



MH-NY-002-003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV-93 4807

UNITED STATES OF AMERICA,
Plaintiff,

SPATT, J.

- against -

Civil Action
No.

STATE OF NEW YORK; MARIO M. CUOMO,
Governor; NEW YORK STATE OFFICE
OF MENTAL HEALTH, Dr. RICHARD C.
SURLES, Commissioner; PEGGY O'NEIL,
Executive Director, Pilgrim Psychiatric
Center,

Defendants.

STIPULATION

I. INTRODUCTION

Plaintiff, the United States of America, and defendants, the State of New York, et al., in order to ensure the protection of the constitutional rights of patients of the Pilgrim Psychiatric Center ("Pilgrim") and to avoid adversarial litigation hereby agree and stipulate, pursuant to Fed. R. Civ. P. 41(a)(2), as follows:

A. This case was filed by the United States of America, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 et seq.

B. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345. Venue is appropriate pursuant to 28 U.S.C. § 1391(b).

ORIGINAL

C. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a and has satisfied all prerequisites for the initiation of a civil action prescribed by that statute.

D. The Defendants are the State of New York; the Honorable Mario M. Cuomo, Governor of the State of New York; the New York State Office of Mental Health; Dr. Richard C. Surles, Commissioner; and Peggy O'Neil, Executive Director, Pilgrim Psychiatric Center. All individual defendants are sued in their respective official capacities.

E. The Defendants have authority and responsibility for the operation of Pilgrim and are officers of the Executive Branch of the State of New York.

F. On September 30, 1987, the Attorney General of the United States, by and through the Assistant Attorney General, notified Governor Cuomo of his intent to investigate, pursuant to CRIPA, alleged unconstitutional conditions of confinement at Pilgrim.

G. Following the investigation, on June 9, 1992, the Attorney General of the United States, by and through the Assistant Attorney General, notified Governor Cuomo of the claimed unconstitutional conditions of confinement at Pilgrim and the minimal measures necessary to remedy these conditions, pursuant to 42 U.S.C. § 1997b(a)(1). The parties agree that the confinement, care and treatment of residents at Pilgrim implicate rights secured and protected by the United States Constitution.

H. The purpose of this Stipulation is to ensure constitutional conditions of confinement, care and treatment at Pilgrim, and its provisions shall be construed in a manner consistent with, and to further, that purpose.

I. Defendants do not admit to any violation of law, and this Stipulation may not be used as evidence of liability in any other proceeding.

J. The provisions of this Stipulation are a reasonable, lawful and fundamentally fair resolution of this case.

K. This Stipulation shall be applicable to and binding upon all of the parties, their officers, agents, servants, employees, assigns, and their successors.

II. DEFINITIONS

As used in this Stipulation, the following definitions apply to the terms below:

A. "State": The Executive Branch of the government of the State of New York, specifically including the Governor of New York, the New York Office of Mental Health, the administration of Pilgrim Psychiatric Center, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees, or assigns.

B. "Pilgrim": Pilgrim Psychiatric Center, Long Island, New York.

C. "Physician": A medical doctor lawfully entitled to practice medicine in the State of New York.

D. "Psychiatrist": A physician who is certified by or is eligible for certification by the American Board of Psychiatry and Neurology.

E. "Psychologist": A person who has attained at least a master's degree in the field of psychology.

F. "Direct care worker": Staff immediately responsible for implementing treatment and providing care to residents (Mental Health Therapy Aides).

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

H. "Professional judgment": A decision shall be deemed to be a reasonable exercise of professional judgment unless it can be shown that the decision is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.

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

J. "Stat": A treatment modality ordered on an immediate basis.

K. "Psychotropic medication": Chemical substances used in the treatment of mental illness which exert an effect on the mind and are capable of modifying mental activity or behavior.

L. "Polypharmacy": Concurrent use of two or more psychotropic medications of a single class.

M. "Treatment Plan": A program of therapeutic steps and activities, including psychological and psychiatric services and medications, determined by qualified professionals consistent with professional judgment to be appropriate to protect a patient from unreasonable risks to personal safety and necessary to enable a patient to function free from undue bodily restraint or seclusion and/or to prevent regression or deterioration of skills.

N. "Training program": A program of steps and activities, including behavior management and the teaching of basic self-care skills, determined by qualified professionals consistent with professional judgment to be appropriate to protect a patient from unreasonable risk to personal safety and necessary to enable a patient to function free from undue bodily restraint or seclusion and/or to prevent regression or deterioration of skills.

O. "Office of Mental Health Psychotherapeutic Drug Manual": The Third Edition of the Office of Mental Health Psychotherapeutic Drug Manual, as Revised 1990-1991, and any subsequent additions or revisions to the Manual issued during the pendency of this agreement.

III. MEASURES TO BE TAKEN

A. Protection from Harm.

Upon filing this Stipulation, the State shall take steps to eliminate preventable injuries to patients by taking adequate measures to protect them from harm. These steps shall include, at a minimum, the following actions:

1. Ensuring that there are sufficient numbers of staff, particularly nursing staff and direct care workers, present and on duty on each shift to ensure adequate supervision of patients, to prevent otherwise preventable injuries, and to provide adequate health, care, safety and treatment of each Pilgrim patient. Further, Pilgrim staff shall, at a minimum, conduct a monthly review of accident and/or injury reports to determine if sufficient staff, particularly nursing and direct care staff, are in place to ensure the requirements of this paragraph are satisfied. If a staffing shortfall is identified, Pilgrim shall take those measures necessary to ensure sufficient staff are available to provide adequate care and treatment of Pilgrim patients. The requirements of this Paragraph shall be accomplished without the resort to excessive use of overtime or the excessive temporary reassignment of staff from regularly assigned wards.

2. Taking adequate steps to protect patients who are targets of aggression by other patients.

3. Identifying patients who frequently fall and, for each such patient, developing and implementing protection measures to prevent injuries due to falls.

4. For each patient who sustains frequent injuries, identifying the medical, behavioral, and environmental factors causing such injuries, and devising and implementing a plan to avoid further injuries.

B. Staffing Requirements.

1. Upon filing this Stipulation, the State shall consistently maintain at Pilgrim such qualified staff, including physicians, psychiatrists, psychologists, social workers, and occupational and recreational therapists, in direct patient service positions, necessary to ensure full implementation of the provisions of this Stipulation and compliance with all constitutional standards of care.

2. Within nine months of the filing of this Stipulation, the State shall employ and retain at least one behavioral psychologist to design and implement appropriate treatment, training and programming for patients exhibiting aggressive, self-injurious or destructive behavior, or those patients who are treatment-resistant, suicidal or dually diagnosed. Alternatively, the State may initiate a training program in behavioral techniques to selected Pilgrim psychologists, other appropriate professionals, and direct care staff in order to meet the requirements of this Paragraph.

3. Within six months of the filing of this Stipulation, the State shall employ and retain at least one individual with demonstrated expertise in the area of geriatric medicine and at least one individual with demonstrated expertise in the area of geriatric psychiatry who will be responsible for supervising and coordinating medical and psychiatric services to the geriatric patients at Pilgrim.

C. Development and Implementation of Treatment Plans.

By no later than one year from the filing of this Stipulation, the State shall provide adequate treatment plans and/or training programs to patients at Pilgrim. This shall include, at a minimum, the following actions:

1. Assessment and Diagnosis:

a. Ensuring that each patient at Pilgrim has a current, accurate diagnosis according to the Third Revised Edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM - III) published by the American Psychiatric Association, or such revisions of said manual as may subsequently be issued.

b. Ensuring that each patient's diagnosis is based on professionally developed psychiatric, nursing, medical and social work assessments, as well as psychological and other assessments required by the patient's individual condition and status. Psychological assessments shall be done, at a minimum, in all cases where, (i) a patient appears to have impairment in intellectual or cognitive functioning and neuropsychological testing is indicated in order to make a differential diagnosis; and/or (ii) there is uncertainty about the patient's clinical diagnosis which projective and/or neuropsychological testing might resolve.

c. Ensuring, when warranted, that each patient has appropriate secondary diagnoses, particularly organic brain syndrome and substance abuse.

d. Ensuring that any change in a patient's diagnosis comports with accepted professional standards and the justification for the change in diagnosis is documented in the patient's record.

e. Ensuring that each patient's diagnosis forms a basis for the patient's treatment plan.

2. Developing for each patient an individualized treatment plan and/or training program, consistent with professional judgment, by an interdisciplinary team of professional staff, including psychiatrists, medical physicians, nurses, psychologists, social workers, physical therapists, occupational therapists, and direct care workers, as appropriate. Each treatment plan shall contain at least the following elements:

a. statements describing the nature of the specific problems and needs of the patient;

b. a description of clear, objective, and measurable goals and objectives for each patient, including time-frames for the achievement of each;

c. a delineation of the specific individualized treatment and or training programs to be afforded to each patient, including a schedule(s) for the conduct of such programs and the individual(s) responsible for such treatment;

d. a statement and rationale for the planned course of treatment, including treatment and/or training programs, designed to achieve the goals specified in the plan; and

e. criteria for release and/or discharge.

3. Reviewing and revising each patient's treatment plan and/or training program by qualified professionals when necessary in accordance with professional judgement due to behavioral episodes, use of seclusion or bodily restraints, use of PRN or "stat" medications for behavior-related reasons, or occurrence of an injury, but in no event less than quarterly. Policies and procedures must be developed and implemented to ensure meaningful evaluation of the effectiveness of patient treatment and/or training programs based on pertinent clinical data so that appropriate review and revision of such programs can be made.

4. The treatment and/or training programs shall be consistently implemented by adequately trained staff who are qualified to implement such programs.

D. Medication Practices.

Psychotropic medication shall be prescribed and administered to patients only pursuant to the professional judgment of a qualified professional. Psychotropic medication shall not be used for the convenience of staff, to compensate for inadequate staff, as punishment, or in lieu of professionally developed treatment and/or training programs. This shall include, at a minimum, the following actions, effective with the filing of this Stipulation:

1. Ensuring that psychotropic medications are used only as an integral part of a patient's treatment and/or training program and are not used for periods longer than professionally justifiable;

2. Ensuring that a specific and appropriate psychiatric diagnosis justifies the use of each medication; such justification shall be specified in the patient's medical record;

3. Ensuring that, when medications are used in combination, that such combinations are not known to pose undue health and safety risks to patients.

4. Ensuring that medications are not used in patients where the presence of other medical conditions dictate, in the exercise of professional medical judgement, against the use of a specific medication.

5. Ensuring that:

a. psychotropic drug prescribing and monitoring is undertaken in accordance with clinical principles outlined in Section II of the Office of Mental Health's Psychotherapeutic Drug Manual, attached hereto as Appendix A;

b. polypharmacy is used only when medically indicated and is clinically approved or authorized using the severity scale system set forth in the Psychotherapeutic Drug Manual;

c. prescribing rationales, target symptoms, and patient responses are documented in the patient's clinical record, and is further accompanied by a notation that the use of polypharmacy will not adversely affect the patient's medical condition or other medication regimen;

d. monitoring for compliance with the forementioned practices shall be the responsibility of Pilgrim's Drug Monitoring Committee; and

e. a second concurring opinion is recorded in a patient's record for all drug interactions of Severity Level 1 or 2, as required by the Office of Mental Health Psychotherapeutic Drug Manual.

6. Ensuring that all medications are administered in a manner which does not unduly:

a. sedate or otherwise interfere with the patient's cognitive functioning; or

b. interfere with the patient's ability to participate in programming and other therapies.

7. Ensuring that each patient's medication is not administered in dosages (including PRNs and "stat" orders) that exceed professionally justifiable levels.

8. Ensuring that the minimum effective dose of medication is administered and that the dose is appropriate to achieve therapeutic blood levels.

9. Ensuring that appropriate safeguards are used when "stat" medications are administered, including that such medications:

a. are not used as a means of chemical restraint where less intrusive therapies would be effective;

b. are not used in a manner which exposes patients to the risks associated with using varying medications of "stat" orders; and

c. are documented by both the ordering physician and the responsible nurse in the patient's chart on a timely basis

following their administration, including the reason for their use and the effects of their use.

10. Regularly monitoring each patient receiving psychotropic medication for drug induced side-effects, taking appropriate action to reduce or eliminate such side-effects; and

11. Developing and maintaining a data collection system sufficient to determine for each patient receiving psychotropic medication whether Pilgrim is adhering to the medication practices consistent with the parameters outlined in Section III, ¶D, (1 - 10).

E. Routine, Specialized, and Emergency Medical Care.

All patients shall be afforded adequate medical care. This shall include, at a minimum, the following actions within six months after filing this Stipulation:

1. Ensuring that a patient's medical needs are identified in and addressed as part of the patient's overall treatment plan.

2. Ensuring that all patients have adequate and timely access to necessary diagnostic and treatment services, either on-grounds or at medical facilities outside Pilgrim, as appropriate. Facility administrators shall ensure that appropriate documentation of a patient's physical illness accompanies the transfer of the patient and that, upon return to Pilgrim, the record of the course of treatment afforded the patient returns to Pilgrim with the patient and is immediately made a part of the patient's Pilgrim medical record.

3. With specific regard to Pilgrim's geriatric population, the State shall:

a. Implement and maintain policies and practices to ensure adequate morbidity prevention, and specifically that geriatric patients at risk of developing pneumonia are so identified and vaccinated, as appropriate;

b. Implement and maintain policies and practices to ensure the adequate assessment of the causes of patient agitation and further to ensure that psychotropic medications are used only in conjunction with an appropriate medical evaluation, and that such medications are not used for the convenience of staff or in lieu of less intrusive behavior therapies;

c. Implement and maintain policies and practices to ensure the adequate evaluation of the medical, pharmacological or environmental factors involved in incidents of patient falls and take those measures necessary to eliminate unreasonable risks to patients as a result of falling;

d. Implement and maintain policies and practices to ensure that Pilgrim medical staff are provided in-service training on the specialized medical needs, including medication practices, of a geriatric patient population to ensure that medical staff are trained in current standards of geriatric care; and

e. Implement and maintain policies and practices to ensure that incidents of trauma and/or injuries are adequately evaluated, diagnosed and treated.

4. Ensure that each patient has an appropriate nursing care plan, which is incorporated into the patients' comprehensive treatment plan, and that Pilgrim nursing staff are adequately trained in the assessments, writing, integration and documentation practices necessary to develop and implement nursing care plans.

5. Ensure that policies and practices are developed, implemented, and maintained to adequately track patients with decubiti, or at risk of developing decubiti, that such policies and practices are amended to include patients with stasis ulcers; and that necessary medical and nursing care is provided to such patients.

F. Staff Training.

The State shall ensure that all staff who provide services to Pilgrim patients are adequately trained to fully implement the provisions of this Stipulation by the required dates and are thereafter provided with in-service training on a regular basis.

IV. STATUS REPORTS

A. The State shall provide to the United States quarterly status reports on progress made toward implementation of this Stipulation, beginning with the calendar-quarter reporting period during which this Stipulation is filed. The status reports shall be submitted to the United States no later than four weeks after the end of each reporting period. The status reports shall continue until the parties agree otherwise or until dismissal of this action.

B. Each status report shall include:

1. The patient population for the first day of each month of the quarter and a listing of all professional, nursing, direct care and rehabilitation staff providing patient care in accordance with Section III - ¶(B)(1).

2. A narrative summary of the status of the State's compliance with Section III, Paragraphs A - F, including the steps the State has taken, or intends to take, to meet the requirements thereof.

3. The name and age of every patient who has died during the reporting period, along with the date and cause of death. In addition, any autopsies, death review summaries and investigative findings related to the death will be forwarded with the status report for the calendar quarter in which they become available.

4. The text of any policies and procedures promulgated to achieve the requirements of this Stipulation.

5. All staff training plans developed to implement the requirements of this Stipulation, the frequency with which training has been provided, the duration and content of the training, and the categories and numbers of staff to which it has been provided.

6. A summary of injuries sustained by patients, noting ward and shift of occurrence and minutes of Pilgrim's Incident Review Committee or other such entity, however named, charged with the responsibility of monitoring injuries and taking corrective action.

7. A listing of all patients transferred to acute care hospitals and the reasons for those transfers.

8. A summary of the use of restraint and seclusion, noting ward and shift.

C. Upon written request by the United States, the State shall provide additional information or documents relating to the State's compliance with this Stipulation.

D. Within 30 days of receipt of written questions from the United States relating to the State's compliance with the Stipulation, the State shall provide to the United States specific written answers and any requested documents regarding the State's compliance with requirements of the Stipulation.

E. Nothing in this Stipulation precludes the United States from conducting discovery pursuant to the Federal Rules of Civil Procedure on matters relating to enforcement of or compliance with this Stipulation.

V. ACCESS TO PILGRIM

A. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, patients, and employees of Pilgrim upon reasonable notice to the State for the purpose of ascertaining compliance with this Stipulation. Such access shall continue until this Stipulation is terminated.

B. Representatives of the State, including facility staff and counsel, may be present during tours or inspections of facilities and records.

C. Pilgrim employees may be interviewed by the counsel for the United States or consultants retained by the United States during tours of Pilgrim. At the employee's option, such interviews may be private or conducted in the presence of the representative of the State.

VI. CONSTRUCTION

A. The parties agree that the State may, during the pendency of this Stipulation, modify policies and procedures referred to herein, including the Office of Mental Health Psychotherapeutic Drug manual attached hereto as Appendix A, provided that such revision is consistent with the terms and conditions of this Stipulation. The State shall provide the United States with a copy of any such revisions as they are made.

B. The parties expect that the State shall fully and faithfully implement all provisions of this Stipulation on or before January 1, 1995. This Stipulation shall conclude on January 1, 1995, provided the parties file with the Court a stipulated order of final dismissal.

C. The Court shall retain jurisdiction of this action for all purposes under this Stipulation until the State shall have fully and faithfully implemented all provisions of the Stipulation and until this case is dismissed.

D. The State may move to dismiss this Stipulation at such time as it has fully and faithfully implemented all provisions of this Stipulation and the plans submitted pursuant thereto. The State shall serve any such motion upon the United States which

shall have 60 days to respond. If the State moves to dismiss the stipulation, it shall have the burden of persuading the Court that the requirements of this Stipulation have been fully and faithfully implemented.

E. The parties agree that Plaintiff may move to enforce this Stipulation if it believes that the State has failed to implement any or all the provisions of this Stipulation. The parties agree that prior to any enforcement motion, the parties shall negotiate in good faith in an attempt to resolve those areas of alleged noncompliance.

F. All parties shall bear their own costs, including attorney fees.

Agreed to:

FOR THE STATE OF NEW YORK

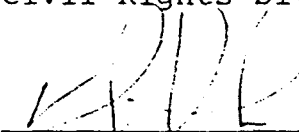
FOR THE UNITED STATES

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Attorney General

JAMES P. TURNER
Acting Assistant Attorney
General
Civil Rights Division

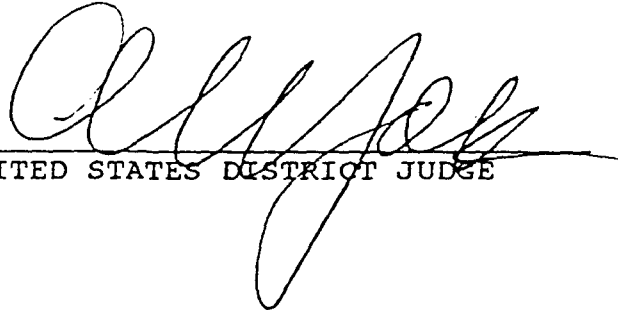
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The above Stipulation is in the general public interest, is a fair and equitable resolution of this action, and is specifically conditioned upon the fulfillment of the terms therein. Jurisdiction is retained until a final Order of Dismissal is granted.

IT IS SO ORDERED this 31st day of OCTOBER, 1993 at
UNIONDALE
Brooklyn, New York.


UNITED STATES DISTRICT JUDGE