

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF  
AMERICA AND THE STATE OF MARYLAND REGARDING THE  
ROSEWOOD CENTER, OWINGS MILLS, MARYLAND

I. INTRODUCTION

On November 7, 1980, the United States Department of Justice gave notice to the State of Maryland of its intention to investigate alleged unconstitutional conditions at the Rosewood Center, Owings Mills, Maryland, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997.

Throughout the investigation, State officials cooperated in all respects. During the time period in which the United States Department of Justice was conducting its investigation, the State of Maryland voluntarily came forward with plans to improve services for its mentally retarded citizens. Under the leadership of Governor Harry R. Hughes, the State applied for and was granted a Title XIX community-based waiver which will result in improved services for hundreds of mentally retarded people. In addition, the State developed the Rosewood Plan to address concerns about the Rosewood Center raised by the United States Department of Justice.

As a result of the Department's investigation of the Rosewood Center and negotiations stemming from the results of the investigation, both State and Federal officials generally concur regarding the need for as well as the nature and scope

of necessary improvements at the facility. State and Federal officials also concur that the interests of the Rosewood Center's residents can best be served by entering into an agreement for needed improvements as opposed to engaging in adversarial litigation.

This Settlement Agreement represents the concurrence of both parties as to needed remedial steps. In entering into this Settlement Agreement, State officials do not admit to any violation of law nor may this Agreement be used as evidence of liability in any other civil proceeding. This Agreement which shall be legally binding and judicially enforceable is, however, intended to assure certain conditions of care, medical treatment and training at the Rosewood Center and shall be read in light of that purpose.

## II. DEFINITIONS

1. "Physician": An individual who is authorized under the Maryland Medical Practice Act to practice medicine in the State of Maryland.

2. "Psychiatrist": A person who is Board certified or Board eligible for certification as a psychiatrist.

3. "Direct Care Worker": Staff immediately responsible for implementing training programs and providing care to residents.

4. "Qualified Professional": A person competent, whether by education, training, or experience, to make the particular decision at issue.

5. "Bodily Restraints": (1) Any physical or mechanical device used to restrict the movement of a resident or the movement or normal function of any portion of the resident's body, excluding those devices used only to provide support for the achievement of functional body position or proper balance, where such cannot be attained through training programs, and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and (2) any drugs used to control the behavior of a resident, including behavior management drugs as defined herein.

6. "Time Out": Isolating a resident from other people for behavior management purposes.

7. "Behavior Management Drugs": Drugs which are prescribed or administered for the purpose of modifying behavior. Included are the major and minor tranquilizers and antidepressants. Excluded are drugs that may have behavior modifying effects but that are not prescribed or administered for that purpose, such as anticonvulsants.

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

9. "Training": Therapeutic steps and activities, including behavior management, determined by qualified professionals to be appropriate to protect a resident from unreasonable risks to personal safety and to facilitate his or her ability to function free from undue bodily restraint.

10. "State": The Executive Branch of the government of the State of Maryland, specifically including the Governor of the State of Maryland, the State Department of Health and Mental Hygiene, and the Mental Retardation and Developmental Disabilities Administration, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees, or assigns.

### III. GENERAL PRINCIPLES

The State of Maryland and the United States, by and through the Attorney General, agree to the following general principles:

1. With respect to all residents, decisions regarding medical treatment, training and basic self-care skills (e.g., feeding, toileting) shall be made and rendered consistent with the exercise of professional judgment by qualified professionals.

2. All residents must be afforded appropriate care and medical treatment.

3. All residents must be afforded such training as is reasonable to guarantee their constitutional rights to freedom from unreasonable risks of harm to their personal safety and freedom from unreasonable bodily restraints.

4. All residents shall be free from abuse and neglect.

5. Pursuant to §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, no resident shall be deprived of services on the basis of severity of handicap.

6. The physical environment of the Rosewood Center must be maintained so as to afford residents protection from unreasonable risks of harm to their personal safety.

In order to assure compliance with the above-stated general principles, the State will perform the actions required by Sections IV, V, VI, and VII, herein.

#### IV. STAFFING

1. By no later than June 30, 1985, the State shall ensure that a sufficient number of physicians, psychologists, registered nurses, licensed practical nurses, and direct care workers are employed to assure attainment and consistent maintenance of at least the ratios of such staff to the specified categories of resident populations at the Rosewood Center delineated in subparagraphs a - e below. At the State's discretion, the ratios may be attained by hiring additional needed staff or by reducing appropriately the resident population of the Rosewood Center according to professional judgments made by qualified staff to place Rosewood Center residents in community alternatives or other placements which are fully protective of their constitutional rights.

a. Physicians: 1:65

b. Psychologists: Masters level-- 1:20 for residents with behavior management needs due to a demonstrated tendency to physically abuse self or others.

- Ph.D. level-----  
 1:200, but in  
 no event no less  
 than four Ph.D  
 psychologists shall  
 be employed full-time  
 at the Rosewood Cente  
 as long as the  
 population is 500 or  
 more residents.
- c. Registered Nurses: 1:40
- d. Licensed Practical Nurses: 1:10 for residents  
 in the Clinical  
 Services Building.
- e. Direct Care Workers
- (1) For residents: (a) 1:1 on duty on day  
 exhibiting chronically  
 severe behavior management  
 needs as evidenced by a  
 high rate of self injuri- 1:3 on duty on night  
 ous or aggressive actions; shift.  
 and (b) based upon the  
 exercise of qualified pro-  
 fessional judgment, the  
 staffing ratio listed here

is deemed appropriate for the individual resident. Such professional judgment shall be based strictly upon the needs of the individual resident and not upon the availability of staff.

- (2) For residents with: (a) chronic moderate behavior management needs as evidenced by occasional self injurious or aggressive actions; or (b) a high level of physical and/or ambulation needs coupled with a severe level of mental retardation. 1:3 on duty on day and evening shifts; 1:10 on duty on night shift.
- (3) For residents with: (a) chronic disruptive but easily re-directable behaviors and who need assistance in caring for themselves; or (b) moderate physical and/or ambulation needs combined with a severe level of mental retardation. 1:6 on duty on day and evening shifts; 1:15 on duty on night shift.

- (4) For residents who are able to care for themselves with minimal assistance and have no strong medical needs. 1:15 on duty on day, evening and night shifts.

The State shall ensure that sufficient direct care staff are available for residents with acute behavioral or physical needs without a concomitant reduction in the staff ratios contained in e (1)-(4) above for residents with chronic needs.

2. By December 1, 1984, the State shall employ, deploy, or otherwise assign necessary professional staff to evaluate immediately those residents exhibiting frequent and serious self injurious or aggressive behavior and to develop appropriate training programs. The State shall employ, deploy, or otherwise assign appropriate staff to ensure that such training programs are implemented consistent with qualified professional judgments. The implementation of training programs shall begin as soon as possible after December 1, 1984, and shall be completed no later than January 31, 1985. Those residents exhibiting the most frequent and serious self injurious or aggressive behavior shall be given first priority as to the date by which their training programs are implemented during this two month period.

3. By March 31, 1985, the State shall ensure that a sufficient number of psychiatrists are employed or otherwise made available at Rosewood Center to render and implement professional decisions with regard to residents on behavior management drugs



and residents in need of psychiatric evaluations or treatment necessary to avoid undue risks to their personal safety. The parties agree that under the circumstances in this case, at least forty hours per month of psychiatric consultation services shall be provided at the Rosewood Center by January 31, 1985 to assist, as appropriate, with the evaluation and training program development and implementation for residents exhibiting frequent and serious self injurious or aggressive behavior.

4. By December 1, 1984, the State shall ensure sufficient consultation or otherwise provide services at the Rosewood Center by such medical specialists as may be needed to provide adequate routine and emergency medical care to each resident including, but not limited to, neurologists, orthopedists, and dentists.

5. The State shall ensure that direct care workers are not ordinarily used to perform routine support functions and those routine functions of support personnel.

#### V. PLANNING OBJECTIVES

The State agrees to file with the Court as provided in Section VI herein and implement a plan or plans of specific actions which will assure fulfillment of the following objectives:

1. That a sufficient number of qualified professional and direct care staff are on duty at the Rosewood Center to render appropriate care and medical treatment and to implement training programs consistent with qualified professional judgment.

2. That procedures for identifying residents' needs for training and implementing training programs are established and implemented.

3. That the quality of resident care, medical treatment, and training needed to protect residents from unreasonable risks of harm to their personal safety and from unreasonable bodily restraints is consistently maintained in all aspects of the facility's operation.

4. That there is consultation and communication of relevant information between and among personnel regarding residents' care, medical treatment, and training needs.

5. That such recordkeeping systems and procedures are established and implemented with respect to each resident's medical history and course of training so as to ensure that sufficient information relevant to care, medical treatment, and training is maintained and kept available.

6. That behavior management drugs are prescribed and administered pursuant to professional judgment by appropriately qualified professionals. Behavior management drugs shall not be administered for the convenience of staff or as a substitute for prescribed training programs.

7. That restraints and time out are administered only pursuant to the exercise of judgment by a qualified professional. Restraints and time out shall not be used as a form of punishment, for the convenience of staff, or in lieu of a prescribed training program.

8. That such systems and procedures as are necessary to prevent abuse or neglect of residents are established and implemented.

9. That the physical environment of the facility poses no unreasonable risks of harm to the personal safety of its residents.

## VI. PLANS

In order to assure fulfillment of the above-stated objectives, the State will file with the Court no later than November 30, 1984, with respect to the plan(s) referred to in paragraph 1 of this Section and March 31, 1985, with respect to the plan(s) referred to in the remainder of this Section, a plan or plans to be implemented describing the specific actions it will undertake to fulfill its responsibilities pursuant to this Agreement. Such plan(s) will address at least the following areas and items:

1. A description of the strategies that the State intends to implement to fulfill the staffing and resident training requirements set forth in Section IV, paragraphs 2, 3, and 4.

2. A schedule of implementation and a detailed description of the steps the State intends to take to achieve the staffing ratios listed in Section IV, paragraph 1, including the methods which the State will use to exercise professional judgment to determine which residents correspond to the various categories for psychologists, licensed practical nurses, and direct care staffing ratios listed in Section IV, paragraph 1, b, d, and e (1) - (4).

3. A description of procedures designed: (1) to provide regular, periodic professional evaluations of each resident to identify those in need of training programs; and (2) to ensure that a sufficient number of daily training program hours are provided to each resident for whom such training is necessary.

4. A description of systems and procedures designed to ensure that there is consultation and communication of relevant information between and among personnel regarding residents' care, medical treatment and training needs.

5. A description of recordkeeping systems and procedures, including methods of implementation, designed to ensure that necessary information relating to each resident is maintained and will be available in making and evaluating decisions with respect to care, medical treatment and training.

6. A description of the measures which will be undertaken to evaluate residents with physical handicaps and the specific steps which will be undertaken to provide appropriate medical and physical therapy services to prevent contractures, physical degeneration, and inappropriate body growth and deformity.

7. A description of policies and procedures pertaining to the use of drugs, particularly behavior management drugs, including policies and procedures concerning the handling and storage of drugs, monitoring and review of the appropriateness of drugs, drug side effects, drug dosage levels, use of two or more behavior management drugs, telephone orders and PRN prescriptions, and utilization of drugs with a behavior modification program.

8. A description of policies and procedures designed to ensure that bodily restraints and time out are administered only pursuant to the judgment of a qualified professional and not used in lieu of training programs prescribed by a qualified professional.

9. A description of systems and procedures designed to ensure resident freedom from abuse and neglect, including: requirements to report alleged incidents of abuse and neglect; procedures for investigating such allegations; disciplinary rules, procedures, and sanctions to be followed upon any findings of abuse and neglect; adequate staff supervision; and continual maintenance of a sufficient number of grounds security staff.

10. A description of measures to ensure that the quality of resident care necessary to protect residents from unreasonable risks of harm to personal safety and unreasonable bodily restraints is maintained in all aspects of facility operation, and a description of enforcement mechanisms, including disciplinary measures and sanctions, where appropriate, designed to ensure compliance with all policies, rules, and standards of job performance and behavior.

11. A description of plans to survey and ensure that all buildings at the Rosewood Center afford residents, particularly those who are non-ambulatory and non-mobile, protection from unreasonable fire safety risks.

12. The plan or plans shall specify a date or dates by which each shall be implemented in toto but, in no event, no later than June 30, 1985, unless an earlier date is specifically set forth in this Agreement.

VII. CONSTRUCTION AND IMPLEMENTATION

1. The State of Maryland and its Executive agencies and officials shall take all necessary steps and exert all possible efforts to obtain adequate funding from the Maryland Legislature and the state budgetary authorization process to carry out the plan(s) developed pursuant to this Agreement.

2. The United States shall have sixty (60) days from receipt of any plan in which to file a response to the plan with the Court. If the United States objects to any plan, or portion thereof, filed by the State, the adequacy of the contested plan shall be determined by the Court in light of the United States' objections, using the standards set forth herein. Prior to filing any response, State and Federal officials shall meet in a good faith effort to attempt to resolve their differences. If following approval of any plan required herein, State officials determine the need to change or otherwise modify a plan or part thereof, State officials shall notify the Court and United States of any such change. The procedural requirements described in this paragraph shall apply to any such change.

3. The State shall submit progress and compliance reports to the United States and Court. The reports shall be filed monthly beginning December 31, 1984 through May 31, 1985 and shall describe the State's compliance with those plans which have been implemented and progress made toward developing plans which have not yet been implemented. Beginning July 1, 1985, the reports shall be filed on at least a quarterly basis until January 1, 1987, unless otherwise agreed to by the United States and the State, and shall describe the State's compliance with all provisions of this Agreement.

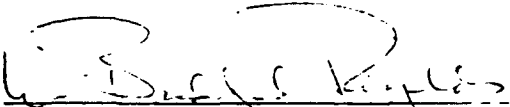
4. The United States and its attorneys and consultants shall have reasonable access to the facilities, records, residents, and employees of the Rosewood Center upon reasonable notice to defendants. Specific terms of such access shall be agreed upon by the United States Department of Justice and the attorneys for the State.

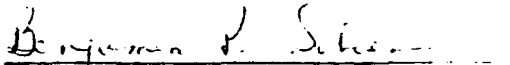
5. The United States Department of Justice will use its best efforts to arrange for those of its consultants who assisted in the Rosewood Center investigation to assist and consult with State officials in their development of a plan

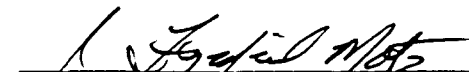
or plans pursuant to this Settlement Agreement should State officials determine that such assistance would be useful.

Dated: January 17, 1985 in Baltimore, Maryland.


FOR THE UNITED STATES


  
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Civil Rights Division  
U.S. Department of Justice

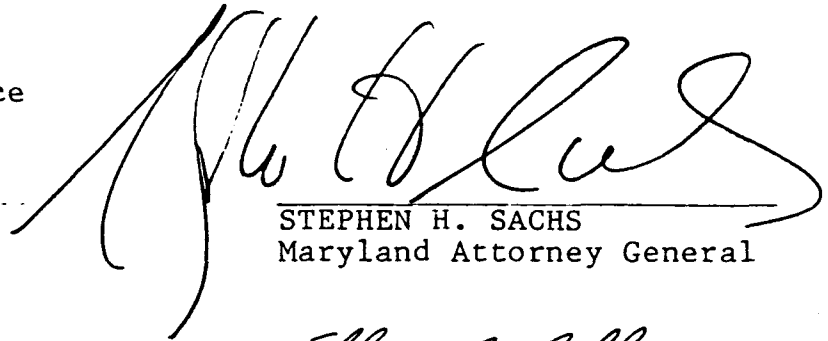
  
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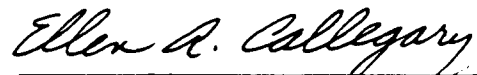
  
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