COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE,ss
TRIAL COURT DEPARTMENT
SUPERIOR COURT DIVISION
C.A. 88-064

SUSAN M. HINCKLEY ESTHER LITTLE on behalf of themselves and all others similarly situated	)
Plaintiffs	)
V.	)
MICHAEL V. FAIR, et al.	)
Defendants	)

SETTLEMENT AGREEMENT

I. **INTRODUCTION**

1. In order to resolve the issues raised in the Amended Complaint filed in this case on December 29, 1989, the parties agree to the following. Nothing in this Agreement shall constitute an admission of or evidence of liability. The term "defendants" shall apply to or obligate a specific defendant only to the extent that the defendant has the ability to influence or control the particular matters set forth in the paragraph. Nothing in the Agreement shall prohibit the defendants from consolidating their efforts through one or more of the other defendants, provided that any consolidation shall not otherwise

modify nor alter any of the terms of this Agreement.

II. **PURPOSE**

2. The parties enter this Agreement in recognition of the following principles and in order to achieve the following goals:

a. The overall goal of this Agreement is to promote compliance with the statutory and constitutional obligations regarding the treatment of women admitted under G.L. c. 123, §35 ("civilly committed women"). In view of the availability of funds, including federal funds, the defendants have decided to address the treatment needs of women who are civilly committed to MCI-Framingham for treatment of alcoholism or drug abuse in appropriate, community settings and to avoid confinement at MCI-Framingham.

b. The need for substance abuse treatment programs has increased dramatically in the past five years. Civil commitments of women to MCI-Framingham have risen from nine in 1987 to one hundred and twenty-six in 1989. Based on the historical rate of growth, commitments can be expected to exceed three hundred in 1990 and approximately four hundred in 1991.

c. In 1987 the Commonwealth adopted a policy which called for the expansion of services for civilly committed women within the public health system to eliminate the need for commitments to MCI-Framingham. In further implementation of that policy, the defendants established two new treatment programs specifically for civilly committed women. The defendants have decided to create additional capacity for

civilly committed women within the existing DPH community-based substance abuse system and to increase the coordination between the courts, substance abuse providers, and others involved in the commitment process. This plan, which was submitted to the Court on June 12, 1990 in this action, builds upon the comprehensive community-based system of substance abuse treatment currently available to women in the Commonwealth, and is premised upon the view that treating civilly committed women in such programs affords them the greatest opportunity to remain close to their families and to establish relationships with aftercare services within their home communities.

d. In implementing this plan, the Commonwealth intends to develop a regional system of services through which civilly committed women can be treated in publicly and privately funded community substance abuse programs, or where necessary, in other types of settings, rather than at MCI-Framingham.

e. The Commonwealth believes that the expansion of existing services, as set forth in paragraphs 3(d)-(f) below, will facilitate reasonable access to treatment and rehabilitation programs for civilly committed women.

f. Given an expected length of stay of thirty days or less, ten days or less in detoxification and twenty days or less in rehabilitation programs, this expansion is expected to meet the anticipated demand.

g. The new community programs will be developed explicitly to

provide alternatives to the practice of committing women to MCI-Framingham and will build on the current community system of inpatient substance abuse treatment available to women in the Commonwealth.

h. The Departments of Public Health (DPH), Mental Health (DMH), and Public Welfare/Medicaid Program (DPW), subject to the availability of funds, will collaborate to develop and maintain a system of substance abuse treatment services for involuntarily committed women under G.L. c. 123, §35 which also has the capacity to meet their medical, mental health, and other special needs, including pregnancy.

i. An individual's decision to enter into treatment is often critical to its success, and civil commitment should, therefore, only be used when there is a clear and present danger to the individual or others as a result of chronic substance abuse and the individual has refused voluntary placement.

j. Women who have been civilly committed and are not ready or willing to make a decision to address their substance abuse problem following a completed detoxification and assessment period should be permitted to leave the facility when it has been determined that discharge is appropriate and the women are no longer dangerous to themselves. Holding the women for the full thirty days under these circumstances could appear to be punitive and not rehabilitative.

III. **THE DEVELOPMENT AND OPERATION OF SUBSTANCE ABUSE SERVICES**

3. Consistent with the principles and goals set forth above, the defendants agree to implement the following actions according to the following schedule:

(a) By June 30, 1990, DPH will confirm whether all publicly supported detoxification and appropriate post-detoxification programs funded for §35 women will participate in the treatment network for civilly committed women, in order to ensure statewide access to substance abuse services.

(b) By September 30, 1990, DPH will identify a procedure for responding to a civil commitment referral from courts in each DPH region. This procedure may be included in the manual referred to in ¶3(g) below. It will include identifying a contact person from a substance abuse program within each region of the Commonwealth who will be available to court personnel to match civil commitments to substance abuse treatment facilities within that region.

(c) By September 30, 1990, DPH will contract for fifteen beds for detoxification services in free-standing substance abuse programs for civilly committed women and provide access to treatment services for up to four hundred admissions annually, subject to the availability of funds, including federal funding.

(d) By September 30, 1990, DPH will contract for an additional fifteen beds for post-acute rehabilitation services for civilly committed women, with a minimum of two beds in western Massachusetts, and provide access to post-acute

services for up to four hundred admissions annually, subject to availability of funds, including federal funding.

(e) By September 30, 1990, DPH will contract for an additional six beds in community detoxification centers for specialized services for dually diagnosed clients with both mental health and substance abuse problems, subject to the availability of funds, including federal funding.

(f) These new substance abuse services created pursuant to this ¶¶3(c)-(e) above will supplement existing publicly funded and private substance abuse facilities throughout the Commonwealth, provided that nothing in this Agreement shall affect such existing facilities, including but not limited to the amount of such facilities funded by any of the defendants.

(g) By October 30, 1990, DPH will distribute a revised manual for courts regarding civil commitment referrals to substance abuse programs. This will be further revised as court and provider policies and procedures are implemented.

(h) By October 30, 1990, DPH will provide the courts with information on which private sector programs have the capacity to admit civilly committed women. The information shall be included in the manual referred to in paragraph 3(g) above.

(i) By October 30, 1990, DPH and DMH will develop a standardized referral process for DMH Forensic Mental Health personnel to match court referrals of civilly committed women to community substance abuse treatment programs.

(j) DMH and the courts will make every reasonable effort to ensure that each civilly committed woman has a complete evaluation prior to placement, subject to the availability of funds and timely notification by the courts.

(k) DPH will identify private hospitals with psychiatric, medical, and substance abuse services that have a capacity to serve civilly committed women with significant psychiatric, pregnancy, medical, and other special needs.

(l) DPH will offer training to court officials and forensic mental health providers on the most effective use of the community drug and alcohol treatment services.

(m) DPH will identify and review reimbursement issues which may present obstacles to civil commitment admissions to acute inpatient hospital facilities.

4. The new and existing services described in ¶3 will be operated so long as necessary to ensure adequate and appropriate alternatives to the commitment of women with substance abuse problems at MCI-Framingham pursuant to G.L. c. 123, §35. Nothing shall prevent the use of these programs by voluntary persons, provided that the newly developed capacity is not needed by civilly-committed women.

5. The new and existing services described in ¶3 will be operated so as to ensure that civilly committed women are not denied admission to an involuntary community substance abuse program and then confined at MCI-Framingham, when their handicap, pregnancy, medical, psychiatric or other special needs can be met in an available substance abuse setting within the Commonwealth.

6. DMH will make every reasonable effort to ensure, subject to the availability of funds, that clinical evaluations are promptly conducted by Department of Mental Health forensic staff, whenever a petition under G.L. c. 123, §35 is filed and prior to the time the petition is heard, except where courts fail to inform promptly the forensic staff of a possible petition or it is otherwise impossible to do so.

7. The Department of Public Health will contract with at least one inpatient substance abuse treatment provider in each geographical region of the Commonwealth to coordinate §35 placements. DPH will designate a regional substance abuse coordinator (coordinator) in each region. Whenever the coordinator is informed of a commitment petition pursuant to G.L. c. 123, §35, s/he will: (1) inform court personnel of available community treatment options in that region and throughout the Commonwealth; (2) assist the court in making a diligent search of all public and private substance abuse treatment programs whenever a women is at risk of commitment under G.L. c. 123, §35; (3) access available community programs in order to ensure, in so far as possible, that civilly-committed women are not sent to MCI-Framingham. Whenever a woman is rejected by a particular program, the coordinator will contact or cause to be contacted other substance abuse providers, both within the region and in other regions to of the Commonwealth, in order to secure a placement in an appropriate substance abuse treatment program.

8. The defendants, other than the Department of Mental

Health, will make every effort to transfer to a community treatment program any women committed to MCI-Framingham, as soon after her arrival at the prison as possible. Officials at the prison will promptly contact the coordinator, during the coordinator's hours of operation, and assist in identifying a community alternative to the institution. No civilly committed woman shall be fingerprinted, photographed, stripped-searched, or transferred to a residential unit at MCI-Framingham until and unless there has been a reasonable, good faith effort to contact the coordinator, if possible to do so during the coordinator's hours of operation, in order to determine that there is no available community treatment bed in the Commonwealth capable of serving her. Department of Correction (DOC) staff will transport any civilly committed women at MCI-Framingham to an available, treatment program as soon as possible after an available alternative is identified. Within twenty-four hours of any such admission, the plaintiffs' counsel will be provided with notice by telephone or FAX of the date, court, and other relevant facts not otherwise confidential for any woman admitted to and retained overnight at MCI-Framingham.

IV. **POLICIES AND PROCEDURES**

9. The Executive Office of Human Services will promptly seek an opinion from the Attorney General with respect to the authority of a community treatment program director to discharge a committed women who has been determined to be no longer a danger to herself or others. The defendants will be bound by any Opinion issued by the Attorney General. The Department of Public Health will distribute the Opinion to all community providers which provide substance abuse services.

10. The defendants, other than the Department of Mental Health, will develop policies and procedures, which, where necessary and appropriate, will be incorporated by reference into contracts with new community programs to ensure that civilly committed women are not:

a.) denied admission to these new, involuntary beds, except where the beds are already occupied by a civilly committed woman or where the program lacks the capacity to serve their special medical or mental health needs, or to protect their safety or the safety of other residents;

b.) transferred to MCI-Framingham by the director or staff of any community treatment program; and

c.) maintained at MCI-Framingham, except pursuant to a determination by the coordinator, as set forth in ¶8, above, that there is no available, substance abuse treatment bed in the Commonwealth capable of serving them and protecting their safety.

11. The defendants will provide copies of these policies and

procedures, and any revisions thereto, to the plaintiffs' counsel and will consider their comments and suggestions.

12. Consistent with the principles and goals set forth in ¶2 above, the defendants will make all reasonable efforts to inform the district and other relevant courts with respect to: (1) the availability of the new community substance abuse treatment programs; (2) the role of the regional coordinator; (3) the availability of clinical evaluations from Department of Mental Health forensic staff; and (4) the process for identifying appropriate treatment services for civilly committed women.

13. By November 1, 1990, the defendants will inform the courts in writing that MCI-Framingham does not provide a substance abuse treatment program in a discrete unit for civilly committed women and, in their opinion, is not an appropriate setting for civilly committed women with substance abuse problems. This information will also be included in the manual described in ¶3(g), above. They will recommend that as soon as the new community treatment programs are operational, district court judges do not commit any women under G.L. c. 123, §35 to MCI-Framingham. Nothing written or said in or pursuant to this paragraph may be used as an admission or evidence in this or any other proceeding.

14. Reasonable educational efforts shall also include those methods described in ¶3(g), (j), and (l) above, as well as coordination with the Office of the Chief Judge of the District Court, the Committee for Public Counsel Services, and the relevant administrative personnel in the court system. The defendants

will provide the plaintiffs' counsel with a copy of the manual referred to in ¶3(g), which shall include the information described in paragraphs 10 and 12 above, for their review prior to its dissemination to the courts.

15. The defendants will continue to support pending legislation which would amend G.L. c. 123, §35 by eliminating the possibility of committing women with substance abuse problems to MCI-Framingham. If this legislation is enacted and women can no longer be civilly committed to MCI-Framingham or any other correctional setting, the plaintiffs agree that this case, other than the claims for damages on behalf of Susan Hinckley and her request for attorneys fees and costs, shall be dismissed and this Agreement shall terminate.

V. **MONITORING AND MODIFICATIONS**

16. The defendants, other than the Department of Mental Health, will monitor admissions to, discharges from, and lengths of stay in the new community treatment programs, as well as in other facilities serving civilly committed women with substance abuse programs. A quarterly monitoring report describing the utilization of these programs and facilities, including the use of MCI-Framingham, if any, will be provided to the plaintiffs.

17. If information gathered through these monitoring activities indicates that women committed under G.L. c. 123, §35 are still being confined in MCI-Framingham, despite (1) the availability of an appropriate bed in the community and (2) compliance with the terms of this Agreement, the defendants will

review these findings and take all reasonable steps within available resources to promptly halt the unnecessary confinement of women in the prison. Within sixty days of such findings, the defendants will file a special report to the plaintiffs, describing the steps which they have taken and the results which have been achieved.

18. If information gathered through this monitoring activities indicates that women committed under G.L. c. 123, §35 are still being confined in MCI-Framingham, as a result of an inadequate number, type, or distribution of involuntary substance abuse programs, the defendants will prepare a plan within one hundred and twenty days to address those issues which are within their control and will implement the plan within available resources, so that women are no longer committed to the prison. To the extent that they are not able to fully implement the plan within available resources, the defendants will compute the amount of funds necessary to remedy these issues and will identify those matters outside of their control which impede full compliance with the principles and goals set forth in ¶2. A copy of the plan, the computation of additional resources, and an identification of issues will be provided to the plaintiffs' counsel.

VI. **COMPLIANCE**

19. The specific means to be employed to achieve compliance with the requirements set forth in this Agreement are matters within the reasonable discretion of the defendants, and shall be

accepted so long as they are consistent with this Agreement.

20. In the event there is evidence of noncompliance with the terms of this Agreement, the Agreement may be enforced only as set forth in this paragraph. The plaintiffs will inform the defendants in writing and afford them twenty days to remedy the problem. During this period the parties will make reasonable, good faith efforts to discuss any identified compliance issues and to resolve these matters through negotiation. In the event that such dispute resolution efforts are not successful, the plaintiffs may enforce this Agreement by seeking an injunction mandating compliance with the provisions of the Agreement which are in dispute. The defendants may oppose entry of, or move to vacate or modify, such an injunction based upon: (1) changed circumstances since the signing of this Agreement; (2) a change in the applicable law since the signing of this Agreement; or (3) in the event that this Agreement remains in effect eighteen months after it is approved by the Court, then evidence of a more effective, more efficient, or more appropriate method of fulfilling the obligations of the Agreement or the applicable statutory and constitutional requirements. The defendants reserve their right to request a modification of the Agreement on the same conditions. Nothing in this Agreement limits the parties' rights under Mass. R. Civ. P. 60. The Agreement shall not be enforceable by contempt.

21. If the defendants fully implement the terms of this Agreement and there are no compliance disputes which the plaintiffs have to brought to the attention of the defendants in

writing, other than those that are remedied or resolved by negotiation, for a period of thirty days after the filing of the fourth quarterly report, the Agreement shall be terminated and all claims, other than the claim for damages for Susan Hinckley and attorneys fees and costs, in this case shall be dismissed without prejudice. During this period, unless the Agreement is brought to the attention of the Court for enforcement or modification, all activity other than the claim for damages for Susan Hinckley and attorneys fees in this case shall be stayed.

22. The plaintiffs reserve their right to seek an award of interim and final attorneys fees for this litigation and this Agreement. The defendants reserve their right to oppose a fee request on any grounds.

23. This Agreement shall not bar or otherwise prejudice a separate action for damages for any woman committed to MCI-Framingham nor the continuation of this action for Susan Hinckley, as described in ¶21, above.

For the Plaintiffs:

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Steven J. Schwartz
Cathy E. Costanzo
Center for Public Representation
22 Green Street
Northampton, MA. 01060
BBO #448440
BBO #553813

_____
John Reinstein
Civil Liberties Union of Massachusetts
19 Temple Place
Boston, MA. 02111
BBO #416120

JAMES M. SHANNON
ATTORNEY GENERAL

_____
Alice Daniel
Deputy Attorney General
Douglas Wilkins
Assistant Attorney General
1 Ashburton Place
Suite 2019
Boston, MA. 02108
617) 727-2200
BBO# 547664
BBO# 528000

_____
Philip W. Johnston
Secretary
Executive Office of Human Services

_____
George A. Vose
Commissioner
Department of Corrections

_____

Henry Tomes, Ph.D.
Commissioner
Department of Mental Health

_____

David Mulligan
Commissioner
Department of Public Health

Approved by the Court: _____

Justice

Date: