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United States District Court, M.D. Alabama,  
Northern Division.

Ricky WYATT, by and through his aunt and legal  
guardian, Mrs. W.C. Rawlins, Jr., et al., Plaintiffs,  
v.

Virginia ROGERS, as Commissioner of Mental  
Health and Mental Retardation, and the State of  
Alabama Mental Health Officer, et al., Defendants,  
United States of America, Amicus Curiae.

No. Civ.A. 3195–N. | Dec. 9, 1998.

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#### Opinion

#### **ORDER**

THOMPSON, J.

\*1 Currently pending before the court is a joint motion,

filed by the plaintiffs, the defendants, and amicus curiae  
United States of America, on September 25, 1998 (Doc.  
no. 1777), to release the Mary Starke Harper Geriatric  
Psychiatry Center, the S.D. Allen Intermediate Care  
Facility, the Alice M. Kidd Intermediate Care Facility,  
and the Claudette Box Nursing Facility from the 1986  
consent decree and this court's other orders. This motion  
represents another step taken by the parties and amicus  
curiae United States to narrow the remaining issues in this  
litigation and to keep moving toward full compliance with  
the 1986 consent decree and the dismissal of this lawsuit.

Box, Allen, and Kidd are licenced nursing facilities, the  
first at Searcy Hospital in Mount Vernon, Alabama, the  
last two at Bryce Hospital in Tuscaloosa, Alabama. *See*  
*Wyatt v. Rogers*, 985 F.Supp. 1356, 1389 nn. 117–18  
(M.D.Ala.1997) (Thompson, J.). Harper is also located in  
Tuscaloosa. Both Allen and Kidd treat patients with a  
primary diagnosis of mental illness. Box treats  
non-aggressive patients who do not present a threat to  
either themselves or others. Harper is a psychiatric facility  
for inpatient acute and short-term psychiatric treatment.  
All four facilities treat patients who are 65 years or older.

In an effort to bring an end to this lawsuit, which began in  
1970, this court in a memorandum opinion issued on  
December 15, 1997, granted partial relief where the  
defendants had complied with the requirements set in the  
1986 consent decree, *id.* at 1433–34, and urged the parties  
to narrow the issues still in contention. *Id.* at 1427. “The  
court's intent ... was to narrow everyone's focus on  
certain provisions of the consent decree, especially those  
areas in which agreement could be easily reached.” *Wyatt*  
*v. Rogers*, 1998 WL 213779,\*1 (M.D. Ala. April 21,  
1998) (Thompson, J.) (Doc. No. 1695) (citing *Wyatt*, 985  
F.Supp. at 1427). *See also Wyatt v. Rogers*, 1998 WL  
264783,\*1 (M.D.Ala. May 14, 1998) (Thompson, J.) (Doc.  
No. 1717). Since the 1997 memorandum opinion, this  
court has relinquished oversight of additional “*Wyatt*  
standards” enumerated in the consent decree when the  
mental health system as a whole demonstrated sufficient  
compliance with that standard. The court has  
conditionally granted joint motions to release the  
defendants from mental-illness standards 16<sup>1</sup> and 23,<sup>2</sup>  
*Wyatt*, 1998 WL 213779, at \*5–6, and mental-illness  
standard 35.<sup>3</sup> *Wyatt*, 1998 WL 264783,\*1. The court has  
also relinquished oversight of particular institutions when  
they satisfy all (or most) of the Wyatt standards. The  
court conditionally granted the release of North Alabama  
Regional Hospital, the Greil Memorial Psychiatric  
Hospital, and the Thomasville Mental Health  
Rehabilitation Center from the control of the consent  
decree, with the exception of mental-illness standards 1,  
2, and 34, and ¶¶ 5 and 9 of the 1986 consent decree and  
other limitations. *See Wyatt*, 1998 WL 213779,\*5–6.

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\*2 The still extant *Wyatt* mental-illness standards which this court must consider before releasing a psychiatric facility are: (1) (privacy and dignity), (2) (least restrictive conditions), (4) (visitation rights), (6) (freedom from unnecessary medication), (7) (freedom from seclusion/physical restraint), (14) (physical exercise), (15) (outdoors at regular intervals), (19) (humane environment; facilities; etc.), (26) (individualized treatment plan, etc.), (31) (confidentiality of records, etc.), and (34) (transitional treatment post-release). *Wyatt*, 985 F.Supp. at 1404.

The parties now propose that this court release the Harper, Allen, Kidd and Box nursing facilities from its control. There are three considerations which a district court must weigh before allowing such a release. “[F]irst, whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; second, whether retention of judicial control in those aspects of the system is not necessary or practicable to achieve compliance with the decree in other facets of the system; and, third, whether the state defendants have demonstrated their good-faith commitment to the whole of the court’s decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.” *Wyatt*, 985 F.Supp. at 1424.

The straightforward issue presented for this court is whether the parties’ evidence demonstrates that the four facilities have complied in good-faith with the remaining *Wyatt* standards and other provisions in the 1986 consent decree, rendering further court supervision unnecessary. As part of the effort to demonstrate compliance, the plaintiffs’ counsel, an attorney for the Department of Justice, and the United States’s expert conducted a three-day tour of the facilities, in which plaintiffs’ psychiatric expert also participated. The group additionally interviewed facility personnel, the director of the Harper facility, the clinical director and the director of psychiatry at Bryce Hospital, the directors of the Allen, Kidd and Box facilities, and various other staff and patients. Each facility was visited by the group, and several units received multiple visits.

Additionally, the defendants, through an informal discovery procedure, produced relevant documentation to the plaintiffs and the United States. The plaintiffs, the United States, and their experts requested and reviewed numerous documents and records in the course of their tour. The parties have filed these documents with the court, which include: the MI Division Investigations procedures (Exhibit 2(a));<sup>4</sup> the Harper Center special reports (Exhibit 2(b)); a copy of all DMH/MR policies and procedures manuals from the central office and each MI facility (Exhibit 2(c)); a list of all residents who expired at a facility or after being placed in an acutecare facility (Exhibit 2(f)); various advocacy documents

(Exhibit 2(h)); a current census of all patients, by hospital location, as of May 7, 1998 ((Exhibit 4(a)); JCAHO performance reports, grids and selected standards ((Exhibit 4(d)); Incident Report Aggregate Data ((Exhibit 4(g)); Harper, Kidd, Allen and Box special incident reports ((Exhibit 4(i)); Suicide attempt data ((Exhibit 4(v)); Behavior Management Plans for several patients ((Exhibit 4(x)); patient list with seclusion, time out/restraint as part of a Behavior Management Plan ((Exhibit 4(y)); Seclusion/Restraint reports, analysis and patient tracking by Quality Improvement department ((Exhibit 4(ff)); and patient individual records demonstrating steps taken to follow up on allegations of abuse or neglect ((Exhibit 4(gg)).

\*3 After carefully inspecting the facilities and the defendants’ documents, the parties have agreed to release the defendants from compliance with the 1986 consent decree and related orders with regard to Harper, Allen, Kidd and Box. The parties further agree that no state-operated nursing home will be expanded in order to accomplish any current or future long-term bed reductions at any mental-illness facility operated by the Department of Mental Health and Mental Retardation.

Based upon a careful review of the evidence submitted, the court finds that the four facilities are now in substantial compliance with the 1986 consent decree and related orders, and will grant the joint motion to release the facilities. As the court explained in its order entered April 21, 1997, neither notice to the class nor a fairness hearing is warranted to resolve this joint motion. The court reiterates its conclusion that given the number and frequency of future joint motions, notice to the class might only confuse the members of the class, as well as depress their interests. *Wyatt*, 1998 WL 213779, at \*5.

It is therefore ORDERED as follows:

- (1) The joint motion, filed September 25, 1998 (Doc. no. 1777), by the plaintiffs, the defendants, and amicus curiae United States, to release the Mary Starke Harper Geriatric Psychiatry Center, the S .D. Allen Intermediate Care Facility, the Alice M. Kidd Intermediate Care Facility, and the Claudette Box Nursing Facility from the 1986 consent decree and this court’s orders, is granted.
- (2) The defendants are released as to the Mary Starke Harper Geriatric Psychiatry Center, the S.D. Allen Intermediate Care Facility, the Alice M. Kidd Intermediate Care Facility, and the Claudette Box Nursing Facility.
- (3) The defendants and their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this order, are each ENJOINED and

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RESTRAINED from expanding any of these four state-operated nursing homes in order to accomplish any current or future long-term bed reductions at any mental-illness facility operated by the Department of Mental Health and Mental Retardation.

Mental Health and Mental Retardation from creating new state-operated nursing homes or expanding any existing state-operated nursing homes.

(4) Nothing in this order prohibits the Department of

Footnotes

- 1 *Wyatt* standard 16 provides that patients shall have an opportunity for religious worship.
- 2 *Wyatt* standard 23 mandates supervision of staff and patients by a Qualified Mental Health Professional.
- 3 *Wyatt* standard 35 requires that a patient and his or her family, guardian or next-of-friend shall receive written notice in understandable language of the *Wyatt* standards upon admission.
- 4 The exhibits listed are attached to the defendants' Notice of Filing of Evidentiary Record, filed on October 27, 1998, (Doc. No. 1785).