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The Honorable ROBERT J. BRYAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

Christi Rust, et al.,

Plaintiffs,

v.

Western State Hospital, et al.,

Defendants.

NO. C00-5749RJB

~~PROPOSED~~ ORDER  
*RJB*

Having reviewed the record and files in this matter and the parties' Joint Motion for Entry of Order and Scheduling of Fairness Hearing, the Court finds that the requested relief is appropriate and necessary in order to ameliorate the allegedly inadequate conditions of care at the Center for Forensic Services (CFS) at Western State Hospital (WSH). Specifically the purpose of this Order is to ensure that Defendants provide the named Plaintiffs and members of the Plaintiff class with:

1. Constitutionally minimally adequate protection from harm as required by the Fourteenth Amendment of the United States Constitution.
2. Constitutionally minimally adequate and timely dental and medical care as required by the Fourteenth Amendment of the United States Constitution.
3. Freedom from unnecessary restraint as required by the Fourteenth Amendment of the United States Constitution.
4. Constitutionally minimally adequate discharge planning as required by the Fourteenth Amendment of the United States Constitution.

~~PROPOSED~~ ORDER

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- 1 5. Privacy as required by the First Amendment of the United States Constitution.
- 2 6. Services, care, and treatment in the most integrated setting as required by Title II of the
- 3 Americans with Disabilities Act.

4 Accordingly, it is hereby **ORDERED** that:

5 Upon entry of this Order, Defendants shall timely commence implementation of the

6 provisions set forth in this Order and in Appendix A attached hereto and incorporated herein.

7 **1. Appointment, Duties, and Compensation of Monitoring Committee**

- 8 a) By April 12, 2001, the parties shall establish a Monitoring Committee to oversee the
- 9 implementation of the provisions set forth in Appendix A. In addition, the Monitoring
- 10 Committee will provide technical assistance to Defendants in the implementation of this
- 11 Order. The specific duties of the Monitoring Committee are set forth below in this section
- 12 in Section (e)(1)-(7).
- 13 b) The Monitoring Committee shall consist of Henry Dlugacz, M.S.W, J.D., and Joel Dvoskin,
- 14 Ph.D., experts in the area of forensic mental health. The Monitoring Committee, may at its
- 15 discretion, consult with Lambert King, M.D., and/or a forensic psychiatrist who has been
- 16 mutually agreed upon by the parties, and with Dr. William Gardner, Ph.D., who is an expert
- 17 in the area of habilitative mental health for individuals with developmental disabilities. The
- 18 parties shall mutually agree upon the consulting forensic psychiatrist no later than April 30,
- 19 2001.
- 20 c) Upon the establishment of the Monitoring Committee, the Monitoring Committee members
- 21 shall determine and inform the parties of what materials they require to conduct the requisite
- 22 oversight as set forth below in this section in Section (e)(1)-(9). Such materials include, but
- 23 are not limited to, any census data, relevant WSH and CFS policies, medical records and
- 24 incident or security reports regarding the class members, as requested by the Monitoring
- 25 Committee.
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- 1 d) The Monitoring Committee shall provide consultation to Defendants in development of the  
2 Risk Assessment Tool (RAT) described in Section A(1)(a) of Appendix A. The RAT will  
3 be implemented upon approval by the Monitoring Committee.
- 4 e) For a period of eighteen months following the implementation of the RAT the Monitoring  
5 Committee shall:
- 6 1. Monitor the implementation and utilization of the RAT as set forth and described in  
7 Section A(1)(a) of Appendix A and oversee the training for evaluators on the use of the  
8 RAT as set forth in Section A(1)(b) of Appendix A.
  - 9 2. Monitor the implementation of policies and protocols that promote the safety of patients  
10 residing on the co-ed evaluation and competency restoration ward that are developed as  
11 set forth in Section A(2)(e) of Appendix A.
  - 12 3. Monitor the implementation of policies set forth in Section A(3)(d) of Appendix A to  
13 promote the safety of vulnerable male patients described in Section A(3)(b) of Appendix  
14 A and other patients identified as vulnerable as a result of the RAT described in Section  
15 A(1)(a)-(e) of Appendix A.
  - 16 4. Monitor the education of CFS staff as to the policies and procedures for reporting  
17 suspected incidents of abuse and neglect.
  - 18 5. Review CFS data as provided by the Quality Assurance Department at WSH regarding  
19 the use of seclusion and restraints as required by Section D(3) of Appendix A.
  - 20 6. Monitor the implementation of the auditing system, developed by the Pharmacy and  
21 Therapeutic sub-committee of the WSH medical staff, of attending psychiatrist notes of  
22 a statistically significant random sample of CFS patients, in conformity with the  
23 requirements of Section E (7) of Appendix A.
  - 24 7. Monitor the implementation of policies required by Section E(4) of Appendix A  
25 regarding ordering outside medical treatment including acute and emergency services.  
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1 8. Monitor the implementation of the policies required by Section B(1)-(7) of Appendix A  
2 regarding reports of suspected patient abuse and neglect.

3 9. Monitor the implementation of the auditing program for treatment plans as described in  
4 Section K(2) of Appendix A and review an appropriate random sample, as determined  
5 by the Monitoring Committee, of the reports generated by the audit process.

6 f) As part of the Monitoring Committee's oversight of the implementation of this Order, the  
7 Monitoring Committee shall conduct four quarterly scheduled on-site visits to CFS and one  
8 additional visit to occur at the end of the eighteen month period of the Monitoring  
9 Committee's responsibilities as set forth above. The Monitoring Committee shall have the  
10 discretion to visit CFS less frequently.

11 g) The Monitoring Committee shall provide written reports to the Defendants, their counsel,  
12 and Plaintiffs' counsel in this case regarding Defendants' progress in implementation and  
13 compliance with the terms of this Order. The first report shall be provided to the parties  
14 within 90 days of the implementation of the RAT and every 90 days thereafter for the term  
15 of the Monitoring Committee.

16 At the end of the eighteen-month period described in Section 1(e), Defendants shall provide  
17 written self-monitoring reports to Plaintiffs' counsel with regard to compliance with  
18 Appendix A of this Order for a period of three and a half years. The self-monitoring of this  
19 Order will be in accordance with a set of objective criteria that will be developed by the  
20 parties in consultation with the Monitoring Committee. During this self-monitoring period,  
21 WPAS may, at its own expense, retain the Monitoring Committee for additional  
22 consultations.

23 If, at any time during this period of monitoring, Plaintiffs' counsel believes that Defendants  
24 are failing to remain in substantial compliance with Appendix A of this Order, Plaintiffs  
25 may invoke the Dispute Resolution and Enforcement section of this Order.  
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- 1 h) The Monitoring Committee may recommend modifications of certain specific provisions of  
2 this Order and the provisions set forth in Appendix A if the Monitoring Committee is  
3 satisfied that a different procedure or policy would adequately or more appropriately protect  
4 the rights of the Plaintiff class. Upon such recommendation the parties shall meet and  
5 confer to discuss whether the recommendation or recommendations should be adopted. If  
6 the parties agree to adopt these recommendations, the parties shall advise the Court.
- 7 i) Defendants shall bear the reasonable and necessary fees and costs of the Monitoring  
8 Committee, including, but not limited to, costs associated with on-site visits, record review  
9 and telephone conferences. Defendants shall also bear the reasonable and necessary fees  
10 and costs, not to exceed \$25,000, of the forensic physician and forensic psychiatrist  
11 identified in paragraph 1(b) above and of Dr. Gardner.

12 **2. Dispute Resolution and Enforcement of this Order**

- 13 a) If at any time during the monitoring period, which is to include monitoring by the  
14 Monitoring Committee and self-monitoring by the Defendants, Plaintiffs' counsel believes  
15 that Defendants are not substantially in compliance with this Order, Plaintiffs' counsel shall  
16 consult with the Medical Director or Clinical Director and the parties shall make a good  
17 faith attempt to informally and timely resolve the dispute.
- 18 b) If a timely and informal resolution cannot be reached by the parties, the parties shall attend  
19 formal mediation to resolve the issue. Mediation of the disputed matter shall occur within  
20 30 business days of a party's formal written request for mediation, unless otherwise agreed  
21 in writing by the parties or the mediator is unavailable. A formal request for mediation in  
22 the form of a letter shall be submitted by the party requesting mediation. This request shall  
23 be served on all counsel for the parties and each member of the Monitoring Committee and  
24 to the mediator.
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1 The Honorable J. Kelly Arnold shall be appointed as the mediator for any dispute arising out  
2 of this Order. If Judge Arnold is unavailable the parties shall mutually agree upon  
3 alternative mediators. Each party shall bear its own costs associated with mediation.

4 c) If, after participating in good faith at the mediation, no resolution is reached, Plaintiffs may  
5 file a motion with the U.S. District Court in this matter requesting the Court to hold a "show  
6 cause" hearing ordering the Defendants to show cause why they are not substantially in  
7 compliance with this Order. Plaintiffs shall provide the appropriate notice to Defendants'  
8 counsel of such action.

9 d) In the event that Plaintiffs have reasonable cause to believe that there is a risk of imminent  
10 harm to a class member as a result of the Defendants' failure to comply with this Order,  
11 Plaintiffs may proceed directly to the Court and request a show cause hearing without first  
12 going through mediation or may take any other necessary legal action. If such action is  
13 taken while the Monitoring Committee is in effect, Plaintiffs will consult with at least one  
14 member of the Monitoring Committee and the Medical Director to discuss the issue or  
15 issues before filing a motion requesting a show cause hearing. If the Monitoring Committee  
16 is no longer in effect, Plaintiffs will consult with the Medical Director regarding the  
17 situation before Plaintiffs take action. In either case Plaintiffs will provide at least one  
18 business day written notice to Defendants' counsel via facsimile and first class mail.

19 e) In the event that the Court grants Plaintiffs' motion requesting a show cause hearing, the  
20 parties will brief the issues and with the Court's approval, present oral arguments and/or  
21 present evidence at a show cause hearing on the issue of the Defendants' substantial  
22 compliance with this agreement.

23 f) Nothing in this Order shall be deemed to limit:

24 1) the Court's powers of contempt or any other power possessed by this Court;  
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1 2) the ability of any class member to seek relief of any kind to which they would otherwise  
2 be entitled under state or federal law other than claims for injunctive relief adjudicated  
3 in this action;

4 3) the ability of the Washington Protection and Advocacy System (WPAS) to fulfill its  
5 mandate pursuant to the "Protection and Advocacy for Individuals with Mental Illness  
6 (PAIMI) Act," 42 U.S.C. § 10801, et seq. and the regulations promulgated thereto, 42  
7 C.F.R. § 51. WPAS shall have access to all class member records during the pendency  
8 of the monitoring period as described in Section 1(g) of this Order.

9 **3. Remedies/Penalties for Noncompliance with Order**

10 In the event that the Court finds that Defendants have failed to substantially comply with the  
11 terms of this Order, the Court may order any penalty or relief the Court deems legally appropriate.

12 **4. Notice to Class Members**

13 Pursuant to requirements of Fed. R. Civ. P. 23 (d), class members will be notified of this  
14 Order by posting notices where all CFS patients can see them and by newspaper advertisements in  
15 all major newspapers in the relevant geographical areas. In addition, all of the criminal courts,  
16 prosecutor, and public defender offices in the WSH cachement area shall be notified of this Order.  
17 The Court shall determine which party will bear the cost of such notice and which party will be  
18 responsible to ensure that this notice is provided.

19 **5. Fairness Hearing**

20 As required by Fed. R. Civ. P. 23 (e), a fairness hearing shall be held on or before May 31,  
21 2001, to give the opportunity to any class member to contest this Order. Appropriate notice of this  
22 hearing shall be afforded to class members along with the notice of the Order described in  
23 paragraph 4 above.

24 **6. Attorneys' Fees and Costs**

25 Defendants shall reimburse Plaintiffs for reasonable attorneys' fees and costs incurred in  
26 this litigation. Plaintiffs will submit to Defendants a statement of their fees and costs incurred in

1 this litigation by May 16, 2001. Defendants shall have until May 23, 2001 to accept or dispute  
2 Plaintiffs' fees and costs statement. If Defendants disagree with Plaintiffs' statement of fees and  
3 costs, Plaintiffs shall present a fee petition to the Court for decision. Upon entry of an order  
4 awarding attorneys' fees and costs, Defendants shall make full payment of the amount ordered  
5 within a reasonable amount of time, but not before July 7, 2001, or as otherwise agreed upon by the  
6 parties or ordered by the Court.

7 Plaintiffs will not seek an award of attorneys' fees for time spent by their counsel in  
8 mediation or for preparation for mediation related to the enforcement of this Order. However, if the  
9 Plaintiffs are the prevailing party as a result of any show cause hearing or other future litigation in  
10 this case due to Defendants' failure to comply with this Order, Defendants shall reimburse Plaintiffs  
11 for reasonable attorneys' fees and costs incurred resulting from such litigation.

12 7. Approval of this Order and Appendix A attached hereto, as a result of a fairness  
13 hearing required in Fed. R. Civ. P. 23 (e), and described in paragraph 5 above, will constitute a final  
14 settlement of certain requests for relief set forth in Appendix A to Plaintiffs' Motion for Preliminary  
15 Injunction and the corresponding claims in Plaintiffs' Complaint and will finally dispose of those  
16 claims. Plaintiffs' sole remedy for such claims shall be through the enforcement provisions set  
17 forth in Section 3 of this Order.

18 The parties agree that claims contained in certain sections of Appendix A to Plaintiffs'  
19 Motion for Preliminary Injunction and the corresponding claims in Plaintiffs' Complaint have not  
20 been fully resolved and are not dismissed with this Order.

21 The claims that have been resolved and the claims that remain unresolved are listed in  
22 Appendix B attached hereto and incorporated herein by reference.

23 8. The parties agree that this Order will be modified as appropriate in the event that the  
24 unresolved claims set forth in Appendix B are later resolved.

25 9. This Order and Appendix A and B shall be binding on all Defendants and any of  
26 their successors in interests, assigns, agents, and officers.



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DATED this 13 day of April, 2001



ROBERT J. BRYAN  
United States District Judge

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~~(PROPOSED) ORDER~~

**APPENDIX A TO ORDER**

**A. Defendants agree to take the following steps for the purpose of reducing the risk of assaults:**

1. Defendants shall develop and implement a risk assessment tool (RAT) in accordance with the provisions set forth in Sections 1(a)-(e) below.

a. Develop and utilize a RAT utilizing the Monahan research, other professionally accepted sources, and in consultation with the Monitoring Committee. The Defendants will consult with William Gardner, Ph.D., a monitor on the monitoring committee in Allen, et al. v. Western State Hospital, et al. to develop and implement a RAT for patients with developmental disabilities. A risk assessment will be performed on each new patient prior to admission to the Center for Forensic Services (CFS) or by the time of the first treatment conference, which is to occur within 5 days of admission to CFS. The purpose of the RAT is to assess the risk for sexual and physical aggression and risk for victimizing or being victimized. This will be implemented no later than June 30, 2001 and in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the Order.

b. Risk assessments will be performed by professional persons as defined in RCW 10.77.010(17). The Monitoring Committee will be responsible for overseeing the training of the evaluators on the use of the RAT. The Defendants will consult with William Gardner, Ph.D., to train the evaluators to do assessments for patients with developmental disabilities. This policy and practice will be implemented no later than three months from the entry of this Order and in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the Order above.

c. **Current Patients:** Commencing immediately following the development of the RAT and the training of staff, risk assessments will be performed on current patients at the time of their next psychiatric assessment or according to the priority set forth below, whichever is earlier.

The priority of the assessments will be as follows:

**Evaluation and Competency Restoration Patients**

- 1) On all patients who have been reported to abuse another patient within 3 days of such report.
- 2) All males on the co-ed competency restoration ward described in paragraph 2(c) below within two weeks of implementation of the RAT.
- 3) Patients who have a history of assaultive behavior within the last 90 days.
- 4) Other competency patients who have been admitted for more than 90 days, with priority given to male patients by order of date of admission.
- 5) All competency patients who have not previously been assessed will be assessed within two months of the implementation of the RAT.

**Long Term Treatment Patients**

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- 1) On all patients who have been reported to abuse another patient within 3 days of such report.
- 2) All patients on the anniversary date of their psychiatric assessment.
- 3) Patients who have a history of assault within the last 90 days.
- 4) In accordance with the priorities established in (1)-(3) above, CFS will perform at least 15 risk assessments on current long term patients per month until each patient has received an assessment and will use clinical discretion in determining priority of assessments, taking into account the patient's danger to others or potential vulnerability.

d. Each patient will be reassessed periodically in accordance with a process to be developed at the time of establishment of the RAT.

e. Risk assessments on new patients will be performed in accordance with paragraphs 2 and 3 below or at or before the first treatment conference, as set forth in paragraph 1(a) above.

2. Defendants shall take the following additional steps to improve the safety of female CFS patients:

a. All female patients will be screened in jail for risk.

b. Female patients will be evaluated in jail if such evaluation is clinically appropriate. If admission to CFS is necessary, female patients will be given the option to: 1) be admitted to the co-ed ward described in paragraph 2(c) below; 2) be admitted to the all female long term treatment ward described in paragraph 2(d) below as space is available; or 3) remain in jail until a bed on the all female ward is available. These options will be provided by April 12, 2001.

c. CFS will establish an admission and competency restoration ward for all females and male competency restoration patients who have been prescreened using the RAT described in paragraph 1(a) above and determined to present a relatively low risk for male to female assault. No male patients admitted to CFS for the purpose of evaluation will be placed on the female ward described in this paragraph. This ward will be established by April 12, 2001.

d. CFS will establish an all female ward for long term patients with a minimum of 30 beds. At least five beds on this ward will be reserved for evaluation and competency restoration female patients who have been determined by the evaluator to require such placement or who express a preference to be placed on an all female ward and for whom there is no clinical contraindication based upon the risk assessment. This ward will be established by April 12, 2001. Females who have been determined to be predatory towards other females may, at the discretion of the Clinical Director, pursuant to Section 5(a), be assigned to the co-ed evaluation and competency restoration ward where clinically indicated. Notwithstanding the provisions set forth herein, the Clinical or Medical Director shall retain the authority to move a female patient to another ward of Western State Hospital (WSH), if such transfer is necessary for the safety of another patient and clinically indicated and suitable provisions are made for the safety of the female patient being moved.

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e. The Defendants will develop policies and protocols with the consultation of the Monitoring Committee to promote the safety of patients on the ward described in Section 2(c) above. This will be implemented no later than September 30, 2001 and in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the Order.

3. Defendants shall take the following additional steps to improve the safety of male patients at CFS:

a. All male evaluation patients will be screened for dangerousness, clinical appropriateness for admission and the clinical necessity for an inpatient evaluation while the patient is in jail. Defendants will make best efforts to complete the evaluation of all male patients in jail.

b. CFS will adopt and implement a policy setting forth objective criteria for identifying males with certain characteristics that may deem them vulnerable. For example, patients with developmental disabilities or borderline intellectual functioning, patients of advanced aged, patients who are medically fragile, and patients with physical disabilities may be considered vulnerable. This policy and practice will be established and implemented by April 12, 2001.

c. The Defendants will consult with William Gardner, Ph.D., to develop protocols to provide patients with developmental disabilities appropriate behavioral supports.

d. The Defendants will develop policies and protocols with the consultation of the Monitoring Committee to promote the safety of patients described in paragraph 3(b) above and other patients identified as vulnerable as a result of the risk assessment process described in Sections 1(a)-(c) above. These policies and protocols will be implemented no later than September 30, 2001 and in accordance with the provisions relating to the Monitoring Committee as set forth in Section 1 of the Order above.

4. The Clinical Director of CFS will have the responsibility for ensuring compliance with Sections 1-3 above.

5. Defendants shall take the following additional steps to improve the safety for all patients at CFS:

a. *Draft and implement a policy giving the Clinical Director the authority to move patients within a unit. The policy will provide a procedure for a request to be submitted by or on behalf of the patient and for the Clinical Director to exercise his or her clinical judgment as to whether a request should be granted within a reasonable period of time. This will be a WSH policy. This policy will be established and implemented by April 12, 2001.*

b. *Draft a policy to clarify that the Medical Director has the authority to make inter unit transfers regardless of legal status of the patient. This policy will be established and implemented by April 12, 2001.*

6. The above provisions set forth in Sections 1-5 will be incorporated into CFS policies by September 30, 2001.

1 7. The Medical Director of WSH will have the responsibility for ensuring compliance with  
2 Section 5 (a) – (b) above.

3 **B. Defendants agree to take the following steps for the purpose of reducing patient abuse**  
4 **and neglect:**

- 5 1. By May 11, 2001, Defendants will develop and implement a written policy providing as  
6 follows:
- 7 a) All administrative reports of incidents (AROI) will be reviewed by the CFS Clinical  
8 Director.
  - 9 b) Those reports which, in the opinion of the Clinical Director, present credible  
10 allegations of suspected patient abuse or the neglect of a CFS patient, as defined by  
11 WSH Policy No. 3.4.4, will be assigned to a supervisor for investigation pursuant to  
12 the procedures set forth in WSH Personnel Policy No. 545.
  - 13 c) A copy of the AROI, described in paragraph (b) above, and the referral to the  
14 supervisor will be forwarded to the Chief Executive Officer of WSH, Mental Health  
15 Division (MHD), and an audit team of the Administrative Services Division, of the  
16 Management Services Administration (MSA) of the Department of Social and  
17 Health Services (DSHS).
  - 18 d) MSA will review and maintain a database of the AROIs and follow up with MHD to  
19 ensure that an appropriate investigation has occurred.
  - 20 e) The Clinical Director will review the results of the supervisor's investigation and  
21 take appropriate action.
  - 22 f) The WSH CEO will be provided with a copy of the results of the supervisor's  
23 investigation.
  - 24 g) Copies of all AROIs will be sent to WPAS during the pendency of the monitoring  
25 period described in Section 1(g) of the Order.

26 This policy will be implemented in accordance with the provisions relating to the  
Monitoring Committee as set forth in Section 1 of the above Order.

2. All AROIs that contain allegations of patient abuse and neglect, as defined by WSH Policy  
3.4.4, and all security reports involving CFS patients which a) relate to a patient injury of  
unknown origin, b) allege abuse or neglect, or c) relate to probable serious injuries as a  
result of assault or self-injurious behavior will be reviewed on the next business day by the  
Quality Assurance Investigative Team (Team). This Team shall be independent of ward  
staff and include at least one RN, one physician, and an additional member of the quality  
assurance department and a member of the security department.

Based upon its review, the Team will independently investigate incidents that could have  
resulted from neglect or abuse, as defined in WSH Policy No. 3.4.4. Such investigation may  
include an interview and/or an examination of the patient who is the alleged victim,  
interviews with ward staff, or such other investigative actions as deemed appropriate by the  
Team. In the event that the Team concludes that the incident may have constituted abuse or  
neglect, as defined by WSH Policy No. 3.4.4, the Team shall refer the matter to the Clinical  
Director, who shall require a supervisory investigation according to WSH Personnel Policy  
No. 545, if such investigation has not previously been ordered.

The above procedures will be established and implemented by May 12, 2001. This policy  
will be implemented in accordance with the provisions relating to the Monitoring  
Committee as set forth in Section 1 of the above Order.

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3. The Team shall continue to report all incidences of suspected abuse or neglect, as defined by WSH Policy No. 3.4.4, to the appropriate state agencies and law enforcement as required by law. The Team shall also report all instances of failure to report suspected patient abuse and neglect to the appropriate agencies.
  4. By July 12, 2001, Defendants will develop and implement a policy that establishes a procedure for the mandatory reporting of suspected patient abuse and neglect as defined by RCW 74.34 and RCW 71.124. This policy will be applicable to all patients on CFS.
  5. By May 12, 2001, all CFS employees and WSH security personnel will be informed or be reminded of their obligations to report suspected abuse and neglect and informed of the appropriate reporting procedure and will be informed or be reminded that the failure to report is grounds for disciplinary action and will be reported to the appropriate agencies. All new employees will receive this information at the time of orientation and sign an acknowledgment of receipt of this information. All current employees will be asked to review the reporting policy and sign an acknowledgement that they have reviewed and understand the policy annually at the time of their evaluations. Defendants shall take appropriate disciplinary action in accordance with personnel policies against any staff member found to have engaged in abuse and/or neglect of a patient as defined in WSH policy 3.4.4.
  6. By May 12, 2001, each ward station on CFS will have an easily identifiable notebook containing all pertinent policies and forms related to incident reporting and contains an easily understandable summary of procedures that staff are to follow when they obtain information related to allegations of patient abuse or neglect. The Clinical Director will be responsible for ensuring the implementation of this policy.
  7. By May 12, 2001, Defendants will develop and implement a process whereby the Clinical Director of CFS or another licensed clinician at CFS shall conduct two or more unannounced spot checks of CFS patient records each month to ensure that incidents as defined by WSH Policy 3.4.4 have been reported on an AROI. The Clinical Director shall report the results of these spot checks to the Monitoring Committee.
  8. Defendants will develop and implement a WSH policy that defines morbidity and mortality events and sets forth procedures for staff to report such events to the appropriate committee. Defendants will notify professional staff of the procedure for reporting morbidity and mortality events.
  9. The Morbidity and Mortality Committee of WSH will continue to review 100% of patient deaths and 100% of cases in which a patient receives medical care at another hospital facility. By May 12, 2001, Defendants will commission independent evaluations by a non-state employee for each unexpected patient death. Such evaluations will be conducted by a non-psychiatric physician or a psychiatrist as appropriate. The evaluation shall include an analysis of cause of death and any recommendations for changes as appropriate.
  10. During the pendency of the monitoring period, as defined by Section 1(g) of the Order, WPAS will receive notification of the death of any patient on CFS. Defendants shall notify WPAS of any patient deaths on CFS within 7 days of the death.

1 11. By May 12, 2001, Defendants will distribute a written definition of an "adverse drug  
2 reaction" including a specific definition of neuroleptic malignancy syndrome to all  
3 professional staff and promulgate written procedures for reporting such event to the Adverse  
Drug Reaction task group for the pharmacy and therapeutic sub-committee. Professional  
staff will be informed of correct procedures for reporting adverse drug reactions.

4 **C. Defendants agree to take the following steps in order to provide additional physical  
5 space for patients:**

- 6 1. CFS shall remain at the current South Hall location until the new CFS facility opens.
- 7 2. Defendants will relocate civilly committed patients to the Adult Psychiatric Unit (APU) as  
8 security concerns permit. Each relevant patient will be assessed by May 31, 2001 to  
9 determine the propriety of such placement.
- 10 3. Defendants will perform risk assessments on each patient prior to admission to CFS and will  
11 use best efforts to perform all evaluations in the jails unless there is a clinical determination  
12 that the evaluation should take place at CFS.
- 13 4. By May 31, 2001, Defendants will develop and implement a CFS policy setting forth  
14 actions that the Clinical Director must undertake in the event that a ward becomes over  
15 census for more than twelve hours at a time.
- 16 5. Conditional Release patients will not be placed at South Hall prior to the opening of the new  
17 CFS facility. By April 30, 2001, WSH will prepare a list of placement options for  
18 Conditional Release Patients and confer and consult with the Washington Protection and  
19 Advocacy System (WPAS) in selecting an appropriate placement for these patients. If  
20 WPAS is not satisfied with the placement options presented by WSH, WPAS may amend its  
21 Complaint and take any other necessary legal action it deems necessary to address this issue.

16 **D. Defendants agree to take the following steps in order to ensure the safe and  
17 appropriate use of seclusion and restraints:**

- 18 1. WSH and CFS will continue to follow the current Joint Commission on Accreditation of  
19 Hospital Organizations (JCAHO) standards on the use of seclusion and restraints.
- 20 2. WSH and CFS will continue to inform staff of the requirements of the current JCAHO  
21 standards on the use of seclusion and restraints. In addition, WSH and CFS will continue to  
22 provide staff with training regarding these standards.
- 23 3. The Quality Assurance Department of WSH will provide the Monitoring Committee with  
24 data regarding the use of seclusion and restraints at CFS. The type and frequency of this  
25 data will be determined in consultation with the Monitoring Committee.

23 **E. Defendants agree to take the following steps in order to provide minimally  
24 adequate & timely medical and dental care to CFS patients:**

- 25 1. By April 12, 2001, CFS patients will begin to receive their medical exams in examination  
26 rooms at South Hall. After the new facility is opened, CFS patients will receive medical  
exams in examination rooms at the new facility.



- 1 2. Transport staff members have been reassigned and a new directive makes medical transport  
2 a top priority. Transport issues will be minimized in the new building because the new  
building is adjacent to medical facilities.
- 3 3. By June 30, 2001, CFS will inspect all medical equipment to ensure that it is in working  
4 order. Malfunctioning equipment will be repaired or replaced as necessary. Professional  
staff will be trained on procedures for requesting repairs or replacement of equipment.
- 5 4. By April 30, 2001, CFS will formulate and implement clear policies on procedures for  
6 ordering outside medical treatment, including acute and emergency services and staff will be  
trained on these procedures.
- 7 5. Procedures for medication monitoring, including the use of the Abnormal Involuntary  
8 Medication Screening test on admission and at least annually are already in place and will  
continue.
- 9 6. The attending psychiatrists on CFS will review medications every 30 days or more often as  
10 clinically indicated and assess the effectiveness of the medications and any side effects.  
Implementation will be completed by April 12, 2001.
- 11 7. In consultation with the Monitoring Committee, Defendants will develop and implement an  
12 auditing system whereby the Pharmacy and Therapeutic sub-committee shall review the  
attending psychiatrist's notes of a statistically significant random sample of CFS patients.  
13 Such audit shall include review of clinical indication for the prescribed medication,  
effectiveness of prescribed medication, tolerance and side effects of the medication PRN  
14 indications, usage, and appropriateness, the reason for the discontinuation of any  
medication, and the frequency and consistency of examinations of patients by psychiatrists.  
15 The sub-committee shall report the results of its review to the Monitoring Committee and  
the Clinical Director of CFS. This review process is to be implemented within 30 days of  
the adoption of the auditing system described above.
- 16 8. By June 12, 2001, CFS will implement a system for tracking doctor's appointments, dental  
17 appointments, transportation arrangements, whether an appointment is kept, and follow up  
measures that were taken in the event of cancellation. Defendants shall make good faith  
18 efforts to computerize the system in accordance with other information systems' priorities.  
CFS will provide a monthly report to Quality Assurance documenting outside doctor  
19 appointments and dental appointments. Such report will indicate whether appointments  
were kept and, if not kept, the reason for cancellation. The Medical Records Department  
20 will track the timeliness of annual physical exams and report the results to the Clinical  
Director.
- 21 9. By May 12, 2001, Defendants will train CFS staff on correct procedures for requesting  
22 services from the WSH laboratory and outside laboratories, retrieving information about  
completed laboratory work and ensuring that appropriate professional staff receive  
23 laboratory results in a timely manner. Psychiatrists and physicians will be directed to report  
unusual delays to the Clinical Director. The Clinical Director will take appropriate  
24 measures to ensure that results are provided in a timely manner.

25 **G. Defendants agree to take the following steps in order to increase staffing levels :**

- 26 1. Add two additional full-time clinical psychologists.

2. Add two additional full-time ward clerks

By May 12, 2001, Defendants shall advertise the positions listed above. Once a candidate has been selected for a position, employment shall commence within 14-days of the date of hiring or within a reasonable time as requested by the candidate. Defendants shall notify WPAS and the Monitoring Committee when these new positions have been filled and when employment shall commence.

**K. Defendants agree to take the following steps in order to improve treatment plans:**

1. An interdisciplinary treatment team shall meet with the patient to review his or her treatment plan at least every 90 days or more often as clinically necessary to review the patient's progress toward his or her treatment goals, determine whether the patient's treatment needs have changed and/or whether the treatment plan needs modification and if so, how it should be modified so as to meet the patient's treatment needs and help to facilitate the patient's ability to meet his or her treatment goals. The treatment team shall identify treatment that is necessary in order for the patient to progress towards discharge.
2. Within 30 days of hiring or transferring the staff listed in G (1) and (2) above, CFS will implement a computerized treatment plan format on two treatment wards which allows users to determine whether treatment plans are current and allows users to track the patient's progress towards his or her identified treatment goals and objectives. Once the treatment planning process has been developed and successfully implemented on these pilot wards, this process will be expanded to the other two CFS long-term treatment wards with appropriate additional staff.
3. By July 12, 2001, Defendants will develop an auditing system on two treatment wards that provides a computerized tool for assessing whether the treatment plan meets specified criteria for content and format, including whether the plan sets forth measurable criteria for response to treatment. Random samples will be selected from each participating ward at two week intervals and sent to trained auditors from another ward for analysis according to the auditing program. The results of such audit will be reported to the treatment team. Once the audit process has been developed and successfully implemented on these pilot wards, this process will be expanded to the other two CFS long-term treatment wards. This process will be implemented in accordance with the provisions relating to the Monitoring Committee of Section 1 of the above Order.
4. CFS will consult with Dr. Gardner on how to write and implement appropriate treatment plans for competency restoration patients with developmental disabilities or who have borderline intellectual functioning This will be implemented at the next Allen Monitoring Committee visit, currently scheduled for May 2001.
5. CFS will begin to implement a computerized tracking system that tracks class offerings, attendance and level of participation. The tracking system will be implemented on two pilot wards by October 12, 2001.

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L. **The Defendants agree to take the following steps in order provide appropriate therapies and treatment interventions to meet the individual needs of each patient:**

1. By June 12, 2001 CFS will provide admissions patients opportunities to have access to outside areas in the fenced yards and on the porch at South Hall, where such access can be provided without an unreasonable increased safety risk.
2. By June 12, 2001, the adjacent structures to South Hall will be utilized to provide additional program and treatment activities.

M. **The Defendants agree to take the following steps in order to provide improved discharge planning:**

1. The civilly committed patients currently at CFS will be relocated to the APU if it is determined that such placement is not clinically contraindicated. The civilly committed patients will be permitted to earn grounds privileges as clinically indicated.
2. Defendants shall ensure that each patient's treatment plan contains individualized reasonable criteria for recommendation of conditional release to the Court pursuant RCW 10.77.150.
3. Defendants shall review the patient's progress towards meeting the criteria for *recommendation for conditional release at least every 90 days*. *This review can be conducted as part the quarterly treatment plan review*. If it is determined that the patient is not making progress toward conditional release, the treatment team will review whether the conditional release criteria for the patient should be modified and make any necessary modifications.
4. Defendants will ensure that all CFS patients participate in their discharge planning and are aware of the discharge criteria they must meet.
5. Defendants will ensure compliance with the requirements set forth under RCW 10.77.140.
6. Defendants will ensure compliance with the requirements set forth under RCW 10.77.150.

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**APPENDIX B**

**I. ISSUES THAT HAVE BEEN RESOLVED**

**A. COMPLAINT**

**The following Factual Claims referenced by paragraph number in the Complaint have been resolved:**

Paragraphs related to Inadequate Protection from Harm  
5.5 – 5.24

Paragraphs related to Other Patient Abuse  
5.25-5.29

Paragraphs related to Failure to Report and Investigate Allegations of Abuse and Neglect  
5.30-5.34

Paragraphs related to Overcrowding & Census  
5.35 – 5.48

Paragraphs related to Inadequate Staffing  
5.54  
5.56-5.58

Paragraphs related to Psychiatric Care  
5.64 – 5.75

Paragraphs related to Lack of Adequate Treatment  
5.79 as it relates to the involvement of patients in their treatment plans  
5.80-5.82  
5.86  
5.88

Paragraphs related to Inadequate and Untimely Medical Care  
5.89 – 5.105

Paragraphs related to Inadequate and Untimely Dental Care  
5.106-5.112

Paragraphs related to Inadequate Discharge Planning  
5.113 – 5.123

Paragraphs related to Denial of Personal Choice, Dignity, Privacy, and Freedom of Association  
5.125  
5.126 (except with respect to allegations of inadequate staffing)  
5.127

1 **The following Legal Claims referenced by paragraph number in the Complaint have been**  
2 **resolved:**

3 Paragraphs related to Due Process Clause-Fourteenth Amendment

6.2(a) except for the issue of regression of Allen class members

6.2(b)-(c)

6.2(e)

6.2(f)

6.2(g)

6.2(h) (6.2(h) duplicates 6.2(e))

6 Paragraphs related to First Amendment of the United States Constitution

7 6.4(a)

6.5(a)

8 6.5(c)

9 Paragraphs related to Americans with Disabilities Act

6.7(a) – 6.7(d)

10 Paragraphs related to Section 504 of the Rehabilitation Act

11 6.8-6.9

12 **B. APPENDIX A**

13 **The following requests for relief contained in Appendix A of Plaintiffs' Proposed Order for**  
14 **Plaintiffs' Motion for Preliminary Injunction have been resolved:**

15 Paragraphs related to Reducing the Occurrence of Sexual and Physical Assaults

A(1) -A(5)

16 Paragraphs related to Patient Abuse and Neglect

17 B(1)-B(6)

18 Paragraphs related to Increasing Physical Space for Patients at CFS

C(1) – C(2)

19 Paragraphs related to Ensuring the Safe and Appropriate Use of Restraints

20 D(1) – D(3)

21 Paragraphs related to Providing Minimally Adequate Timely Medical and Dental Care to  
22 CFS Patients

E(1)-E(7)

23 All Paragraphs related to Psychiatric Evaluations and Assessments

24 Paragraphs related to Increase Staffing

G(3)(d)

25 G(3)(g)

G(3)(h)

26 Paragraphs related to Improved Treatment Plans

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K(1)-K(4)

Paragraphs related to Discharge Planning  
M(1) – M(5)

**II. ISSUES THAT HAVE NOT BEEN RESOLVED**

**A. COMPLAINT**

**The following Issues and Claims are Not Resolved by entry of the Order filed on March 26, 2001:**

Paragraphs related to Inadequate Staffing

5.49 – 5.53

5.55

5.59-5.63

Paragraphs related to Lack of Adequate Active Treatment

5.76 – 5.88

Paragraph related to Denial of Personal Choice, Dignity, Privacy, and Freedom of Association

5.126 Only with respect to the portion of the claim that relates to the issue of staffing.

**The following Legal Claims referenced by paragraph in the Complaint have not been resolved.**

Paragraphs related to Due Process Clause-Fourteenth Amendment

6.1

6.2(a) as to regression in Allen class members

6.2(d)

Paragraphs related to First Amendment of the United States Constitution

6.3

6.4(b)

6.5(b)

Paragraphs related to Americans with Disabilities Act

6.6

6.7(e) – 6.7(g)

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**B. APPENDIX A**

**The following requests for relief contained in Appendix A of Plaintiffs' Proposed Order for Plaintiffs' Motion for Preliminary Injunction have not been resolved:**

Paragraphs related to Providing Minimally Adequate & Timely Medical and Dental Care to CFS Patients  
E(8)

Paragraphs related to Increasing Staffing  
G(1) – G(2)  
G(3)(a) – (c)  
G(3)(e) & (f)  
G(4) – G(5)

Paragraphs related to Required Credentials of Newly Hired Staff  
H(1) – H(3)

Enhancing Supervision of Staff

Paragraphs related to Developing an Adequate System for Recruitment, Retention, and Training of Qualified Staff  
J(1) – J(5)

Paragraphs related to Appropriate Therapies and Treatment Interventions to Meet the Individual Needs of Each Patient  
L(1) – L(4)

ec

United States District Court  
for the  
Western District of Washington  
April 13, 2001

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:00-cv-05749

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