

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

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UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF TENNESSEE, et al.,)
)
 Defendants.)
)
 PEOPLE FIRST OF TENNESSEE,)
 on behalf of its members,)
)
 and)
)
 PARENT-GUARDIAN ASSOCIATION)
 OF ARLINGTON DEVELOPMENTAL)
 CENTER,)
)
 Intervenors.)

U.S. DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

Civil Action
NO. 92-2062 M1/A

U.S. v. Tennessee



MR-TN-003-013

CERTIFIED TRUE COPY
ROBERT R. DI TROLIO
U.S. DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

BY *F. Herman*
DEPUTY CLERK

STIPULATION AND ORDER

On December 15, 1995, the United States filed its Fourth Motion for Contempt based upon Defendants' failure to comply with the Remedial Order and subsequent Court orders. The United States' Motion was based, in part, on the Monitor's Second Semi-Annual Compliance Report. The United States filed a supplemental memorandum in support of its Motion on June 14, 1996, that referenced the Monitor's most recent Third Semi-Annual Compliance Report. The Court set a hearing on the United States' Motion for June 21, 1996. In order to avoid the costs associated with

This document entered on docket sheet in compliance with Rule 55 and/or 32 (b) FRCP on 6/26/96.

litigation, the parties hereby agree to the following Stipulation and Order, if approved and so ordered by this Court.

I. Defendants hereby acknowledge that they were in contempt as to the areas of non-compliance identified in the Second Compliance Report, except Section XIV (Admissions and Placement).

II. In lieu of sanctions for contempt, Defendants agree to the following:

A. Development of Three Plans

1. Defendants shall develop three comprehensive plans: a plan for institutional compliance; a plan for institutional phase-down; and a community placement and development plan. The plans must be approved by the Monitor and the Court. The parties will have the opportunity to comment on the draft plans and, if a party objects to a final plan submitted to the Court, the party may file objections with the Court. Defendants will retain consultants with expertise in drafting compliance plans of this nature to assist Defendants in drafting these plans. The parties may submit to Defendants recommendations of consultants to assist Defendants in developing these plans, and the Defendants shall select the consultants, subject to the approval of the Monitor. A completed draft of the institutional compliance plan shall be submitted to the Monitor and the parties by September 1, 1996; a completed draft of the institutional phase-down shall be submitted to the Monitor and the parties by October 1, 1996; and a completed draft of the community placement and development plan shall be submitted to the Monitor and the parties by November 15, 1996. These dates may be changed if the parties and the Monitor agree. The parties shall submit comments on the plans within 10 days of receiving them. A final version of each plan shall be reviewed and approved or rejected by the Monitor within 10 days of

the Monitor receiving the parties' comments. If approved, the plan will be sent to the Court for final approval. Any party objecting to the plan shall have 10 days after it is sent to the Court to file any objections.

2. The plans shall address, at a minimum, the requirements of the Remedial Order and the other court orders. In addition, the institutional compliance plan shall contain, at a minimum, the following essential elements: special monitoring for citizens who are behaviorally and medically at risk; survey of citizen needs; necessary staff and staff training; provision of specialized services; quality assurance; use of consultants; and address those elements identified by the Monitor in her April 1, 1996 Response to the Parties' Comments Regarding Defendants' Proposed Milestones (Monitor's April 1, 1996 Response). The institutional phase-down plan shall contain, at a minimum, provisions sufficient to address the issues relevant to the downsizing identified in the Monitor's April 1, 1996 Response. The community placement and development plan shall contain, at a minimum, the following essential elements: all citizens shall be evaluated by competent professionals who are members of the IDT for the appropriateness of community placement, and evaluations by consultants independent of the Department of Mental Health and Mental Retardation shall be conducted for those individuals for whom the IDT does not recommend community placement, and collectively these evaluations will form the basis for each citizen's individualized plans which will be implemented by Defendants in a manner consistent with applicable federal law and federal funding requirements; citizens who are known or suspected of having been abused or repeatedly injured shall receive consideration for community placement on a priority basis; at least one additional employee shall be hired immediately to work full-time

coordinating community placement and development; Defendants will retain and utilize additional qualified consultants in the area of community placement; Defendants will implement a well-defined, effective quality assurance and monitoring system to monitor the placements after they have been made to ensure that the placements are meeting the needs of the individuals placed; and address those elements identified in the Monitor's April 1, 1996 Response. These essential elements of each plan and other significant provisions of the plans shall be accomplished by dates certain established in the plans and shall be enforceable by the Court. Upon the Court's approval of the plans, the time frames for implementation in the plans will supplant the deadlines in the previous Court orders (except for the deadlines associated with the 25 critical provisions of the Remedial Order referred to in Section B of this document and with the provisions of the Emergency Order/Preliminary Injunction of July 21, 1995) and will be enforceable. Detailed strategy components within the plans may be changed by Defendants as necessary and appropriate, after opportunity for comment by the parties, if approved by the Monitor.

B. Automatic Sanctions

1. The Monitor, after consultation with the parties, has identified 30 critical areas of non-compliance (Attachment A) based upon the Third Semi-Annual Review as potential provisions for automatic sanctions. Within five days of the entry of this Stipulation and Order by the Court, Defendants may choose five of these provisions to strike from the list. If, at the time of the Monitor's Fourth Semi-Annual Review, the Monitor finds that Defendants still are not in compliance with any one of these 25 provisions, Defendants shall pay automatic sanctions of \$1,000 a day for each provision with which they are found not in compliance until the date upon

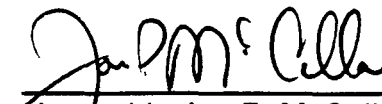
which they come into compliance, as determined by the Court. Automatic sanction fines for these 25 provisions under this Stipulation and Order are limited to an annual total of two million dollars. If this annual cap is reached for these provisions, the parties may seek the Court's approval to have the cap increased upon a showing that the Defendants are in contempt with respect to any of these 25 provisions.

2. In order to ensure that Defendants have notice of continuing deficiencies, the Monitor will file with the parties and the Court her final conclusions with regard to these 25 provisions within 15 days of the last day of her tours. The Monitor's findings regarding these provisions and the imposition of these automatic fines are not contestable. The automatic fines begin upon notification by the Monitor of Defendants' non-compliance with any of these 25 provisions for which they are being fined and continue until Defendants come into compliance with the provisions for which they are being fined. Defendants will have an opportunity to demonstrate compliance with those provisions for which the Monitor found them not in compliance.

III. The parties agree that no motion for contempt shall be filed based upon the Monitor's recent Third Semi-Annual Compliance Report.

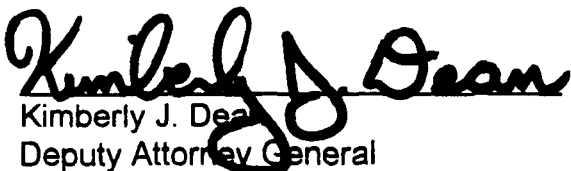
IV. Defendants agree to immediately withdraw all current appeals.

DONE and ORDERED this 24 day of June, 1996 at Memphis, Tennessee.

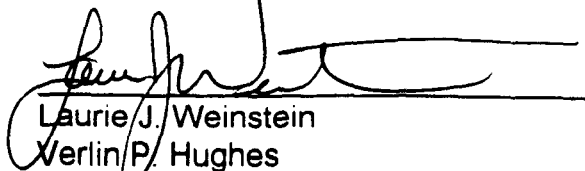


Honorable Jon P. McCalla
U.S. DISTRICT COURT JUDGE
WESTERN DISTRICT OF TENNESSEE

FOR THE STATE OF TENNESSEE:


Kimberly J. Dean
Deputy Attorney General

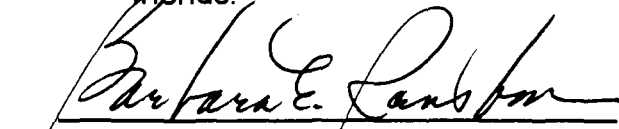
FOR THE UNITED STATES:


Laurie J. Weinstein
Verlin P. Hughes
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Senior Trial Attorneys
Special Litigation Section
U.S. Department of Justice

FOR PARENT-GUARDIAN
ASSOCIATION OF ARLINGTON
DEVELOPMENTAL CENTER:

FOR PEOPLE FIRST OF TENNESSEE
on behalf of its members,
CARL BEARD, SANDRA HOWARD,
HERMAN WALTER RUNIONS,
HARVEY RICHARD WATSON,
KEITH COLLINS, STEVELYN DANIEAL
TUCKER,
by their parents and next
friends:

William F. Sherman*


Judith A. Gran
Jack Derryberry
Barbara E. Ransom

*Counsel for the Parent-Guardian Association has been unable to consult with his client's leadership and is unable to take a position without such consultation.

ATTACHMENT A

MONITOR'S LIST OF CRITICAL AREAS IDENTIFIED FROM THE REMEDIAL ORDER AND PLAN OF CORRECTION

1. I.A. Provision of One-to-One Coverage
2. I.E. Direct Care Staff Trained to Supervise Residents and to Recognize and Report Abuse
3. III.E. Full Implementation of BDPs
4. III.K. Responsibilities of the Chief Psychologist
5. III.L. Behavior Management Committee's Review of Behaviors
6. POC
I.A. Identification of Individuals for Focused Treatment
7. IV.A.2 Replacement Behaviors
8. VI.B.1. Primary Care Physician Evaluate
9. VI.C.1. Problem List and Annual Medical Plan
10. VI.B.2. Determine Need for Specialized Medical Services
11. VI.B.3. Respond to Recommendations of Specialists
12. VI.C.2.(a) Medical Management Feeding Disorders
13. VI.F.3. ATC Levels
14. VI.F.7. Status Epilepticus
15. VII.A. Cease Dangerous Feeding Practices
16. VII.B. Cease Feeding Residents in Unsafe Positions or Faster than Safe
17. VII.D. Provide Adaptive Equipment
18. VII.L.2. Perform a Comprehensive Evaluation
19. VII.L.5. Nutritional Management Plan for Each Resident
20. VII.L.6. Train the Staff on Nutritional Management Plans

ATTACHMENT A

MONITOR'S LIST OF CRITICAL AREAS IDENTIFIED FROM THE REMEDIAL ORDER AND PLAN OF CORRECTION

21. POC
III.C.4. Staff Training by Re-Trained Teams
22. POC
III.D. Nurses' Training by Re-Trained Teams
23. VIII.A-K. Ensure Nurses are Trained (Training Aspect Only)
24. VIII.G. Administer Medications Consistent with Nursing Practices
25. VIII.K. Develop Appropriate Nursing Care Plans
26. POC
II.A. Training Nurses and Direct Care Staff
27. POC
II.B. Individual Case Management
28. X.D. Provide and Utilize Adaptive Equipment (Deliver by Agreed Schedule)
29. X.F. Appropriately Designed Wheelchairs (Deliver by Agreed Schedule)
30. X.I. Acquire Sufficient Therapy Staff