The Honorable ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTI RUST, et al., Plaintiffs, v. WESTERN STATE HOSPITAL, et al., Defendants.	NO. C00-5749RJB AMENDED ORDER

After having reviewed the record and files in this matter and conducting a fairness hearing as required by Fed. R. Civ. P. 23 (e) , the Court found on September 28, 2001, that the requested relief was appropriate and necessary in order to ameliorate the allegedly inadequate conditions of care at the Center for Forensic Services (CFS) at Western State Hospital (WSH). The Order entered by this Court provided for a Monitoring Committee to monitor implementation of the terms of the Order. The Monitoring Committee also was empowered to recommend modifications of specific provisions of the Order as described more fully in Paragraph 1(h) of the Order.

The Monitoring Committee has issued a report finding the Defendants to be in substantial compliance with the Order, thus triggering the administration of the self-monitoring period described in Paragraph 1(g) of the September 28, 2001, Order. In addition, the monitors

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have proposed one modification of the Order, relating to the establishment of an all female ward at Western State Hospital.

Having considered the Monitors' recommendation and heard from counsel for the parties, including counsel for the represented class, the Court finds that the modification proposed is in the best interests of the class and that the fairness hearing originally conducted in this matter, at which time all provisions related to the Monitors' authority were considered, satisfies the requirements of Rule 23, Fed. R. Civ. P. The Order of September 25, 2001, is hereby modified to read as follows:

The purpose of this Amended Order is to ensure that Defendants provide the named Plaintiffs and members of the Plaintiff class with:

1. Constitutionally minimally adequate protection from harm as required by the fourteenth amendment of the United States Constitution.
2. Constitutionally minimally adequate and timely dental and medical care as required by the fourteenth amendment of the United States Constitution.
3. Freedom from unnecessary restraint as required by the fourteenth amendment of the United States Constitution.
4. Constitutionally minimally adequate discharge planning as required by the fourteenth amendment of the United States Constitution.
5. Privacy as required by the first amendment of the United States Constitution.
6. Services, care, and treatment in the most integrated setting as required by Title II of the Americans with Disabilities Act.

Accordingly**,** it is hereby **ORDERED** that:

Defendants shall continue to implement the provisions set forth in this Amended Order and in Appendix A attached hereto and incorporated herein.

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a) Defendants shall provide written self-monitoring reports to Plaintiffs' counsel with regard to compliance with Appendix A of this Amended Order for a period of three and a half years, or until February 28, 2008. The self-monitoring of this Amended Order will be in accordance with a set of objective criteria that was developed by the parties in consultation with the Monitoring Committee. During this self-monitoring period, WPAS may, at its own expense, retain the Monitoring Committee for additional consultations.

If, at any time during this period of monitoring, Plaintiffs' counsel believes that Defendants are failing to remain in substantial compliance with Appendix A of this Amended Order, Plaintiffs may invoke the Dispute Resolution and Enforcement section of this Amended Order.

b) The Monitoring Committee previously constituted in this action may recommend modifications of certain specific provisions of this Amended Order and the provisions set forth in Appendix A if the Monitoring Committee is satisfied that a different procedure or policy would adequately or more appropriately protect the rights of the Plaintiff class. Upon such recommendation the parties shall meet and confer to discuss whether the recommendation or recommendations should be adopted. If the parties agree to adopt these recommendations, the parties shall advise the Court.

1. Dispute Resolution and Enforcement of this Amended Order

a) If at any time during the self-monitoring period by the Defendants, Plaintiffs' counsel believes that Defendants are not substantially in compliance with this Amended Order, Plaintiffs' counsel shall consult with the Medical Director or Clinical Director and the parties shall make a good faith attempt to informally and timely resolve the dispute in consultation with the Monitoring Committee.

b) If a timely and informal resolution cannot be reached by the parties, the parties shall attend formal mediation to resolve the issue. Mediation of the disputed matter shall

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occur within 30 business days of a party's formal written request for mediation, unless otherwise agreed in writing by the parties or the mediator is unavailable. A formal request for mediation in the form of a letter shall be submitted by the party requesting mediation. This request shall be served on all counsel for the parties and each member of the Monitoring Committee and to the mediator.

The Honorable J. Kelly Arnold shall be appointed as the mediator for any dispute arising out of this Amended Order. If Judge Arnold is unavailable, the parties shall mutually agree upon alternative mediators. Each party shall bear its own costs associated with mediation.

c) If, after participating in good faith at the mediation, no resolution is reached, Plaintiffs may file a motion with the U.S. District Court in this matter requesting the Court to hold a "show cause" hearing ordering the Defendants to show cause why they are not substantially in compliance with this Amended Order. Plaintiffs shall provide the appropriate notice to Defendants' counsel of such action.

d) In the event that Plaintiffs have reasonable cause to believe that there is a risk of imminent harm to a class member as a result of the Defendants' failure to comply with this Amended Order, Plaintiffs may proceed directly to the Court and request a show cause hearing without first going through mediation or may take any other necessary legal action. If such action is taken while the Monitoring Committee is in effect, Plaintiffs will make a good faith effort to consult with both members of the Monitoring Committee and the Medical Director to discuss the issue or issues before filing a motion requesting a show cause hearing. If the Monitoring Committee is no longer in effect, Plaintiffs will consult with the Medical Director regarding the situation before Plaintiffs take action. In either case Plaintiffs will provide at least one business day written notice to Defendants' counsel via facsimile and first class mail.

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e) In the event that the Court grants Plaintiffs' motion requesting a show cause hearing, the parties will brief the issues and with the Court's approval, present oral arguments and/or present evidence at a show cause hearing on the issue of the Defendants' substantial compliance with this agreement.

f) Nothing in this Amended Order shall be deemed to limit:

1) the Court's powers of contempt or any other power possessed by this Court;

2) the ability of any class member to seek relief of any kind to which they would otherwise be entitled under state or federal law other than claims for injunctive relief adjudicated in this action;

3) The ability of the Washington Protection and Advocacy System (WPAS) to fulfill its mandate pursuant to the "Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act," 42 U.S.C. § 10801, et seq., and the regulations promulgated thereto, 42 C.F.R. § 51, including, but not limited to, access to all class member records during the pendency of the monitoring period as described in Section 1(e)-(g) of this Amended Order.

2. Remedies/Penalties for Noncompliance with Amended Order

In the event that the Court finds that Defendants have failed to substantially comply with the terms of this Amended Order, the Court may order any penalty or relief the Court deems legally appropriate.

3. Notice to Class Members

Pursuant to requirements of Fed. R. Civ. P. 23 (d), class members will be notified of this Amended Order by posting notices where all CFS patients can see them. In addition, all of the criminal courts, prosecutor, and public defender offices in the WSH cachement area shall be notified of this Amended Order. The parties will evenly share the costs of such notice and the Plaintiffs' counsel will ensure that this notice is provided.

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4. Fairness Hearing

As required by Fed. R. Civ. P. 23 (e), a fairness hearing was held to give the opportunity to any class member to contest the original Order. Appropriate notice of this hearing was afforded to class members along with the notice of the original Order. The original Order contemplated modifications that were recommended by the monitors and agreed by the parties to be in the best interest of members of the class. No further fairness hearing is required for such modifications.

5. Attorneys' Fees and Costs

Defendants paid an agreed amount of attorneys' fees upon entry of the original Order. No attorneys' fees will be assessed for modification of the Order after the monitors' recommendation.

Plaintiffs will not seek an award of attorneys' fees for time spent by their counsel in mediation or for preparation for mediation related to the enforcement of this Amended Order. However, if the Plaintiffs are the prevailing party as a result of any show cause hearing or other future litigation in this case due to Defendants' failure to comply with this Amended Order, Defendants shall reimburse Plaintiffs for reasonable attorneys' fees and costs incurred resulting from such litigation.

6. Plaintiffs' claims were resolved in their entirety upon entry of the September 28, 2001, Order. Plaintiffs' sole remedy for any claims related to this action shall be through the enforcement provisions set forth in Section 3 of this Amended Order.

7. This Amended Order and Appendix A shall be binding on all Defendants and any of their successors in interests, assigns, agents, and officers.

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DATED this 19th day of November, 2004.

/S/ Robert J. Bryan
ROBERT J. BRYAN
United States District Judge

Presented by:

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APPENDIX A TO AMENDED ORDER

A. Defendants agree to take the following steps for the purpose of reducing the risk of assaults:

1. Defendants shall develop and implement a process for assessing institutional risk in accordance with the provisions set forth in 1(a) – (c) below:

a) By July 31, 2001, Defendants will develop and implement a process for Assessing Institutional Risk (AIR). The Defendants will consult with William Gardner, Ph.D., a monitor on the monitoring committee in Allen, et al. v. Western State Hospital, et al. to develop and implement an AIR for patients with developmental disabilities. The AIR will include an assessment of observable, known historical, or other apparent factors that would create a risk of victimization or perpetration of violence to CFS staff or patients. To the extent practical, the AIR should include, but not be limited to, a history of violence or non-consensual sexual behavior in institutional and other settings; evidence of threats, impulsivity, hostility, and/or paranoia; a history of sexual or physical victimization in an institutional setting or elsewhere, or any other behaviors or characteristics that are deemed likely to present a danger to the patient, CFS staff or other patients.

b) Prior to or during the admission process, Defendants will perform an AIR on each patient. The AIR will be performed prior to the patient's assignment to a living unit. The results of the AIR will be documented as part of the admission note. The AIR will be updated at any time that new, relevant information becomes available.

c) An AIR will be performed on male patients who are being considered for placement on the co-ed competency unit

2. Defendants shall take the following additional steps to improve the safety of all patients at CFS:

a. All evaluation patients will be screened using the AIR while the patient is in jail. Defendants will make best efforts to complete the evaluation of all patients in jail. Defendants will not admit competency patients to CFS prior to evaluation if the person is deemed by CFS; a) to present an unacceptable risk to other patients or b) to be clinically inappropriate for admission.

b. CFS will adopt and implement a policy setting forth objective criteria for identifying patients with certain characteristics that may deem them vulnerable. For example, patients with developmental disabilities or borderline intellectual functioning, patients of advanced aged, patients who are medically fragile, and patients with physical disabilities may be considered vulnerable. This policy and practice will be established and implemented by April 12, 2001.

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c. The Defendants will consult with William Gardner, Ph.D., to develop protocols to provide patients with developmental disabilities appropriate behavioral supports.

d. The Defendants will develop policies and protocols with the consultation of the Monitoring Committee to promote the safety of patients identified as vulnerable through the AIR. These policies and protocols will be implemented no later than September 30, 2001 and in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the Order above.

3. The Clinical Director of CFS will have the responsibility for ensuring compliance with Sections 1-2 above. These provisions will be incorporated into CFS policies by September 30, 2001.

4. Defendants shall take the following additional steps to improve the safety for all patients at CFS:

a. Draft and implement a policy giving the Clinical Director the authority to move patients within a unit. The policy will provide a procedure for a request to be submitted by or on behalf of the patient and for the Clinical Director to exercise his or her clinical judgment as to whether a request should be granted within a reasonable period of time. This will be a WSH policy. This policy will be established and implemented by April 12, 2001.

b. Draft a policy to clarify that the Medical Director has the authority to make inter unit transfers regardless of legal status of the patient. This policy will be established and implemented by April 12, 2001.

5. The Medical Director of WSH will have the responsibility for ensuring compliance with Sections 1-4 above.

B. <u>Defendants agree to take the following steps for the purpose of reducing patient abuse and neglect</u>:

1. By May 11, 2001, Defendants will develop and implement a written policy providing as follows:

a) All administrative reports of incidents (AROIs) will be reviewed by the CFS Clinical Director.

b) Those reports which, in the opinion of the Clinical Director, present credible allegations of suspected patient abuse or the neglect of a CFS patient, as defined by WSH Policy No. 3.4.4, will be assigned to a supervisor for investigation pursuant to the procedures set forth in WSH Personnel Policy No. 545.

c) A copy of the AROI, described in paragraph (b) above, and the referral to the supervisor will be forwarded to the Chief Executive Officer of WSH, Mental Health Division (MHD), and an audit team of the Administrative Services Division, of the Management Services Administration (MSA) of the Department of Social and Health Services (DSHS).

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d) MSA will review and maintain a database of the AROIs and follow up with MHD to ensure that an appropriate investigation has occurred.

e) The Clinical Director will review the results of the supervisor's investigation and take appropriate action.

f) The WSH CEO will be provided with a copy of the results of the supervisor's investigation.

g) Copies of all AROIs will be sent to WPAS during the pendency of the monitoring period described in Section 1(f) of the Order.

This policy will be implemented in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the Order.

2. All AROIs that contain allegations of patient abuse and neglect, as defined by WSH Policy 3.4.4, and all security reports involving CFS patients which a) relate to a patient injury of unknown origin, b) allege abuse or neglect, or c) relate to probable serious injuries as a result of assault or self-injurious behavior will be reviewed on the next business day by the Quality Assurance Investigative Team (Team). This Team shall be independent of ward staff and include at least one RN, one physician, and an additional member of the quality assurance department and a member of the security department.

Based upon its review, the Team will independently investigate incidents that could have resulted from neglect or abuse, as defined in WSH Policy No. 3.4.4. Such investigation may include an interview and/or an examination of the patient who is the alleged victim, interviews with ward staff, or such other investigative actions as deemed appropriate by the Team. In the event that the Team concludes that the incident may have constituted abuse or neglect, as defined by WSH Policy No. 3.4.4, the Team shall refer the matter to the Clinical Director, who shall require a supervisory investigation according to WSH Personnel Policy No. 545, if such investigation has not previously been ordered.

The above procedures will be established and implemented by May 12, 2001. This policy will be implemented in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the above Order.

3. The Team shall continue to report all incidences of suspected abuse or neglect, as defined by WSH Policy No. 3.4.4, to the appropriate state agencies and law enforcement as required by law. The Team shall also report all instances of failure to report suspected patient abuse and neglect to the appropriate agencies.

4. By July 12, 2001, Defendants will develop and implement a policy that establishes a procedure for the mandatory reporting of suspected patient abuse and neglect as defined by RCW 74.34 and RCW 71.124. This policy will be applicable to all patients on CFS.

5. By May 12, 2001, all CFS employees and WSH security personnel will be informed or be reminded of their obligations to report suspected abuse and neglect and informed of the appropriate reporting procedure and will be informed or be reminded that the failure to report is grounds for disciplinary action and will be reported to the appropriate agencies. All new employees will receive this information at the time of orientation and sign an acknowledgment of receipt of this information. All current employees will be asked to review the reporting policy and sign an acknowledgement that they have reviewed and understand the policy annually at the time of their evaluations.

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Defendants shall take appropriate disciplinary action in accordance with personnel policies against any staff member found to have engaged in abuse and/or neglect of a patient as defined in WSH policy 3.4.4.

6. By May 12, 2001, each ward station on CFS will have an easily identifiable notebook containing all pertinent policies and forms related to incident reporting and contains an easily understandable summary of procedures that staff are to follow when they obtain information related to allegations of patient abuse or neglect. The Clinical Director will be responsible for ensuring the implementation of this policy.

7. By May 12, 2001, Defendants will develop and implement a process whereby the Clinical Director of CFS, or another licensed clinician at WSH as designated by the CEO of WSH, shall conduct two or more unannounced spot checks of CFS patient records each month to ensure that incidents as defined by WSH Policy 3.4.4 have been reported on an AROI. The Clinical Director shall report the results of these spot checks to the Monitoring Committee.

8. Defendants will develop and implement a WSH policy that defines morbidity and mortality events and sets forth procedures for staff to report such events to the appropriate committee. Defendants will notify professional staff of the procedure for reporting morbidity and mortality events.

9. The Morbidity and Mortality Committee of WSH will continue to review 100% of patient deaths and 100% of cases in which a patient receives medical care at another hospital facility. By May 12, 2001, Defendants will commission independent evaluations by a non-state employee for each unexpected patient death. Such evaluations will be conducted by a non-psychiatric physician or a psychiatrist as appropriate. The evaluation shall include an analysis of cause of death and any recommendations for changes as appropriate.

10. During the pendency of the monitoring period, as defined by Section 1(g) of the Order, WPAS will receive notification of the death of any patient on CFS. Defendants shall notify WPAS of any patient deaths on CFS within 7 days of the death.

11. By May 12, 2001, Defendants will distribute a written definition of an "adverse drug reaction" including a specific definition of neuroleptic malignancy syndrome to all professional staff and promulgate written procedures for reporting such event to the Adverse Drug Reaction task group for the pharmacy and therapeutic sub-committee. Professional staff will be informed of correct procedures for reporting adverse drug reactions.

C. <u>Defendants agree to take the following steps in order to provide additional physical space for patients</u>:

1. CFS shall remain at the current South Hall location until the new CFS facility opens.

2. Defendants will relocate civilly committed patients to the Adult Psychiatric Unit (APU) as security and clinical concerns permit. Each relevant patient will be assessed by May 31, 2001 to determine the propriety of such placement.

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3. Defendants will not accept any patients for competency evaluation at CFS until 24 hours after Defendants have received the court order, discovery materials and other relevant information in the possession of the Court, prosecuting attorney, or defense attorney. Sanity and diminished capacity evaluation patients will remain in jail or be returned to jail until all documentation deemed by the evaluator to be necessary to the performance of the evaluation has been received from the prosecuting attorney or defense counsel who requested the evaluation.

4. By May 31, 2001, Defendants will develop and implement a CFS policy setting forth actions that the Clinical Director must undertake in the event that a ward becomes over census for more than twelve hours at a time.

5. Conditional Release patients will not be placed at South Hall prior to the opening of the new CFS facility. By April 30, 2001, WSH will prepare a list of placement options for Conditional Release Patients and confer and consult with WPAS in selecting an appropriate placement for these patients. If WPAS is not satisfied with the placement options presented by WSH, WPAS may amend its Complaint and take any other necessary legal action it deems necessary to address this issue.

6. Within 14 days of the signing of this Order, all CFS patients shall be afforded an opportunity for a minimum of one hour of fresh air per day at least five days a week unless a determination has been made and documented by a licensed clinician that such activity is clinically or medically contraindicated.

D. Defendants agree to take the following steps in order to ensure the safe and appropriate use of seclusion and restraints:

1. WSH and CFS will continue to follow the current Joint Commission on Accreditation of Hospital Organizations (JCAHO) standards on the use of seclusion and restraints.

2. WSH and CFS will continue to inform staff of the requirements of the current JCAHO standards on the use of seclusion and restraints. In addition, WSH and CFS will continue to provide staff with training regarding these standards.

3. The Quality Assurance Department of WSH will provide the Monitoring Committee with data regarding the use of seclusion and restraints at CFS. The type and frequency of this data will be determined in consultation with the Monitoring Committee.

E. Defendants agree to take the following steps in order to provide minimally adequate & timely medical and dental care to CFS patients:

1. By April 12, 2001, CFS patients will begin to receive their medical exams in examination rooms at South Hall. After the new facility is opened, CFS patients will receive medical exams in examination rooms at the new facility.

2. Transport staff members have been reassigned and a new directive makes medical transport a top priority. Transport issues will be minimized in the new building because the new building is adjacent to medical facilities.

3. By June 30, 2001, CFS will inspect all medical equipment to ensure that it is in working order. Malfunctioning equipment will be repaired or replaced as necessary.

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Professional staff will be trained on procedures for requesting repairs or replacement of equipment.

4. By April 30, 2001, CFS will formulate and implement clear policies on procedures for ordering outside medical treatment, including acute and emergency services and staff will be trained on these procedures.

5. Procedures for medication monitoring, including the use of the Abnormal Involuntary Movement Screening test on admission and at least annually are already in place and will continue.

6. The attending psychiatrists on CFS will review medications every 30 days or more often as clinically indicated and assess the effectiveness of the medications and any side effects. Implementation will be completed by April 12, 2001.

7. In consultation with the Monitoring Committee, Defendants will develop and implement an auditing system whereby the Pharmacy and Therapeutic sub-committee shall review the attending psychiatrist's notes of a statistically significant random sample of CFS patients. Such audit shall include review of clinical indication for the prescribed medication, effectiveness of prescribed medication, tolerance and side effects of the medication PRN indications, usage, and appropriateness, the reason for the discontinuation of any medication, and the frequency and consistency of examinations of patients by psychiatrists. The sub-committee shall report the results of its review to the Monitoring Committee and the Clinical Director of CFS. This review process is to be implemented within 30 days of the adoption of the auditing system described above.

8. By June 12, 2001, CFS will implement a system for tracking doctor's appointments, dental appointments, transportation arrangements, whether an appointment is kept, and follow up measures that were taken in the event of cancellation. Defendants shall make good faith efforts to computerize the system in accordance with other information systems' priorities. CFS will provide a monthly report to Quality Assurance documenting outside doctor appointments and dental appointments. Such report will indicate whether appointments were kept and, if not kept, the reason for cancellation. The Medical Records Department will track the timeliness of annual physical exams and report the results to the Clinical Director.

9. By May 12, 2001, Defendants will train CFS staff on correct procedures for requesting services from the WSH laboratory and outside laboratories, retrieving information about completed laboratory work and ensuring that appropriate professional staff receive laboratory results in a timely manner. Psychiatrists and physicians will be directed to report unusual delays to the Clinical Director. The Clinical Director will take appropriate measures to ensure that results are provided in a timely manner.

G. <u>Defendants agree to take the following steps in order to increase staffing levels :</u>

1. Defendants shall add thirty-three new staff positions. Set forth below are the positions which the Defendants intend to fill based on the request authorized by the legislature:

a) 3 Institutional Counselors 2s
b) 5 Psychiatric Social Workers

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c)	8	Activities therapists
d)	1	Office Assistant Senior
e)	1	Therapies Supervisor
f)	2	Office Assistants
g)	5	Psychiatric Security Assistants (PSAs)(temps to convert to IC2s in new building)
h)	6	Psychologist IIIs
i)	2	Ph.D. Psychologists

2. A certain number of the staff positions set forth above will include individuals trained in the provision of habilitative mental health care. Defendants will ensure that a WSH staff person with experience in providing habilitative mental health care is involved in the interviews and hiring processes for these employees. At least one of the psychologists or psychiatric social workers at CFS will be assigned to become familiar with the treatment program in effect for Allen class members and will serve as a liaison between that program and any CFS units which include developmentally disabled patients.

3. Defendants will advertise for two Ph.D. psychologists and two ward clerks by May 12, 2001. Once a candidate has been selected for a position, employment shall commence within 14-days of the date of hiring or within a reasonable time as requested by the candidate.

4. Defendants will use best efforts to fill all of the 33 staff positions described in Section G(1) of Appendix A as soon as reasonably practicable. However, Defendants shall use best efforts to fill at least 20 positions by October 1, 2001, with the remaining positions to be filled no later than January 1, 2002. If the Defendants are unable to fill the advertised positions with qualified permanent employees, Defendants will expedite the hiring process by 1) hiring temporary employees, 2) changing the job classifications on a temporary basis or 3) changing the job classifications on a permanent basis. Decisions to change job classifications will not be made prior to consultation with the Monitoring Committee.

5. Defendants shall commence the process of providing appropriate individualized active treatment to all class members within two weeks of the signing of this Order and shall continue to make reasonable progress towards providing active treatment to all of the class members over the period of time in which the 33 new staff are being hired.

6. The Monitoring Committee shall monitor Defendants' compliance with the provisions of Section G (4)-(5) of Appendix A and shall include a finding with respect to their compliance in their quarterly reports until Defendants have filled all 33 positions. If the members of the Monitoring Committee make a mutual finding that the Defendants have not complied with the provisions of Section G(4)-(5) of Appendix A, Plaintiffs may proceed directly to court and request a show cause hearing without first going through mediation or may take any other necessary legal action. Plaintiffs will make a good faith effort to consult with both members of the Monitoring Committee and the Medical Director to discuss the issue or issues before filing a motion requesting a show cause hearing. Plaintiffs will provide at least one business day written notice to Defendants' counsel via facsimile and first class mail.

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7. Defendants shall provide documentation as requested by the Monitoring Committee to monitor the provisions of paragraphs 4-5 above. In addition, WPAS will be provided with copies of the documents sent to the Monitoring Committee. The Monitoring Committee shall have the discretion to conduct an on-site review of defendants compliance with paragraphs 4-5 above

K. Defendants agree to take the following steps in order to improve treatment plans:

1. An interdisciplinary treatment team shall meet with the patient to review his or her treatment plan at least every 90 days or more often as clinically necessary to review the patient's progress toward his or her treatment goals, determine whether the patient's treatment needs have changed and/or whether the treatment plan needs modification and if so, how it should be modified so as to meet the patient's treatment needs and help to facilitate the patient's ability to meet his or her treatment goals. The treatment team shall identify treatment that is necessary in order for the patient to progress towards discharge.

2. Defendants will institute a formal risk assessment for dangerousness as part of the treatment planning process. This treatment assessment for risk (TAR) will utilize current research and scholarship, and will include clinical, actuarial, situational, and other factors. This assessment will include the following components:

   a. Actuarial assessment tools, such as the Psychopathy Checklist, HCR-20, V-RAG, or others that provide actuarial information about the likelihood of recidivism upon eventual release.

   b. An assessment of prior violence and crime to determine the likely severity of recidivism if it were to occur.
   c. An assessment of the individual's history and pattern of violence, crime, and victimization that will identify the clinical and situational risk factors that must be addressed in the treatment plan.
   d. An assessment of skill deficits and barriers to skill utilization that make the patient vulnerable to the risk-laden situations identified above, and
   e. An assessment of existing protective factors that reduce the risk of harm, and which might be built upon by the treatment plan.

3. The treatment plan will be structured around the TAR. The goals of the treatment plan will include acquisition of the specific skills that will increase the patient's chances of eventual safe return to freedom. The treatment plan will allow for periodic objective assessment of the patient's progress in acquiring the necessary skills.

4. The TAR based treatment plan will be implemented for every newly admitted long-term treatment patient, on or before July 1, 2001.

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5. The treatment plans for current patients will be revised to include the TAR at or before the time of the next scheduled treatment plan conference that occurs after July 31, 2001.

6. Within 30 days of hiring or transferring two additional psychologists and two ward clerks, CFS will implement a computerized treatment plan format on two treatment wards which allows users to determine whether treatment plans are current and allows users to track the patient's progress towards his or her identified treatment goals and objectives. Once the treatment planning process has been developed and successfully implemented on these pilot wards, this process will be expanded to the other two CFS long-term treatment wards with appropriate additional staff.

7. By July 12, 2001, Defendants will develop an auditing system on two treatment wards that provides a computerized tool for assessing whether the treatment plan meets specified criteria for content and format, including whether the plan sets forth measurable criteria for response to treatment. Random samples will be selected from each participating ward at two week intervals and sent to trained auditors from another ward for analysis according to the auditing program. The results of such audit will be reported to the treatment team. Once the audit process has been developed and successfully implemented on these pilot wards, this process will be expanded to the other two CFS long-term treatment wards. This process will be implemented in accordance with the provisions relating to the Monitoring Committee of Section 1 of the above Order.

8. CFS will consult with Dr. Gardner on how to write and implement appropriate treatment plans for competency restoration patients with developmental disabilities or who have borderline intellectual functioning This will be implemented at the next Allen Monitoring Committee visit, currently scheduled for May 2001.

9. CFS will begin to implement a computerized tracking system that tracks class offerings, attendance and level of participation. The tracking system will be implemented on two pilot wards by October 12, 2001.

L. The Defendants agree to take the following steps in order provide appropriate therapies and treatment interventions to meet the individual needs of each patient:

1. By June 12, 2001 CFS will provide admissions patient's opportunities to have access to outside areas in the fenced yards and on the porch at South Hall, where such access can be provided without an unreasonable increased safety risk.

2. By June 12, 2001, the adjacent structures to South Hall will be utilized to provide additional program and treatment activities.

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3. Defendants will offer at least 20 hours per week of active treatment and programming to each patient. Active treatment is defined as that which is directly related to the patient's individual goals (as stated in the treatment plan) and documented in the patient's chart. Examples include psycho-educational and educational groups, skill-building groups, individual and group psychotherapy, occupational therapy, alcohol and chemical dependency treatment, and recreation therapy that is directly related to a patient's treatment goals. For evaluation patients and competency restoration patients, time spent in clinical evaluative
interviews may be considered as a portion of active programming for the purposes of this section. Competency restoration groups also are considered to be active treatment. The Monitoring Committee, in consultation with Dr. Gardner, will monitor the development and implementation of the active treatment program at CFS to ensure that it complies with the following conditions to ensure that the active treatment program at CFS complies with the following conditions:

a. Active treatment will be consistent with the individual needs of all patients, including those patients with developmental disabilities and those patients with borderline intellectual functioning.

b. At the time of the initial treatment planning meeting, new patients will be assessed by the treatment team for borderline intellectual functioning. All current patients will be assessed by their treatment teams for cognitive deficits. Formal testing will be done within two weeks of the treatment team's determination that such testing is clinically indicated. Ongoing assessment of individual needs and cognitive functioning will be done as part of the treatment planning process described in Section K above. Defendants will fully implement these provisions within 30 days of the signing of this Order.

c. Defendants will immediately begin to develop appropriate curricula to meet the individual needs of patients of differing cognitive levels and to assign patients to the appropriate treatment modalities.

d. Incident reports will be reviewed on an ongoing basis to determine whether individual CFS patients have a need for a positive behavioral support plan. If such a plan is clinically indicated, the plan will become a part of the patient's treatment plan and staff will be trained in the implementation of the program. Defendants will fully implement these provisions within 30 days of the signing of this Order.

e. Defendants shall provide individuals with developmental disabilities with at least six hours per day, seven days per week of individualized and active mental health treatment. This treatment shall include, but is not limited to, specialized competency restoration treatment that is designed to meet individual needs and appropriate habilitative mental

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health treatment, including opportunities to participate in programs and social activities on the wards established for individuals with developmental disabilities under Allen or with other Allen class members, and opportunities to have recreational activities and supportive counseling with one-to-one staff on CFS. Defendants will fully implement these provisions within 30 days of the signing of this Order.

At least one staff person from the patient's ward will be assigned to accompany the CFS patients to the Allen ward for treatment and serve as a liaison between the Allen wards and CFS to ensure that the skills taught and learned on the Allen ward are reinforced on the home wards and in the evenings at CFS by all staff working directly working with the patient.

f. All developmentally disabled patients will have a positive behavioral support plan that shall be incorporated into his/her treatment plan. All staff working directly with the patient will be trained in the implementation of these plans and the habilitative mental health treatment model. Defendants will fully implement these provisions within 30 days of the signing of this Order.

4. Defendants will keep track of each patient's participation in active treatment, and will create monthly statistical reports on the average number of hours of active treatment actually provided to each patient. In the event that a patient's participation significantly falls below 20 hours per week of active treatment, the treatment team will meet with the patient to consider changes in the treatment plan or additional programming options that appear necessary.

5. Defendants will conduct ongoing assessment of the quality of the programming being offered and will make good faith efforts to make the programs interesting and desirable to patients.

6. All competency restoration patients with developmental disabilities who are later found to be not guilty by reason of insanity and committed for long-term treatment will be transferred to the ward for Allen class members. This provision is already being implemented and will continue.

M. The Defendants agree to take the following steps in order to provide improved discharge planning:

1. The civilly committed patients currently at CFS will be relocated to the APU if it is determined that such placement is not clinically contraindicated. The civilly committed patients will be permitted to earn grounds privileges as clinically indicated.

2. Defendants shall ensure that each patient's treatment plan contains individualized reasonable criteria for recommendation of conditional release to the Court pursuant RCW 10.77.150.

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3. Defendants shall review the patient's progress towards meeting the criteria for recommendation for conditional release at least every 90 days. This review can be conducted as part the quarterly treatment plan review. If it is determined that the patient is not making progress toward conditional release, the treatment team will review whether the conditional release criteria for the patient should be modified and make any necessary modifications.

4. Defendants will ensure that all CFS patients participate in their discharge planning and are aware of the discharge criteria they must meet.

5. Defendants will ensure compliance with the requirements set forth under RCW 10.77.140.

6. Defendants will ensure compliance with the requirements set forth under RCW 10.77.150.

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2004, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following:

DEBORAH A. DORFMAN debbied@wpas-rights.org

DAVID GIRARD. davidg@wpas-rights.org

DATED this 10th day of November, 2004, at Olympia, WA.

/S/
Judith E. Parent
Legal Assistant

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