

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

LYNN KOPE, et al.  
Plaintiffs,

v

Case No. 88-61424-CZ  
Hon. James R. Giddings

THOMAS WATKINS, et al.  
Defendants. /

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Kope v. Watkins



MR-MI-001-002

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CONSENT JUDGMENT

CONSENT JUDGMENT

At a session of said Court, held  
in the Circuit Court for the  
County of Ingham, State of  
Michigan, on the 8th day of  
June, 1993.

PRESENT: The Honorable James R. Giddings  
Circuit Judge

This matter having come before the Court upon the stipulation of the parties hereto, and the Court being fully advised in the premises;

NOW THEREFORE, it is hereby ordered:

Each member of the plaintiff class, subject to the time constraints in section VI.B, of this judgment, and the responsibility declaration in section III.C of this judgment, shall be entitled to the following:

I. Comprehensive Assessments and Plans of Care

A. An annual comprehensive INTERDISCIPLINARY assessment prepared by an interdisciplinary team, consisting of a psychologist, a registered nurse, an occupational therapist, the class member"s case manager, a speech pathologist, and a physician. The class member and his/her guardian shall be invited to participate as members of the interdisciplinary team as well as any other persons who may be added as appropriate, such as a physical therapist. The comprehensive assessment shall address each class member"s physical, mental and psychosocial needs.

B. A plan of service which:

- (1) Is based upon the comprehensive interdisciplinary assessment;
- (2) Is developed by the interdisciplinary team;
- (3) Identifies appropriate programs, services, therapies and interventions which will afford each class member a reasonable opportunity to attain the highest level of individual physical, mental and psychosocial well-being.
- (4) Provides for proper feeding techniques and positioning during meal times, snacks and medication administration, including during enteral feedings.
- (5) Provides for proper positioning sufficient to allow each class member to assume a minimum of four different postural positions over a 24-hour period; changing positions a minimum of once every two hours; including sufficient postural alignment equipment to support each class member. It is recognized that this requirement is a guideline. If a class member, because of independent movement, inability to tolerate specific positions, or for any other reason, does not require four positions, or does not or cannot maintain a specific position for two hours, such divergence from these requirements shall be authorized by the class member's interdisciplinary team and the interdisciplinary team's rationale documented in the class member's clinical record.
- (6) Provides for identification and follow-up of any health- or life-threatening risks.
- (7) Addresses challenging behaviors, including utilizing a motivation assessment scale or functional analysis to develop restraint free programs.
- (8) Provides for appropriate durable medical equipment, including customized wheelchairs, walkers, equipment for appropriate postural alignment, etc.
- (9) Provides for comprehensive physical, dental and nursing assessments, including evaluations of blood levels for persons who receive

psychotropic or anticonvulsant medications, adequate nutrition and/or adequate medical care for frequent vomiting, progressive weight loss, uncontrolled seizures, frequent infections, decubiti, problems with bowel movements, cyanosis, hypotension, hypertension, and gastroesophageal reflux.

- (10) Provides for evaluations of each class member's day program and vocational needs, including an examination of any available appropriate day activity, older adult activity, work activity, sheltered workshop, supported employment program and/or competitive employment program.

The plan of service will be revised annually or more often as the class member's needs dictate.

C. Periodic monitoring of the implementation of each class member's plan of service and assessment of changing needs by a qualified mental retardation professional, as that term is defined in the federal regulations governing intermediate care facilities for the mentally retarded, and by other appropriate professionals as the class member's needs may dictate.

## II. Services and Programs

A. The Department of Mental Health (DMH), its officers, agents, servants, employees and those in active concert or active participation with them, shall assure the services ordered in each plan of service are performed in conformance with the responsibilities set forth in Section I of this Consent Judgment. Defendant DMH shall assure that the following is provided to each

plaintiff class member while such class member resides in Greenbrook Manor or Kalamazoo Total Living Center:

- (1) a safe, sanitary and humane living environment;
- (2) privacy consistent with the care and treatment setting;
- (3) freedom from unnecessary mechanical and/or chemical restraints;
- (4) individually appropriate seizure control programs;
- (5) adequate detection and follow-up for serious and/or life threatening health risks;
- (6) documentation of concerns and issues which should alert home staff and defendants to take preventative or other corrective measures;
- (7) regular and meaningful opportunities for physical exercise, to be out of doors, and for other recreational and social activities, providing that members who cannot move themselves shall have their joints, upper and lower extremities, fingers and toes moved through the normal range of movement as prescribed in the individual plan of service;
- (8) a structured day program which meets each class member's habilitative or vocational needs. Such programming may be provided through a combination of on-site and off-site programs, unless the class member's interdisciplinary team indicates that attendance at such day program is clinically contraindicated. Day programs, for purposes of this section, includes programs such as day activity, work activity, sheltered workshop, older adult activities, supported employment or school.

### III. Placement of Class Members

A. Defendant, DMH, shall not refer or approve for admission, any new admissions to the specialized nursing homes as

long as they continue providing programs for persons who are developmentally disabled.

B. Defendant, DMH, shall use its best efforts to place class members in community residential settings, in accordance with the following schedule:

- (1) class members at Kalamazoo Total Living Center by June 30, 1994;

C. After placement, responsibility for provision of services to the plaintiff class members is the responsibility of the responsible mental health agency in the county in which the classmember lives, except as otherwise indicated in this Consent Judgment. The DMH shall also continue to fulfill its responsibilities under the Mental Health Code, MCL 330.1101, et seq., to endeavor to ensure that adequate and appropriate services are available to plaintiff class members.

D. Defendant, DMH, shall provide plaintiffs with monthly reports of its progress in meeting this schedule and will advise plaintiffs of any obstacles to meeting this schedule.

E. The range of residential options to be considered for each class member shall include independent living, natural home, shared living arrangements, foster home, supported living arrangements and group homes for six or less persons. Class members' needs, desires and preferences will be considered prior to placement. Each class member will be provided individually, appropriate pre-release planning and, within 30 days after placement, a post nursing home discharge plan of service

prepared with the same considerations as the plan of service required in Section I.B of this Consent Judgment, except that representative(s) of the community mental health agency and the provider shall also participate. Placements will be made in accordance with the DMH protocol concerning placement of persons from specialized nursing homes, dated September 21, 1990.

F. For those individual class members who, because of their physical health and medical condition, require continued care in a nursing facility, or state operated Center for Persons with Developmental Disabilities ("STATE CENTER") the DMH shall review each case individually, in consultation with the class member's guardian or other legal representative. If the DMH and the guardian, or other legal representative, are unable to come to agreement on the appropriate placement of such individual, either of the parties or the guardian may request the court's review and resolution of the disagreement pursuant to Section XI of this Consent Judgment. Such class members, if they continue to reside in the nursing facility or State Center, will continue to receive such services as are required by state and federal laws, and the class member's plan of service.

#### IV. Dismissal of Individual Defendants

Defendants Miller, Watkins and Weiner, without liability and with prejudice are dismissed from this litigation.

V. Costs and Fees

Defendant, DMH, shall pay plaintiffs' costs and fees in an amount OF \$150,000.00.

VI. Court Monitor

Twenty-one days after entry of this Consent Judgment by the court, the court monitor's office created by the court in its Preliminary Injunction of October 29, 1990, shall be dissolved and her staff discharged. At that time, the monitor shall submit a final report to the court and the parties, at which time, her final billing shall also be submitted.

VII. DMH Monitoring Unit

A. No later than 21 days from the date of entry of this Consent Judgment the DMH shall establish and, thereafter, maintain a unit within its central office which will monitor compliance with provisions of this Consent Judgment. Staff who are familiar with the needs of persons with developmentally disabled who also have serious physical and health concerns shall be assigned to this unit.

B. The unit shall monitor the services and programs being provided each class member to assure that the



responsibilities established in Sections I, II and III are being provided:

- (1) For all class members residing in Greenbrook or Kalamazoo Total Living Center, the unit shall monitor the provision of services:
- (2) for class members who were placed in community residential settings prior to the entry of this Consent Judgment, the unit shall monitor the provision of services for two years subsequent to the date of the entry of this Consent Judgment;
- (3) for all other class members, the unit shall monitor the provision of services for two years from the date of placement of each class member.

C. The monitoring unit shall determine whether each class member is receiving all of the available services specified in plans of service; whether the needs of class members are being assessed by appropriate professionals annually, and more frequently as the class member's condition warrants; whether an individual plan of service has been prepared for each class member, which addresses the class member's needs, including health care and habilitative services and training; whether the plan of service is implemented on a regular and timely basis; whether the class member's needs and the implementation of the individual plan of service are monitored by a qualified mental retardation professional, as the term is defined by the federal ICF/MR regulations, on a regular basis, and in no event less frequently than once per month; and, whether changes and modifications to the individual plan of service occur as the class member's condition and needs change.

D. As necessary the monitoring unit shall also coordinate the provision of training to care providers serving class members in identification of health and nutritional risks, in appropriate physical management techniques (such as positioning, physical therapy needs, etc.) and in other areas designed to assure that appropriate services will be provided.

E. Consistent with its statutory responsibilities, the DMH shall diligently endeavor to ensure that deficiencies noted by the monitoring unit will be addressed and remedied by the responsible mental health agency within a reasonable period of time.

F. The monitoring unit shall provide an annual report regarding its activities. Any findings made with regard to a specific class member shall be included in the clinical record maintained for that class member. A copy of such report shall be provided to plaintiffs' counsel and to the provider of services.

### VIII. Consultants Agreement/Advisory Group

A. During the term of this Consent Judgment, the DMH will maintain contracts with four consultants in the areas of health care, habilitative/vocational programming, occupational or physical therapy, and speech. The consultants will be individuals mutually agreed upon by the parties and may include employees of the State of Michigan or a community mental health board. In the event that the parties cannot agree on the individuals to be contracted with, either party may seek the court's assistance pursuant to Section XI of this Consent Judgment.

B. The consultants, along with the DMH director of medical services, shall constitute an advisory group which shall provide advice and assistance to the DMH in the implementation of this agreement.

C. The group shall collect and analyze a semi-annual, statistically valid, random sample of class members' clinical records. The group shall submit a semi-annual report which includes an analysis of whether the conditions of this agreement are being satisfied and whether training needs are met by nursing homes and community residential care providers. Such report may contain recommendations as to programs and services for specific individuals or for changes in service delivery systems or procedures. The group may make on-site visits to class members living arrangements, day programs and consult with individuals involved in providing services and programs, as the group deems appropriate.

The group shall review death reports prepared in accordance with Section IX of this Consent Judgment in preparing its report.

D. Any recommendations made by the group (i.e., changes in service delivery systems or procedures) that are not agreed to by the parties shall be resolved utilizing the dispute resolution process set forth in Section XI of this Consent Judgment. Any such recommendation by the group, shall describe the current system or procedure, specify the change proposed, state the facts underlying the recommendation including the names of specific class members who are known by the advisory group to be adversely affected by the current system and the number of class members who would be beneficially impacted by the proposed change, provide an indication of the available resources necessary to implement the proposed change, set out any known response of the responsible mental health agency and/or the department's monitoring unit and the reasons for the group's disagreement with these responses.

#### IX. Deaths

During the term of this Consent Judgment, the DMH shall commence, within five business days of acquiring knowledge of the death of a class member, a review such death for appropriateness of implementation of the class member's plan of service. Within 60 days of the death of the class member, such investigation shall be completed and a written report prepared. A copy of the report shall be provided to plaintiffs' counsel and the DMH

within 90 days of the date of death. If any autopsy report is unavailable within this time period, it will be provided as soon as available. If the family requests an autopsy and the county medical examiner requires payment, the DMH will bear the expense.

X. Monthly Reports

Monthly reports indicating where class members have been placed, and/or transferred, shall be provided to plaintiffs' counsel and the court.

XI. Dispute Resolution Procedures

With regard to any dispute which arises involving the interpretation or implementation of this Consent Judgment, the parties agree to meet within 14 days of notice of the dispute to attempt resolution of the dispute. If the parties cannot reach agreement regarding the dispute, either party may, thereafter, seek review by the court by filing a motion for clarification. After notice and hearing, the court may issue such further order necessary to resolve the dispute.

## XI. Consumer Satisfaction

Plaintiffs will send a short consumer satisfaction survey to class members/guardians every six months for the life of this Consent Judgment to solicit feedback regarding services provided. A copy of such survey, and responses to it, shall be provided to the DMH after its completion, no later than thirty days.

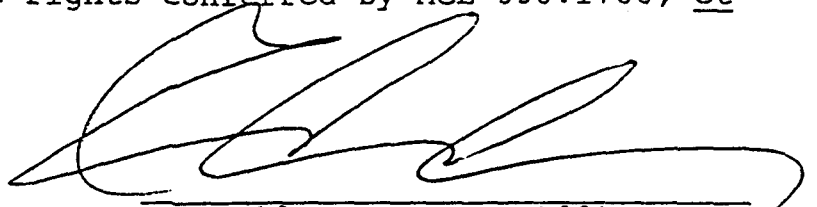
## XII. Miscellaneous

Nothing in this agreement shall alter the obligation of the Department of Mental Health, the nursing homes, community mental health boards, or any other agency or entity providing or regulating services or programs provided to class members from existing requirements of any law. The provisions of this agreement shall be interpreted as supplementing such LAW, not as supplanting it.

The entry of this Consent Judgment resolves all claims, of any kind or nature, which plaintiffs now have, or could have brought against defendants.

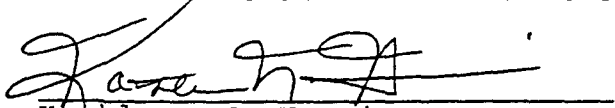
This Consent Judgment is discharged, and the injunction contained herein dissolved, 730 days from the placement of the last class member now residing at Greenbrook Manor or Kalamazoo Total Living Center, in a community residential setting, who was not otherwise placed pursuant to Section III.F of this Consent Judgment or unless otherwise agreed to by the parties.

This Consent Judgment shall not be construed as limiting, in any way, those rights conferred by MCL 330.1700, et seq.

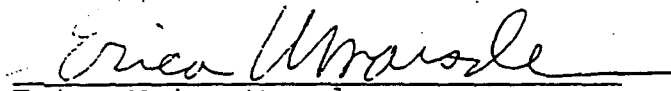


Honorable James R. Gidding  
Circuit Judge


APPROVED AS TO FORM & CONTENT



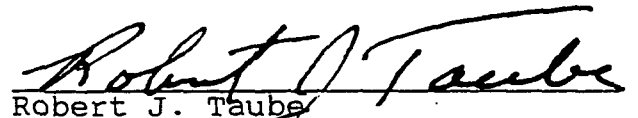
Kathleen N. Harris  
Attorney for Plaintiffs



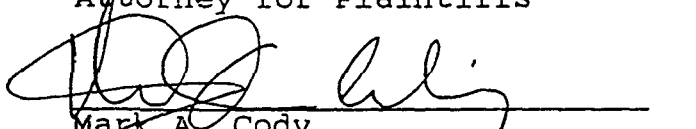
Erica Weiss Marsden  
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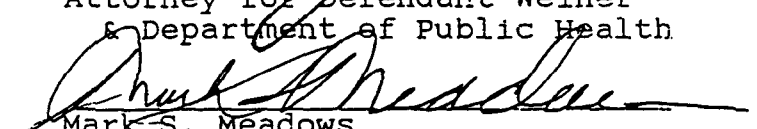
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Mental Health

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