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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Judge THOMAS F. HOGAN

UNITED STATES OF AMERICA,
 Plaintiff,
 v.
 THE DISTRICT OF COLUMBIA, et al.,
 Defendants.

Civ. No. 95-948 TFH

FILED

JUL 6 1995

CLERK, U.S. DISTRICT COURT,
DISTRICT OF COLUMBIA

STIPULATED ORDER TO REMEDY THE UNITED STATES' AND
THE OMBUDSMAN'S MOTIONS FOR A PRELIMINARY INJUNCTION

Whereas, the United States of America filed a civil action against the District of Columbia and officials thereof in their official capacities alleging violations under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, in the Defendants' operation of the D.C. Village Nursing Home ("DCV");

Whereas, the Long-Term Care Ombudsman filed a motion to intervene in this action further alleging violations under D.C. Code §§ 32-1401 et seq., in the Defendants' operation of DCV, and the Court granted that motion;

Whereas, the United States and the Ombudsman each filed a motion for a preliminary injunction to remedy alleged violations that allegedly require immediate preliminary relief and the Ombudsman filed a petition for a monitor;

Whereas, the District of Columbia has authority and responsibility for the operation of DCV;

U.S. v. District of Columbia



NH-DC-001-005

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Whereas, the parties entering into this Stipulated Order desire to avoid protracted and adversarial litigation;

Whereas, in entering into this Stipulated Order, the Defendants do not admit any violation of law and the parties agree that this Stipulated Order may not be used as evidence of liability in any other judicial or administrative proceeding;

Whereas, the provisions of this Stipulated Order are a lawful, fair and appropriate resolution of the motions;

Whereas, the parties agree that this Stipulated Order, voluntarily entered into, shall be entered by the United States District Court for the District of Columbia and shall be enforceable as an order of the Court; and

Whereas, the parties agree that this Stipulated Order shall be in effect during the pendency of the litigation, and until a final order in this civil action is issued by the Court, and shall be legally binding and judicially enforceable by the parties and shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

Now, therefore, the parties hereby agree as follows:

A. Medical and Nursing Care

1. Care of Decubitus Ulcers

a. Defendants shall immediately cease the use of Elase and Intrasite gel inappropriately for treatment of decubitus ulcers.

b. Defendants shall immediately ensure that all DCV residents receive appropriate and adequate preventive medical and

nursing care and timely treatment for decubitus ulcers and/or other skin breakdown sufficient to maintain their good health. To this end, Defendants shall assess all residents for risk of skin breakdown within two days from the date of entry of this Stipulated Order, and shall develop and implement within twenty days thereafter, for each resident identified as at risk, a treatment plan fully adequate to prevent skin breakdown and/or to treat existing skin breakdown.

2. Care of Incontinent Residents

Defendants shall immediately ensure that all incontinent DCV residents receive appropriate, adequate and timely nursing care in accordance with generally accepted nursing standards. For residents who have been identified as subject to becoming incontinent, nursing staff shall make rounds to check on their individual condition at least once every two hours. Nursing staff shall take all appropriate steps to care for and clean those residents who need nursing attention due to their incontinence. Nursing staff shall take special care to clean and treat ulcerated areas that may have become soiled due to incontinence.

3. Adequate and Appropriate Nursing Staff

a. Defendants shall ensure that continuity of nursing staff is maintained to the maximum extent feasible during all shifts, seven days a week, on all DCV living units.

b. By no later than January 1, 1996, Defendants shall ensure that there is a sufficient permanent nursing staff at DCV

to ensure that DCV does not routinely rely on contract nurses. Nothing herein prevents the use of contract nurses in emergency situations or to ensure that adequate nursing staff is available to care for DCV residents.

4. Medication Errors

a. Defendants shall ensure, within fifteen days from the date of entry of this Stipulated Order, that all nursing staff on duty are trained in proper medication administration practices, and are adequately inserviced on and/or are sufficiently aware of the individual needs of the residents to whom they are administering medications.

b. Defendants shall ensure, within fifteen days from the date of entry of this Stipulated Order, that all medication errors are recorded, that adequate procedures are established to track all medication errors, that any causes for medication errors are identified and remedied, and that any other needed corrective action is taken in a timely manner to minimize medication error risk to the DCV residents.

B. Measures Needed to Remedy Shortages

1. Food and Drink

Defendants shall immediately ensure that sufficient supplies of nutritious and appropriate food and drink are consistently maintained at DCV and that each resident daily receives adequate, well-balanced, nutritious and appropriate food and drink according to their individual nutritional needs.

2. Medications, Medical Supplies and Equipment

a. Defendants shall ensure that adequate and appropriate supplies of necessary medications, that meet the individual needs of the DCV residents, are consistently maintained at DCV no later than two days from the date of entry of this Stipulated Order.

b. Defendants shall ensure that an adequate and appropriate quantity of medical supplies and equipment, that meet the individual needs of the DCV residents, are available for use, as needed, no later than five days from the date of entry of this Stipulated Order.

c. Defendants shall maintain the plumbing and heating system at DCV to ensure that adequate amounts of hot water, at safe temperatures, are available for use by residents within two days from the date of entry of this Stipulated Order. Defendants shall also ensure that there is sufficient hot water to properly sanitize and clean eating utensils, plates and meal-related items.

3. Personal Care Items

Defendants shall ensure that adequate and appropriate supplies of personal care items, including but not limited to toothbrushes, combs, brushes, soap, lotion and paper towels, are available for use by residents within two days from the date of entry of this Stipulated Order.

C. Payment of Vendors

By no later than forty-five days from the date of entry of this Stipulated Order, Defendants shall pay in full all

outstanding debts to individuals and vendors who have supplied goods and/or provided services to or on behalf of DCV residents. Defendants shall thereafter provide prompt payments in full to such individuals and vendors for goods supplied and/or services rendered no later than forty-five days from the date a legitimate invoice is received by the Defendants. Defendants shall ensure that needed goods and/or services procured for the benefit of the DCV residents shall not be terminated due to Defendants' non-payment or delinquent payment of individuals or vendors.

D. Services for Individuals with Mental Retardation

1. Defendants shall place all DCV residents with mental retardation in appropriate community-based residential and day programs which fully meet their individual needs as identified by appropriate interdisciplinary assessments, no later than October 31, 1995. Defendants shall ensure that the placements are adequate to meet each individual's needs.
2. In the interim, Defendants shall ensure uninterrupted clinical services, habilitation, and other services to all DCV residents with mental retardation. Such services shall remain in effect until all DCV residents with mental retardation are outplaced into appropriate community settings in accordance with the above provision.
3. No individuals with mental retardation shall be admitted to DCV in the future except where this Court specifically approves the proposed admission.

E. Monitor

A Monitor shall be appointed with full authority to oversee the Defendants' compliance with the provisions of this Stipulated Order and in accordance with D.C. Code §§ 32-1401 et seq. The United States shall submit within seven days the name(s) and curricula vitae of recommended candidate(s) for the Monitor for the Court's approval. The Monitor shall submit within thirty days of his/her designation an initial budget for monitoring activities which shall be approved by the Court. Defendants shall bear all costs of the Monitor.

F. Construction and Implementation

1. In construing, implementing and monitoring Defendants' compliance with the terms and provisions of this Stipulated Order, the parties agree to the following:

a. The Defendants shall submit every 30 days compliance reports to the United States, the Ombudsman and the Court, beginning August 15, 1995 and continuing until such time as this Stipulated Order is terminated;

b. Each compliance report shall describe the Defendants' progress towards implementation and compliance with each provision of this Stipulated Order;

c. Each compliance report shall also include:

1. The name and age of every resident who has died during the reporting period, the date and cause of death, and any investigative findings related to the death;

2. A list of all hospitalizations specifying the name of the resident, date of the hospitalization, and the reason for the hospitalization;
3. Statistics on the number of planned and emergency restraints; a list of residents put in emergency restraints specifying name, date and cause precipitating the emergency restraint;
4. A list of any emergency use of psychotropic medication specifying the name of the resident, date, and cause precipitating the emergency use of psychotropic medication;
5. Chronological lists of all incident reports specifying name of residents involved, date, and a brief description of the incident;
6. All final unusual incident reports pertaining to the care and treatment of DCV residents;
7. Names of residents who have been or are planned to be placed into the community, specifying the date of discharge and location of ultimate residence;
- d. All parties shall bear their own costs, including

attorney fees.

G. Protective Order

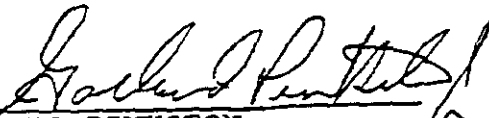
Pursuant to CRIPA, 42 U.S.C. § 1997d, and D.C. Code § 6-3517(b), no persons, be they residents, staff, District employees, or otherwise, reporting conditions which may constitute a violation under those provisions shall be subjected to retaliation in any manner for so reporting.

H. Right of Access


During any investigative tours to assess compliance with this Stipulated Order, the United States and its agents shall have the right to request, inspect, review and copy facility records, resident charts and other documents, conduct interviews with residents and staff outside the presence of supervisory staff, and observe activities normally conducted at DCV. Except where an emergency exists, such investigative tours will be conducted upon reasonable notice.


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CONSENTED TO BY THE UNDERSIGNED:
FOR THE DEFENDANTS:

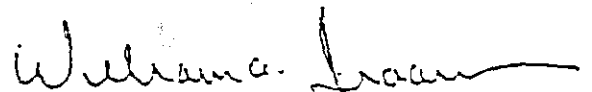

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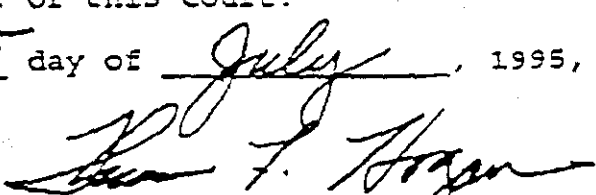

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WHEREFORE, the parties to this action having agreed to the provisions in the Stipulated Order set forth above, and the Court being advised in the premises, this Stipulated Order is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this 10th day of July, 1995,
at Washington, D.C.


Thomas F. Hogan
UNITED STATES DISTRICT JUDGE