UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTI RUST, et al.,

Plaintiffs,

v.

WESTERN STATE HOSPITAL, et al.,

Defendants.

Case No. C00-5749RJB

ORDER GRANTING A PRELIMINARY INJUNCTION

This matter comes before the court on Plaintiffs' Motion for a Preliminary Injunction (Dkt. #27). The court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

FACTUAL AND PROCEDURAL BACKGROUND

Each of the individually named plaintiffs, who range from 24 to 63 years of age, has a mental illness and is confined at the Center for Forensics Services ("CFS") at Western State Hospital ("WSH") pursuant to either a forensic commitment under RCW 10.77 or a civil commitment under RCW 71.05. Plaintiff Washington Protection and Advocacy System ("WPAS") is the statewide protection and advocacy system designated by the Governor of Washington to advocate for and protect the legal and civil rights of Washington citizens who have physical, mental, and/or developmental disabilities.

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Defendant WSH is a state-owned and operated psychiatric hospital, which receives federal funding for the treatment of mentally ill persons. As the WSH forensic unit, CFS primarily provides services to persons who have been charged with a crime and whose mental health is at issue. Persons are generally admitted to CFS "to have their competency evaluated, to be restored to competency, or to be admitted as not guilty by reason of insanity." Defendants' Memorandum, p. 2 (Dkt. #51).

Plaintiffs originally sought a preliminary injunction to protect individuals committed to CFS from imminent harm and enjoin defendants from denying plaintiffs and members of the plaintiff class minimally adequate active treatment, and psychiatric, medical, and dental care, and protection from harm. Plaintiff's Memorandum, pp. 1-2 (Dkt. #28). The parties have subsequently engaged in serious deliberations and worked diligently to address the issues raised in the motion for a preliminary injunction. As the result of the parties' laudable efforts, a partial settlement in this case was approved by the court on May 25, 2001, resolving a majority of the issues raised in plaintiffs' complaint and motion for preliminary injunction. (Dkt. #117). The parties concur that the issues remaining in this case involve the provision of minimally adequate active treatment and the adequacy of staff to provide that treatment. Plaintiffs' Supplement, p. 1 (Dkt. #127); Defendants' Supplemental Response, p. 4 (Dkt. #120).

STANDARD FOR PRELIMINARY INJUNCTION

"To obtain a preliminary injunction, a movant must show a likelihood of success on the merits and the possibility of irreparable injury or the existence of serious questions going to the merits and the balance of hardships tipping in the movant's favor." *Children of the Rosary v. City of Phoenix*,154 F.3d 972, 975 (9th Cir. 1998). "For purposes of injunctive relief, serious questions refers to questions which cannot be resolved one way or the other at the hearing on the injunction." *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (1991) (relying on *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)(en banc), *cert. denied*, 490 U.S. 1035 (1989)).

Serious questions, which are "fair ground for litigation and thus for more deliberative investigation," need not promise the certainty of success, but must involve a fair chance of success on the merits. *Id.*

STANDARDS OF CARE

In *Youngberg v. Bauman*, 457 U.S. 307 (1982), the United States Supreme Court held that in addition to the right to adequate food, shelter, clothing, and medical care, persons who are involuntarily committed to state mental institutions have constitutionally protected liberty interests under the Due Process Clause of the Fourteenth Amendment to reasonably safe conditions of confinement, freedom from unreasonable bodily restraints, and such minimally adequate training as reasonably may be required by these interests.

In addition, the Ninth Circuit has held that the Fourteenth Amendment Due Process Clause "requires states to provide civilly-committed persons with access to mental health treatment that gives them a realistic opportunity to be cured and released." *Sharp v. Weston*, 233 F.3d 1166, 1172 (9th Cir. 2000) (relying on *Ohlinger v. Watson*, 652 F.2d 775, 778 (9th Cir. 1980)). "Because the purpose of confinement is not punitive, the state must also provide the civilly-committed with 'more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.'" *Id.* (quoting *Youngberg*, 457 U.S. at 322).

Furthermore, under Washington state law, each person involuntarily detained, hospitalized, or committed pursuant to RCW 10.77 and RCW 71.05 has the "right to adequate care and individualized treatment." RCW 10.77.210; RCW 71.05.360(2). Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards also require "treatment which is individualized based upon an assessment of the particular patient's needs." Dlugaz Declaration, p. 3 (Dkt. #126).

DISCUSSION

Plaintiffs seek preliminary relief "to redress imminent harm to the plaintiff class" due to the lack of minimally adequate active treatment provided to members of the plaintiff class and the lack of adequate numbers of credentialed staff to provide the required individualized treatment. Plaintiffs' Supplement, pp. 1-2 (Dkt. #127).

Defendants argue that "[p]laintiffs cannot show that CFS currently falls below the constitutionally minimal standard in its provision of active treatment" because CFS has recently commenced an active treatment program which "includes one hour of therapy groups and one hour of psychosocial rehabilitation modules five days a week" for all long term CFS patients. Defendants' Reply, p. 3 (Dkt. #131); Mehlman Supp. Dec., p. 1 (Dkt. #132). Defendants also argue that plaintiffs have not shown a likelihood of imminent harm.

Whether plaintiffs' constitutional rights have been violated must be determined by balancing their liberty interests against the relevant state interests. *Youngberg*, 457 U.S. at 321. The standard for determining whether the State has adequately protected the plaintiffs' rights is whether professional judgment was in fact exercised. *Id.*

"In order to minimize the interference by the federal judiciary with the internal operations of state institutions, courts should show deference to the judgment exercised by a qualified professional. A decision made by a professional is presumptively valid, and 'liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.'" *Sharp*, 233 F.3d at 1171 (quoting *Youngberg*, at 323).

The court may take action when there is a substantial departure from accepted professional judgment or when there has been no exercise of professional judgment at all. *Sharp*, 233 F.3d at 1171. "Once a constitutional violation has been found, a district court has broad powers to fashion a

remedy." *Id.*, at 1173.

Here, defendants concur that "involuntarily committed patients have a right to constitutionally adequate treatment." Defendants' Reply, p. 3 (Dkt. #131). Furthermore, in the order which serves as a partial settlement of this case, defendants agreed to provide individualized treatment plans for all members of the plaintiff class. Order, pp. 16-18 (Dkt. #106).

While defendants have agreed to provide individualized treatment plans for all members of the plaintiff class, defendants have failed to provide the individualized active treatment necessary to implement the individual treatment plans. Defendants' newly implemented "active treatment program" fails to meet the constitutional minimal standard because it is not meaningfully individualized in terms of either treatment modality or the number of hours of treatment. Furthermore, the active treatment program is not provided to all members of the plaintiff class, but rather is limited to "CFS patients residing on the four long-term treatment wards." Defendants' Reply, p. 2 (Dkt. #131). Defendants have made no showing that individualized active treatment is provided to patients committed to CFS for competency restoration or to CFS patients with developmental disabilities and borderline intellectual functioning.

Defendants' failure to provide individualized active treatment to all members of the plaintiff class is a substantial departure from their own professional judgment, as well as from accepted professional judgment, practice, or standards. Defendants' "across the board approach of therapy provision indicates that defendants are not exercising professional judgement in that they are not making individualized determinations of need." Haycock Declaration, p. 8 (Dkt. #125).

After carefully reviewing all pleadings and supporting evidence provided by both the plaintiffs and defendants, the court finds that a preliminary injunction is necessary because plaintiffs have shown a likelihood of success on the merits and have raised serious questions about the constitutional adequacy of individualized active treatment for all members of plaintiff class. The questions raised are "fair ground for litigation and thus for more deliberative investigation."

Furthermore, as plaintiffs are institutionalized and wholly dependent on the State for care and treatment, "the balance of hardships tips sharply in favor of the plaintiffs." *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991). In addition, plaintiffs have a likelihood of success of the merits concerning the provision of individualized active treatment given defendants' agreement to the need for individualized active treatment plans for all members of the plaintiff class.

Moreover, under the Fourteenth Amendment, defendants have a constitutional duty to provide civilly-committed persons at CFS with access to mental health treatment that gives them a "realistic opportunity to be cured and released." *Sharp*, 233 F.3d at 1172. While defendants argue that "[a]lthough a patient may be harmed if he or she does not receive active treatment over a long period of time, this type of harm does not quality as 'imminent,'" it seems likely that patients who are not receiving individualized active treatment sustain imminent harm by the reduction, or loss, of their "realistic opportunity to be cured and released."

As to the issue of adequacy of staffing to provide the required individualized active treatment, defendants concur that JCAHO requires "adequate numbers of credentialed staff to provide necessary treatment to the patients." Reply, p. 2 (Dkt. #131). The record contains ample evidence from which the court can conclude that staffing levels at CFS are currently inadequate to provide the constitutionally and statutorily required individualized active treatment to all members of the plaintiff class. (See e.g., Awmiller Declaration, ¶ 8 (Dkt. #128)).

Defendants acknowledge that in order to provide more individualized treatment, additional credentialed staff is required. In reference to the new "active treatment program" for long-term CFS patients, defendants state that "as CFS gains further staff, it will be able to diversify the groups and modalities to a greater extent." Mehlman Supp. Dec., ¶ 6 (Dkt. #132). If a program which provides therapy groups and psychosocial rehabilitation modules to long-term CFS patients requires *additional staff in order to diversify, it stands to reason that the provision of active treatment which* is individualized to the treatment needs of each member of the plaintiff class will require additional

credential staff.

While the court does not presume to tell the defendants the number of staff required to provide individualized active treatment to all members of the plaintiff class, the court should order the defendants to hire sufficient staff to provide the constitutionally and statutorily mandated individualized active treatment.

For the reasons stated above, the plaintiff's motion for a preliminary injunction should be granted.

Therefore, it is hereby

ORDERED that Plaintiffs' Motion for a Preliminary Injunction (Dkt. #27) is **GRANTED** as follows:

Upon entry of this Order, defendants shall immediately and timely commence implementation of this Order to provide minimally adequate individualized active treatment to all members of the plaintiff class at CFS and to secure adequate staffing to provide such treatment. In order to ameliorate the lack of minimally adequate individualized active treatment for class members at CFS, it is further **ORDERED** that within 30 days of entry of this Order, the defendants shall:

1) Provide individualized active treatment for all class members, including those class members committed to CFS for competency restoration. In so doing, the defendants shall:

   a) Provide all class members with psychotherapeutic options that are appropriate to the individual patients' needs;

   b) Make reasonable modifications in CFS programs and services provided to individuals with cognitive and other disabilities to ensure that they are able to participate in these programs and services;

   c) Ensure that the psychological therapies prescribed for the patients at CFS are

appropriate and not deleterious to the patients' health or that of others.

2) Provide the appropriate individualized active habilitative mental health treatment for all class members with developmental disabilities and borderline intellectual functioning. Such treatment shall be equivalent to and consistent with the habilitative mental health care provided to the class members in *Allen, et al. v. Western State Hospital, et al.*, C99-5018RJB, a related case. The development and implementation of the treatment for individuals with developmental disabilities and borderline intellectual functioning shall be overseen by William Gardner, Ph.D., a member of the monitoring committee in the above-referenced case.

3) Provide adequate numbers of credentialed staff to provide the necessary individualized treatment as specified in paragraphs 1 and 2 above.

It is further **ORDERED** that the monitoring committee in this case shall assist in the development of the provisions set forth in paragraphs 1-3 above. Implementation of the treatment in this Order shall be overseen by the monitoring committee as set forth in the court's May 11, 2001, Order (Dkt. #106). This Order shall remain in effect until further order of the court or final resolution of this matter.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 9 day of July, 2001.

Robert J. Bryan
United States District Judge

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United States District Court
for the
Western District of Washington
July 9, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05749

True and correct copies of the attached were mailed by the clerk to the following:

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