UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 96-2312
	)	
v.	)	
	)	
STATE OF TENNESSEE, et. al.,	)	
	)	
Defendants.	)	
	)	

CONSENT DECREE

INTRODUCTION

1. This case was instituted by the United States on March 15, 1996, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq.

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

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

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

5. The Defendants are the State of Tennessee; the Honorable Don Sundquist, Governor of the State of Tennessee; Marjorie Nelle Cardwell, Commissioner of the Department of Mental Health and Mental Retardation; and Elizabeth A. Banks, Superintendent, Memphis Mental Health Institute ("MMHI"), who are sued in their respective official capacities.

6. The individual Defendants are officers of the Executive Department of the State of Tennessee who have authority and responsibility for the operation of MMHI.

7. On December 12, 1990, the Attorney General of the United States, through the Assistant Attorney General, Civil Rights Division, notified the Governor of Tennessee, the Attorney General and Reporter of Tennessee (the "Attorney General"), the Commissioner of Mental Health and Mental Retardation (the "Commissioner"), and the Superintendent of MMHI (the "Superintendent") of his intent to investigate allegations of unconstitutional conditions at MMHI pursuant to CRIPA.

8. Following the United States' initial investigation tour, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, on April 4, 1991, notified the Governor of Tennessee, the Attorney General, the Commissioner, and the Superintendent that he had determined that certain conditions at MMHI (i.e., the lack of professional and direct care staff) were depriving persons residing in or confined to MMHI of their constitutional rights.

9. Following further tours and a thorough investigative effort of MMHI, on February 6, 1992, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor, the Attorney General, the Commissioner, and the Superintendent that he had determined that numerous conditions in addition to those listed

in Paragraph 8 were depriving persons residing in or confined to MMHI of their constitutional rights.

10. The parties agree that the care, conditions of confinement, and the treatment of MMHI residents implicate rights of these residents that are secured or protected by the Constitution of the United States. The parties entering into this Consent Decree recognize these rights and, for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein. This Consent Decree provides for actions, practices, and procedures that the State has agreed to implement.

11. Each and every provision of this Decree is entered into by clear agreement of the parties, after lengthy and thorough negotiations.

12. In entering into this Consent Decree, the Defendants do not admit any violation of law, and this Consent Decree may not be used as evidence of liability in any other legal proceeding.

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

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

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

16. The purpose of this Consent Decree is to achieve the substantive outcomes set forth within this decree. This consent decree includes all of Attachment A, appended to this document.

17. This Consent Decree is binding on all state agencies and/or departments that may have an effect, either directly or indirectly, either currently or in the future, on the operations of MMHI.

I. REMEDIAL MEASURES

The Defendants shall implement, continue to implement, and/or maintain the implementation of all policies, systems, procedures, and rules currently in place and as set forth in Attachment A. These policies, systems, procedures, and rules are designed to provide adequate care and treatment to patients at MMHI in accordance with rights secured and protected by the Constitution of the United States.

II. STATUS REPORTS

1. The Defendants shall provide to the United States quarterly status reports on progress made toward implementation of this Consent Decree. The status reports shall be submitted to the United States no later than 15 working days after the end of each reporting period. The reporting periods shall begin on the first day of January, April, July, and October. The first reporting period shall be the first full calendar quarter after the entry of this Consent Decree. The status reports shall continue until the parties agree otherwise or until this Consent Decree is no longer in effect.

2. Each status report shall include:

a. For each month of the reporting period, the average daily patient population;

b. The status of compliance with each requirement in this Consent Decree;

c. The name and age of every MMHI patient who, during the reporting period, died at MMHI or who is known to have died at an acute health care facility following transfer by MMHI to the facility, indicating the date and cause of death and any autopsies, death review summaries, and investigative findings related to the death;

d. The text of any policies and procedures promulgated to fulfill the requirements of this Consent Decree;

e. All staff training plans developed to implement the requirements of this Consent Decree, the frequency with which the training has been provided, the duration and content of the training, and the categories and numbers of staff to which it has been provided;

f. The number of uses, and duration of use, of seclusion, time out, and bodily restraint;

g. A tabulation of injuries sustained by patients, setting out the date, time, and floor of each injury;

h. A listing of the MMHI patients transferred to any acute health care facility, showing the name of the patient, the reason for the transfer, the facility to which the patient was

transferred, and the nature of the treatment rendered or expected to be rendered, by the acute health care facility.

3. Defendants shall, within three working days of any "Code Blue," or other similar emergency medical situation, provide the United States with a detailed accounting of the event including the time and place of the event, the time emergency medical personnel were advised of the situation, the time such personnel responded, the treatment provided and the ultimate resolution of the event (e.g., patient transferred to local acute care hospital).

4. A listing of all patients discharged within the quarter, including the place to which the patient was discharged or the program providing aftercare services.

III. ACCESS TO MMHI

1. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, patients, and employees of MMHI upon reasonable notice to the Defendants for the purpose of ascertaining compliance with this Consent Decree. Such access shall continue so long as this Consent Decree is in effect.

2. Designee(s) of the Defendants may be present during tours or inspections of facilities and records.

3. MMHI employees may be interviewed by the counsel for the United States or consultants retained by the United States during tours of MMHI. At the option of the individual employee, such

interviews may be conducted in private or in the presence of designee(s) of the Defendants.

4. Within 25 days of receipt of written questions from the United States relating to the Defendants' compliance with the Consent Decree, the Defendants shall provide to the United States specific written answers and any requested documents regarding the Defendant's compliance with requirements of this Consent Decree.

5. Nothing in this Consent Decree precludes the United States from conducting discovery pursuant to the Federal Rules of Civil Procedure on matters relating to enforcement of or compliance with this Consent Decree.

IV. CONSTRUCTION AND TERMINATION OF CONSENT DECREE

1. If the nature of the patient population of MMHI significantly changes, the parties agree to confer in good faith on the provisions of this Consent Decree. Upon motion, or by agreed order, either party may seek to modify any requirement of this Consent Decree consistent with the existing standards for modification of consent decrees.

2. The Defendants may petition the Court for termination of this Consent Decree, in whole or in part, on grounds that they have achieved and demonstrated their ability to maintain compliance with its provisions at any time, but not sooner than one year following entry of this Consent Decree. Upon the filing of such petition, the United States shall have 60 days to object. If no objection is filed, the Consent Decree shall terminate as

to the parts addressed by the petition. If the United States files an objection, the Court will decide which parts of the Consent Decree shall be terminated and which parts shall remain in effect. With respect to any part(s) of this Consent Decree so terminated, the Court's jurisdiction over each terminated requirement will end.

3. The Court shall retain jurisdiction of this action for all purposes until such time as the Consent Decree is terminated with respect to all requirements.

AGREED TO:

FOR THE STATE OF TENNESSEE

Charles W. Burson
Attorney General and
Reporter
State of Tennessee

Kathleen A. Maloy
Assistant Attorney General
State of Tennessee

FOR THE UNITED STATES

Deval L. Patrick
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Arthur E. Peabody Jr.
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Robinsue Frohboese
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Verlin Hughes
Senior Trial Attorney
Special Litigation Section

William G. Maddox
William G. Maddox
Senior Trial Attorney
Special Litigation Section

Done and Ordered this _____ day of _____, 1996 at Memphis, Tennessee.

_____
U.S. District Court Judge

ATTACHMENT A

I. DEFINITIONS

As used in this Consent Decree, the following definitions apply to the terms below:

1. "Defendants": The State of Tennessee, specifically, the Executive Department of the government of the State of Tennessee, including the Governor, the Department of Mental Health and Mental Retardation ("DMHMR"), the administration of MMHI, and any and all of their officials, agents, or assigns, and the successors in office of such officials, agents, employees, or assigns.

2. "MMHI": The Memphis Mental Health Institute, a State facility located in Memphis, Tennessee, providing acute care for adults with psychiatric diagnoses. The areas covered by this Consent Decree include all units and common areas except for the Alcohol and Drug unit.

3. "Unit": A self-contained area comprised of one-half the physical plant of each of three floors dedicated to providing acute care for psychiatric illness at MMHI. There are three "units" at MMHI, one on the third floor, one on the fourth floor and one on the fifth floor.

4. "Physician": A medical doctor lawfully entitled to practice medicine in the State of Tennessee.

5. "Psychiatrist": A physician who is certified by or is eligible for certification by the American Board of Psychiatry and Neurology.

6. "Psychologist": An individual who has a minimum of a master's degree in the field of psychology.

7. "Nurse Practitioner": A nurse practitioner, as defined by Tennessee statutory law, lawfully entitled to practice in the State of Tennessee.

8. "Social Worker": An individual who has a minimum of a bachelor's degree in social work and who is eligible to practice in the State of Tennessee.

9. "Adjunctive Therapist": A recreational therapist with either a bachelor's degree or four years experience, and who is eligible to practice in the State of Tennessee.

10. "Program Director": An individual with either a master's degree or a bachelor's degree with four years experience in psychiatric care.

11. "Nurse Manager": A registered nurse or higher degree, who is eligible to practice in the State of Tennessee.

12. "Direct care worker": A staff member, other than a licensed professional, who is directly responsible for implementing treatment and providing care to patients. This includes, but is not limited to, psychiatric technicians and nurses' aides.

13. "Qualified professional": An individual who is competent, whether by education, training or experience, to make the particular decision at issue.

14. "Initial Treatment Plan": A plan devised by the professional staff at MMHI which addresses the initial

assessment, both medically and psychiatrically, of the patient upon admission.

15. "Master Treatment Plan": A program of therapeutic steps and activities, including psychological and psychiatric services and medications, determined by qualified professionals and consistent with professional standards and practice to be sufficient to permit each patient an opportunity to improve, to be cured, or to function as independently as the patient's psychiatric conditions permit.

16. "Psychotropic medication": Chemical substances used in the treatment of mental illness which exert an effect on the mind and are capable of modifying mental activity or behavior.

17. "PRN": A treatment modality ordered on a pro re nata or "as needed" basis.

18. "Stat": A treatment modality ordered on an immediate basis.

II. REMEDIAL MEASURES

A. STAFFING REQUIREMENTS

The Defendants shall maintain a sufficient number of appropriately qualified psychiatrists, psychologists, nurses, and direct care staff at MMHI. The staffing requirements shall be accomplished without excessive resort to: 1) use of overtime; 2) reliance on temporary agency or temporary contract staff; or 3) the transfer of personnel from their regularly assigned units. The total number of adjunctive therapists present and on duty shall be increased, when necessary, to account for increased

patient population, or to ensure the provision of adequate therapy services to MMHI patients. There shall be one full-time program director per unit whose responsibilities include the development and implementation of the programming on each unit and the management and supervision of the unit staff. The responsibilities of the nurse managers include the direct supervision of the nursing staff and the assessment of the appropriate acuity level for each unit. The nursing and direct care staff includes registered nurses (RNs), licensed practical nurses (LPNs), and psychiatric technicians (PTs). The number of registered nurses present and on duty on each floor shall be adequate to ensure a sufficient number of registered nurse hours for supervision of other staff and to provide patient treatment. The total number of nursing and direct care staff present and on duty shall be increased, when necessary, to account for increased patient population, or to ensure adequate supervision, health, safety, and treatment of each MMHI patient, by having sufficient nursing staff to provide administrative support and to provide for therapeutic groups and other nursing care needs of MMHI patients. The total time in which an internist is present and on duty shall be increased, when necessary, to ensure the provision of adequate medical services to MMHI patients. The total time in which a nurse practitioner is present and on duty shall be increased, when necessary, to ensure the provision of adequate medical services to MMHI patients.

B. DEVELOPMENT AND IMPLEMENTATION OF PATIENT TREATMENT PLANS

Defendants shall maintain adequate evaluation and appropriate treatment plans for MMHI patients at MMHI. This shall include, at a minimum, the following actions:

1. Assessment and Diagnosis

a. Ensuring, when warranted, that each patient has appropriate secondary diagnoses, with particular attention paid to the possible presence of organic brain syndrome and/or substance abuse.

b. Ensuring that each patient's diagnosis comports with accepted professional standards and the justification for change in diagnosis is documented in the patient's record.

c. Ensuring that each patient's diagnosis forms a basis for the patient's treatment plans.

2. Initial Treatment Plan

MMHI shall develop an Initial Treatment Plan with input from 1) a psychiatrist, 2) an internist or a nurse practitioner and 3) a nurse, for each patient within 24 hours of admission.

3. Master Treatment Plan

MMHI shall develop for each patient, within 7 days of admission, a Master Treatment Plan consistent with professional judgment by an interdisciplinary team of professional staff, including, as appropriate, a psychiatrist, a medical physician, a nurse, a psychologist, a social worker, appropriate adjunctive therapist(s) and direct care worker(s). Each Master Treatment Plan shall contain at least the following elements:

a. Statements describing the nature of the specific problems and needs of the patient;

b. A description of clear, objective and measurable treatment goals relative to each patient's individual needs and written in behavioral terms;

c. A delineation of the specific individualized treatment methods and/or programs to be afforded to each patient, including a schedule(s) for the conduct of such programs and the individual(s) responsible for such treatment;

d. A statement and rationale for the Master Treatment Plan; and

e. A statement of what is needed by the patient to function in a community setting (e.g., medication compliance).

4. Review of Master Treatment Plan

Each patient's Master Treatment Plan shall be reviewed and revised, as needed but at least weekly, by an interdisciplinary team of qualified professionals in accordance with professional standards with a particular focus on behavioral episodes, use of seclusion or bodily restraints, use of PRN or Stat medications for behavior related reasons, or occurrence of an injury. At a minimum, these reviews shall consist of a psychiatric, medical and nursing progress note, including the determination of whether the treatment program is effective.

5. Implementation of Master Treatment Plan

a. A designated psychiatrist shall be responsible for coordinating and implementing each patient's Master Treatment Plan.

b. Treatment plans shall be implemented by qualified staff who are adequately trained in the implementation of the Treatment Plan.

6. Discharge Plan

a. Prior to discharging the patient, MMHI shall ensure that the patient's record is complete, including treatment plan, progress notes, and social history.

b. MMHI shall assess each patient to determine the patient's needs for aftercare services. Based upon this assessment, MMHI shall specify that patient's needs and the criteria for discharge, and develop a discharge plan that meets those aftercare needs. Prior to discharge, appropriately qualified MMHI staff shall ascertain the adequacy of the plan for aftercare services. Appropriate and adequate referrals shall be made to applicable outpatient or residential treatment programs named in the discharge plan to provide reasonable assurance of continued and appropriate after care consistent with T.C.A. § 33-1-202 and 208 and with 42 U.S.C. §§ 12131-12134.

c. Each patient at MMHI shall have a social worker who has the responsibility of overseeing the development and implementation of the patient's aftercare plan. MMHI/DMHMR shall

take all appropriate/necessary steps to 1) monitor the implementation of the aftercare plan in terms of the availability and/or provision of the services identified in the aftercare plan and 2) review the compliance by providers with their obligations under the aftercare plan and other contracts for services and shall take appropriate action if those obligations are not being met.

d. No patient will be discharged from MMHI until a determination is made by an appropriate and qualified physician that the patient is appropriate for discharge.

C. NON-PSYCHIATRIC MEDICAL CARE

All patients shall be afforded adequate medical care. To this effect, Defendants shall:

1. Ensure that each patient admitted to MMHI is given a complete history and physical within 24 hours of admission by qualified personnel. The history and physical shall include, at a minimum, a record of present and past illnesses, traumas, or other significant events which could affect the patient's medical status; current medications; allergies; vaccinations; and substance abuse history. Special attention is to be paid to potentially treatable organic causes of the patient's neuropsychiatric condition, including assessment of a patient's HIV status where clinically indicated.

2. Develop a medical problem list identifying acute and chronic medical problems. Have appropriate medical specialists address any possible correlation between the patient's medical

and psychiatric problems. Develop an appropriate plan to address such correlation. Care should be taken to ensure that the patient's medication regimen does not pose undue risk to his or her physical or mental health. The medical problem list shall be placed in each patient's chart and shall be appropriately updated during the course of the patient's stay at MMHI.

3. Ensure that the medical plan is made an integral part of the patient's Master Treatment Plan.

4. Ensure that each patient has an appropriate and individualized nursing care plan, which is incorporated in the patient's Master Treatment Plan, and that the MMHI nursing staff is adequately trained in the development and implementation of the nursing care plans.

5. Ensure that adequate reviews of both the quality and timeliness of outside consultant services are performed by qualified MMHI staff, and that appropriate followup action is implemented as necessary to correct any identified deficiencies in the consultant services.

6. Ensure that each patient's medical condition is reassessed as appropriate. The intensity of medical monitoring shall reflect the severity and acuity of patient's condition.

7. Investigate, to the extent possible, any known and/or reported deaths, and the circumstances surrounding those deaths, of any MMHI patient who dies either at MMHI or within three months from the time of transfer or discharge from MMHI.