



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

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U.S. v. Pennsylvania



MR-PA-007-001

Honorable Robert Casey
Governor
Commonwealth of Pennsylvania
Governor's Executive Office
Room 225
Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Notice of Findings Regarding Embreeville Center,
42 U.S.C. §1997b(a)(1)

Dear Governor Casey:

On September 11, 1986, we notified the Commonwealth of Pennsylvania, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997, that we were commencing an investigation into conditions at the Embreeville Center in Coatesville, Pennsylvania. As contemplated by the statute, we are writing to inform you of the findings of our investigation. Our investigation identified several conditions at the Embreeville Center ("Embreeville") that deprive residents of their constitutional rights and, accordingly, we set forth the minimum measures we believe are required to remedy these conditions.

In conducting the investigation, attorneys in our Special Litigation Section toured Embreeville with three independent expert consultants on three different occasions. In December 1986, we toured the facility with a physician and a psychologist. The same psychologist returned to Embreeville in April 1987, and in March 1989 a second psychologist and the physician who toured previously conducted a two day survey of the facility. During each of these tours, the experts examined resident records, interviewed facility administrators and staff, observed and spoke with residents, and reviewed numerous documents provided by the facility.

Attorneys and officials with the Department of Public Welfare, and Embreeville staff, provided considerable assistance throughout our investigation, and we join our consultants in expressing our appreciation for their continuing cooperation.

Many of the staff were justifiably proud of the progress that Embreeville has made since our first visit in areas such as computerization of facility information and various improvements in some residential areas. These and other accomplishments have not been overlooked. Despite the efforts of administrators and staff, however, this investigation revealed conditions at Embreeville that deprive residents of their constitutional rights. Institutionalized mentally retarded persons have a constitutional right to adequate medical care. Moreover, the Constitution guarantees such residents a reasonably safe environment, freedom from unreasonable risks of harm and undue bodily restraints, and such training as is necessary to ensure those interests. Youngberg v. Romeo, 457 U.S. 307, 324 (1982).

Set forth below are our findings and recommendations. We will emphasize the following areas which we believe violate the constitutional rights of those confined at Embreeville:

1. Inadequate training programs; and
2. Inappropriate use of psychotropic medication and shortage of registered nurses.

1. Inadequate Training Programs

Behavior training programs are inadequate for Embreeville residents exhibiting maladaptive behaviors which pose unreasonable risks to their personal safety and that of others. Our consultant psychologist concluded that Embreeville's professional staff, particularly psychologists, do not properly assess resident's behavior problems, develop professionally based training programs, insure consistent implementation of such programs, or properly monitor and revise training programs, as necessary. The failure to provide professionally designed training programs to residents who need them in order to eliminate unreasonable risks to their personal safety violates their constitutional rights.

The failure to properly assess and diagnose behavior problems permits residents with such problems to exhibit dangerous behavior absent intervention by qualified professionals. The overburdened Embreeville psychology staff and the few hours per month provided by a consultant psychiatrist are insufficient to address this problem. Many "training" programs in place reflect identical or similar procedures for numerous residents. As such, they fail to reflect the exercise of judgment by a qualified professional as to the individualized needs of particular residents. Moreover, many programs are, in the view of our consultant psychologist, so inadequate as to strengthen the very dangerous behaviors the programs are ostensibly designed to eliminate. In addition, the programs are not consistently implemented. Many direct care staff are ill-

equipped to implement training programs due to lack of experience and knowledge. Indeed, some direct care staff interviewed by our consultant psychologist were unaware of behavior programs they were responsible for implementing with residents under their supervision. Finally, such behavior programs are neither adequately monitored nor revised, as appropriate.

The deficiencies in training programs at Embreeville are linked to inadequate numbers of psychologists, psychiatrists, and direct care staff. The number of staff is inadequate to insure that the facility is able to meet the individual needs of residents for training programs sufficient to protect them from harm. Our consultant psychologist also opined that Embreeville psychologists and direct care staff require additional training in order to permit them to fulfill their assigned responsibilities. The lack of experience in implementing training programs is particularly acute with respect to direct care staff where turnover of staff is a significant problem. In sum, the staff charged with responsibility for the development and implementation of behavior training programs requires strengthening both in terms of numbers and expertise.

2. Inappropriate Use of Psychotropic Medication and Shortage of Registered Nurses

Embreeville residents are being exposed to medical care practices which substantially depart from accepted medical judgment. The facility's use of psychotropic medications and its shortage of registered nurses place the health of residents at significant risk.

In lieu of appropriate behavior training programs discussed above, staff at Embreeville overuse and misuse psychotropic medication to control the behavior of residents. The percentage of residents being administered psychotropic medications was virtually as high at the time of our second tour of Embreeville as on our first tour. Almost 40 percent of the population is receiving these powerful, mind altering drugs. In addition, polypharmacy, the concurrent use of multiple drugs of the same chemical class, is being utilized without any professionally acceptable justification. Regrettably, a pattern emerged during the course of the investigation that psychotropic medication is being used for the convenience of staff in lieu of training programs. The use of such medications in these circumstances amounts to undue chemical restraint.

The decision making process that precedes the use of psychotropic medication at Embreeville likewise does not comport with generally accepted medical practice. Due to the absence of adequate involvement by psychiatrists, psychologists make many decisions with respect to these medications. While we recognize that it is important to involve all members of a resident's

treatment team as organized at Embreeville in discussions regarding an individual resident's case, for a psychologist to assume the role of a qualified physician is contrary to accepted medical practice. Finally, our medical consultant noted numerous resident records where there is no justification of the use of psychotropic drugs noted in the record.

A severe shortage of registered nurses at Embreeville compromises the delivery of adequate medical care at the facility. Indeed, the shortage precludes the delivery of basic nursing services. For example, our medical consultant noted that vital observations are not being made, medication errors are occurring at an unacceptable level, medication orders are not being transcribed correctly resulting in further medication errors, and mistakes in nursing procedures are commonplace. Moreover, the coordination and consultation between nurses and other health care professionals is so deficient that adequate medical care is seriously jeopardized. Our medical consultant noted instances where medical recommendations had not been implemented due to conflicting views among staff as to who had responsibility for performing the relevant task. Our medical consultant also noted the absence of clear notes regarding the causes of various serious injuries, including fractures. Finally, the shortage of registered nurses has caused facility administrators to transfer responsibility for the development of nursing care plans to licensed practical nurses -- an assignment beyond the expertise of these individuals. In sum, nursing shortages at Embreeville place residents at undue risk of harm.

Proposed Remedies

On each of our expert tours, we were impressed by the sincerity and dedication of many staff at the Embreeville Center. Nevertheless, the conditions noted amount to a pattern and practice of systemic deficiencies that deprive residents of their constitutional rights.

To rectify the deficiencies at Embreeville and to ensure that constitutionally adequate conditions are maintained thereafter, we propose to enter into a legally binding and judicially enforceable agreement with the Commonwealth of Pennsylvania. We believe a negotiated agreement is preferable to litigation both in terms of conserving federal and state resources and ensuring the speediest relief to Embreeville residents. The agreement we envision would provide, at a minimum, the following remedies:

1. Training programs must be designed and implemented pursuant to professional judgment in order to reduce or eliminate unreasonable risks to residents' personal safety and/or the need for undue bodily or chemical restraint.

2. A sufficient number of qualified direct care and professional staff, and registered nurses in particular, must be hired, trained, and deployed to provide necessary care, to monitor residents, and to implement, and make professional judgments regarding, the training programs.
3. Psychotropic medications must be prescribed and administered pursuant to professional judgment and must not be used in lieu of appropriate training or for the convenience of staff.
4. A system must be established to insure consultation and communication of relevant information between and among personnel regarding residents' care, medical needs, and training programs.

Information about federal financial assistance which may be available to assist with the remediation process can be obtained through the United States Department of Health and Human Services Regional Office, Office of the Regional Director, Linda Z. Marston (215-596-6492) and through the United States Department of Education by contacting the individuals listed in the enclosed information guide.

Attorneys from this office will be contacting counsel for the Department of Public Welfare shortly to arrange for a meeting to discuss this matter in greater detail. If you have any questions regarding the case prior to that time, do not hesitate to contact Arthur E. Peabody, Jr., Chief of the Special Litigation Section (202-272-6060). Our goal is to resolve this investigation in a reasonable manner and in the spirit of cooperation intended by the Civil Rights of Institutionalized Persons Act. We look forward to working with state officials toward that end.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Honorable Ernest D. Preate, Jr.
Attorney General
Commonwealth of Pennsylvania

Mr. John F. White, Jr.
Secretary, Department of Public Welfare

~~Mr.~~ John A. Kane, Esquire
Chief Counsel, Department of Public Welfare

Ms. Marguerite Conley
Director, Embreeville Center

Mr. James J. West
United States Attorney
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