, development, and their overall well-being. Such environments must be functional and serve to enhance the quality of life for the individuals. Currently accepted professional standards require that this environment be the least separate, most integrated setting where the individuals' needs can be met. It must be safe, stable, and operate to teach and maintain functional skills, to reduce or pre-empt the occurrence of behavior problems, and otherwise promote the independent functioning of the individual. NTWDC does not meet these requirements. The failure to provide adequate services at NTWDC may, in fact, be resulting in the inability of residents to develop those skills necessary for them to live outside the institution. This is simply unacceptable.

The State must provide these residents with disabilities an opportunity to participate in or benefit from services equal to those afforded to others outside the institution; more specifically, to those provided to other individuals with disabilities in the State's established community-based programs. By confining residents with disabilities at NTWDC, the State has failed to provide such services in the least separate, most integrated setting as required by the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq., and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

V. Remedial Measures.

In order to remedy the deficiencies identified herein and ensure that the rights of NTWDC residents are protected, the following remedial measures must be implemented promptly:

a. NTWDC must employ and deploy sufficient numbers of competent and trained professional and direct care staff, including psychologists, to ensure residents are supervised and adequately protected from harm and provided appropriate training and other services.

b. Restraint procedures used at NTWDC must be revaluated immediately. The practice of prone restraint must be terminated to avoid resident injuries and death by choking or asphyxiation and use of the straight-arm maneuver should also be prohibited immediately in light of the past injury. All injuries related to the use of restraints must be fully investigated. While in use, time-out rooms must be padded to protect residents placed in time out. All NTWDC residents must be medically cleared before hands-on procedures to restrain them are used.

c. All residents must be evaluated to determine their individual strengths and weaknesses and to develop appropriate individualized training programs, including behavior management and skill acquisition programs. Immediate attention must be given to residents with self-injurious, physically abusive and other destructive behaviors by identifying them and providing necessary training on a priority basis. One-to-one staffing must be provided immediately for residents who are at risk of serious injury, including injuries from aggression and pica.

d. All interdisciplinary teams in conducting evaluations should review the individual's training needs, utilizing a functional analysis for those individuals with problem behaviors, and emphasizing alternatives to restraints. Programs should address and develop appropriate strategies to promote the physical, mental, behavioral, and social skills of each resident and permit each resident to function as independently as possible. Such programs must be consistently implemented and appropriately reviewed and revised. Emphasis should also be placed on teaching residents to acquire the skills necessary for them to live in community settings.

e. As part of the provision of appropriate programs, NTWDC must develop and implement a professionally designed, individually appropriate, data collection system to measure relevant information about problem behaviors and the conditions under which they occur, including, where appropriate, the frequency, intensity, and duration of the behaviors. NTWDC must implement an appropriate data collection system to ensure that adaptive and functional skills training is meeting the needs of the resident involved. Furthermore, NTWDC must review and respond to the data collected relating to both behavior programs and skill acquisition programs in a timely and appropriate manner.

f. Measures must be taken to improve the adaptive skills training provided to NTWDC residents, including that for communication and language skills. Similarly, NTWDC must assess each resident's need for adaptive devices, including communication devices, and provide them to those individuals in need of them.

g. NTWDC must hire, train and deploy adequate numbers of competent and qualified medical care staff, including physicians and nurses, to meet the medical needs of the residents. NTWDC must provide enhanced training opportunities to the present physician staff to teach them skills necessary to care for developmentally disabled persons. NTWDC must increase the number of hours of consulting and contract professionals to a level sufficient to provide adequate care. NTWDC must ensure that enough adequately trained medical professionals are employed to institute appropriate quality assurance mechanisms, especially to

oversee the prescription, administration, and monitoring of psychotropic and anticonvulsant medications, and to provide timely prevention, treatment and follow-up of medical problems. Policies and protocols to guide professional decisions must be developed.

h. NTWDC must immediately hire at least one full-time psychiatrist with experience and training in dual diagnosis.

i. NTWDC must provide adequate and timely medical care, including appropriate services to meet the acute, chronic and emergency medical care needs of residents. NTWDC must ensure that physicians are immediately available to NTWDC residents at night and on weekends. NTWDC must develop and implement procedures and protocols for tracking sentinel health events and managing acute and chronic illnesses.

j. Residents on psychotropic and anticonvulsant medications must be evaluated to determine the appropriateness of their prescriptions and whether these medications are being prescribed and monitored in accordance with accepted professional standards. Psychotropic medications must not be used without an adequate rationale and a psychiatric or neuropsychiatric diagnosis, nor as punishment, in lieu of a training program for behavior control, or for the convenience of staff.

k. Medical records must be kept in a fashion sufficient to allow medical professionals to provide adequate and timely care.

l. An overall plan to assess the need for continued institutionalization of each resident and to place residents in appropriate, less restrictive, community-based programs must be developed and implemented. In the meantime, residents should receive training to assist in their placement and transition to community-based living arrangements. Residents should also be adequately assessed to identify services necessary to meet their needs in the community. NTWDC staff must take a greater role in helping to ensure that residents' placements into the community are appropriate and successful.

Staff from my office will be contacting representatives from the Attorney General's office soon to negotiate a judicially enforceable settlement to correct deficiencies at NTWDC, as well as those identified at Clover Bottom and Greene Valley Developmental Centers.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Charles W. Burson
Attorney General
State of Tennessee

Mr. Stanley B. Lipford
Superintendent
Nat T. Winston Developmental Center

Veronica Coleman, Esquire
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