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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA  
BY \_\_\_\_\_ DEPUTY

99-CV-05018-ORD

The Honorable Robert B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHARON ALLEN, *et al.*

No. C99-5018-RBL

Plaintiffs,

~~(PROPOSED)~~ ORDER AND  
PARTIAL SETTLEMENT  
AGREEMENT

v.

WESTERN STATE HOSPITAL, *et al*

Defendants.

This matter is before the Court on the parties Joint Motion and Entry of Order Scheduling Fairness Hearing in the above-captioned action. The Court has reviewed the Motion, including attachments thereto, and the pleadings and other documents on file herein. Being fully advised, the Court hereby orders as follows:

**I. PURPOSE OF ORDER:**

A. The purpose of this settlement agreement is to address, without defining constitutional standards or statutory requirements, the protection of the Constitutional rights to minimally adequate care and protection from harm, and statutory rights to reasonable modifications to treatment of *Allen* class members at Western State Hospital ("WSH") based upon their cognitive deficits.

1           **B.**       Specifically, the settlement addresses: overall conditions of care; protection  
2 from harm; treatment and habilitation; behavior management and freedom from unnecessary  
3 restraint; census of the Habilitative Mental Health Unit ("HMH") Unit; vocational training and  
4 employment opportunities; personal choice; dignity and freedom of association; discharge  
5 planning; patient regression; and access to community-based services.

6           **C.**       The parties agree that this Partial Settlement and Order does not affect the stay  
7 as previously ordered in the Agreed Order on Joint Motion to Stay Proceedings approved and  
8 entered by the Court on December 2, 1999, as it relates to all claims regarding the services  
9 provided in the community to the plaintiffs and the plaintiff class.

10       **II. ENFORCEABILITY, DISPUTE RESOLUTION, AND NON-WAIVER OF**  
11       **CLAIMS AND DEFENSES**

12       **A.       The attached Settlement Agreement regarding WSH is enforceable as follows:**

13           Sections III A through E and IV below are enforceable subject to the dispute resolution  
14 provisions and requirements set forth below in paragraphs B 1-5 of this Section.

15       **B.       Western State Hospital Dispute Resolution:**

16           1.       If at any time during the monitoring period, plaintiffs' counsel believes that  
17 defendants are not substantially in compliance with this Order, plaintiffs' counsel shall contact  
18 defendant's counsel to request a consultation with the medical director or program manager of  
19 the rehabilitative mental health unit at WSH. The parties shall make a good faith attempt to  
20 informally and timely resolve the dispute. Consultation with the Independent Monitor may be  
21 requested by either party.

22           2.       If a timely and informal resolution cannot be reached by the parties, the parties  
23 shall participate in formal mediation to resolve the issue. Mediation of the disputed matter  
24 shall occur within 30 business days of a party's formal written request for mediation, unless  
25 otherwise agreed in writing by the parties or the mediator is unavailable. A formal request for  
26 mediation in the form of a letter shall be submitted by the party requesting mediation. This

1 request shall be served on all counsel for the parties, the Independent Monitor, and the  
2 mediator.

3       3. The Honorable J. Kelly Arnold shall be appointed as the mediator for any  
4 dispute arising out of this Order. If Judge Arnold is unavailable, the parties shall mutually  
5 agree upon alternative mediators. Each party shall bear its own costs associated with  
6 mediation.

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

12       5. In the event that plaintiffs have reasonable cause to believe that there is a risk of  
13 imminent harm to a class member as a result of the defendants' failure to comply with this  
14 Order, plaintiffs will make a good faith effort to consult with defendants' counsel and the  
15 medical director of WSH to discuss the issue or issues before filing a motion requesting a show  
16 cause hearing. Consultation with the Independent Monitor may be requested by either party, at  
17 the requesting party's expense. If the matter is not resolved, Plaintiffs may proceed directly to  
18 the Court and request a show cause hearing without first going through mediation or may take  
19 any other necessary legal action. Plaintiffs will provide at least one business day written notice  
20 to defendants' counsel via facsimile or e-mail and first class mail prior to initiating court  
21 action.

22       6. In the event that the Court grants plaintiffs' motion requesting a show cause  
23 hearing, the parties will brief the issues and with the Court's approval, present oral arguments  
24 and/or present evidence at a show cause hearing on the issue of defendants' substantial  
25 compliance with this agreement.  
26

1 **C. Nothing in this Order shall be deemed to limit:**

2 1. The Court's powers of contempt or any other power possessed by this Court;

3 2. The ability of any class member to seek relief of any kind to which they would  
4 otherwise be entitled under state or federal law other than the claims for injunctive relief  
5 adjudicated in this action;

6 3. The ability of the Washington Protection and Advocacy System ("WPAS") to  
7 fulfill its federal mandates pursuant to the "Protection and Advocacy for Individuals with  
8 Mental Illness (PAIMI) Act," 42 U.S.C. § 10801, *et seq.* and the regulations promulgated  
9 thereto, 42 C.F.R. § 51 and the "Developmental Disabilities Assistance and Bill of Rights (DD)  
10 Act," 42 U.S.C. § 15041, *et seq.* and the regulations promulgated thereto, 45 C.F.R. § 1386.

11 **D.** By agreeing to continue to stay proceedings and to entry this Order and Partial  
12 Settlement Agreement, defendants have waived no defenses to allegations that they have or  
13 are violating plaintiffs' constitutional or other legal rights, and have admitted no liability  
14 regarding plaintiffs' claims.

15 **E.** By agreeing to continue to stay proceedings and to entry of this Order and Partial  
16 Settlement Agreement, plaintiffs have waived no claims as to allegations that defendants have  
17 or are violating plaintiffs constitutional or other legal rights.

18 **F.** The parties acknowledge, and the Court recognizes, that the Partial Settlement  
19 Agreement set forth herein is a negotiated settlement of disputed claims. This settlement does  
20 not constitute an agreement of the parties as to the constitutional or legal standards applicable  
21 to plaintiffs' claims, and shall not limit any party's right to litigate such standards in future  
22 proceedings.

23 **G.** During the monitoring period WPAS may, at its own expense, consult with the  
24 Independent Monitor.

1 **III. AGREEMENT REGARDING SERVICES AT WESTERN STATE HOSPITAL**

2 **A. Controlling the Census of the Habilitative Mental Health Unit at Western State**  
3 **Hospital (WSH); Adequate Staffing to Provide Care to *Allen* Class Members at**  
4 **WSH.**

5 **1. Eligibility:**

6 Within 180 days of the entry of this Order, defendants shall:

7 a. Identify and prioritize and conduct eligibility re-determination for  
8 individuals whose Division of Developmental Disabilities (“DDD”) eligibility needs to be  
9 clarified in order to proceed with appropriate treatment and/or discharge planning. In the event  
10 that a class member is found ineligible for DDD services, WSH will notify the designated  
11 Regional Support Network liaison for this individual as to this determination and the status of  
12 the individual's readiness for discharge.

13 b. Revise DDD Policy 11.03, *Eligibility Expirations and Reviews*, to  
14 facilitate timely reviews of all class members residing at WSH. In cases in which psychiatric  
15 stability is not relevant to the eligibility re-determination, the re-determination may occur as  
16 soon as possible. When psychiatric stability is relevant to the eligibility re-determination, the  
17 re-determination may occur when the treating psychiatrist determines the individual to be  
18 sufficiently stable for assessment.

19 **2. Notification:**

20 Within 90 days of the entry this Order:

21 a. The Mental Health Division (“MHD”) will notify community hospitals  
22 that have certified evaluation and treatment beds, and free-standing Evaluation and Treatment  
23 Centers of the requirements of this order for a pre-screening assessment prior to admission to  
24 WSH for individuals enrolled with DDD. The notice will provide for the facilities to notify  
25 WSH at the time a fourteen day involuntary detention order is entered or upon filing of a  
26 petition for revocation.

b. The pre-screening assessment referred to item 2.a above shall be

1 performed by WSH staff to determine the most appropriate placement at the hospital and to  
2 evaluate and recommend alternatives to WSH admission.

3 c. DDD will issue a management bulletin directing DDD case managers to  
4 notify the DDD mental health case resource manager of any community hospital admission.

5 **3. Census of Current HMH Unit:**

6 a. Within 180 days of the entry of this Order, defendants will reduce the  
7 census of the HMH unit at its current location to the target cap of 26.

8 b. Within 180 days of the entry of this order, the defendants will discharge  
9 a minimum of four individuals identified by defendants as ready for discharge and for whom  
10 an appropriate discharge plan has been developed.

11 c. Defendants will make best efforts to maintain the target cap of 26. The  
12 target cap can be exceeded only as follows:

13 1) The WSH medical director, or designee, in consultation with the  
14 HMH program manager, deems it necessary to exceed this maximum. WPAS shall be notified  
15 in writing by e-mail or facsimile within one business day whenever the census exceeds the  
16 target cap, and shall be notified of the clinical basis for the decision.

17 2) In the event that the cap is exceeded, WSH will jointly develop  
18 and implement a plan with DDD to return to the target census of 26. In situations in which  
19 coordination with DDD is not required to achieve the reduction in census, WSH will develop  
20 and implement the plan. The plan will be developed and a copy will be provided to WPAS  
21 within three business days unless the parties mutually agree in writing to an extension of time.  
22 The plan will be reviewed on at least a monthly basis by the medical director, in consultation  
23 with the HMH unit manager. Defendants shall also review the progress of the implementation  
24 of the plan with WPAS on at least a monthly basis until the census no longer exceeds 26.  
25 Whenever the census exceeds 26, the MHD program administrator and the DDD MH program  
26 manager will notify their respective division directors and assistant secretaries of the current

1 census and the plan to return the census to 26. The MHD program administrator and the  
2 DDD MH program manager shall be regularly apprised by the WSH medical director or his or  
3 her designee, of the status of the census on the HMII unit until such time as the census is  
4 decreased to the target cap of 26.

5 3) The census of the HMII unit in its current location will not  
6 exceed 30.

7 **4. Future Placement of Class Members within WSH**

8 Within 60 days of the entry of this Order, defendants will develop a policy regarding  
9 the future placement of class members who have historically been placed on the HMH Unit  
10 onto other treatment units at WSH. This policy shall provide that all class members reside on  
11 the HMH unit, with the following exceptions:

12 a. Class members whom the HMH treatment team identifies as being more  
13 appropriately served on another unit may be placed on another unit at the approval of the  
14 medical director. In the event that a class member is moved to a unit other than that of the  
15 HMII unit, the class member will be afforded the opportunity to receive all treatment,  
16 vocational, and recreational supports and services set forth in this Order, consistent with the  
17 treatment provided to class members residing on the HMII unit, as clinically indicated. The  
18 clinical appropriateness of the placement of a civilly committed class member on a unit other  
19 than the HMII unit will be regularly reviewed by the medical director at least every thirty days  
20 or more often as clinically indicated, and promptly shared with WPAS.

21 b. A class member may be placed on a ward other than that of the HMII  
22 unit if in the opinion of the medical director the person presents an unacceptable level of risk to  
23 the safety of the class members residing on the HMII unit, in accordance with paragraph 3(a),  
24 above.

25 c. Class members committed to WSH for competency evaluation and/or  
26 restoration will be placed at CFS unless the medical director determines that placement on

1 another unit is more appropriate. In the event that a civil detention in accordance with RCW  
 2 Chapter 71.05 is subsequently ordered, the HMH program manager or designee will assess the  
 3 person for clinical appropriateness for admission to the HMH unit. If the medical director, in  
 4 consultation with the HMH unit manager determines that the class member is not clinically  
 5 appropriate for the HMH unit, the class member may be placed on another unit, in accordance  
 6 with paragraph 3.a. above.

7 **5. Staffing of HMH Unit:**

8 If staff on the HMH unit is reduced based on the reduction in census, staffing will be  
 9 restored commensurate with an increase in census.

10 **B. Reducing the risk of patient-to-patient assaults on the HMH Unit at WSH:**

11 1. Within 90 days of the entry of this Order, Defendants shall adopt a policy  
 12 regarding program environment and safety that will promote the improvement of safety for all  
 13 *Allen* class members at WSH. This policy shall be developed in consultation with the  
 14 mutually agreed upon consultant as set forth in Section IV.A of this Order. Implementation of  
 15 this policy will be monitored by the Independent Monitor as set forth in Section IV.B of this  
 16 Order.

17 2. Within 90 days of the entry of this Order, Defendants shall adopt a policy  
 18 regarding the reduction of patient-to-patient assaults. This policy will include a description of  
 19 a standardized "debriefing" tool to be used with each *Allen* class member involved in each  
 20 *patient-to-patient* assault. This policy shall be developed in consultation with the mutually  
 21 agreed upon consultant as set forth in Section IV.A of this Order. Implementation of this  
 22 policy will be monitored by the Independent Monitor as set forth in Section IV.B of this Order.

23 3. a. Within 30 days of the entry of this Order, defendants shall create a  
 24 multidisciplinary team, including a psychiatrist, a psychologist, and the HMH program  
 25 manager or his or her designee, with expertise in habilitative mental health treatment and in  
 26 treatment modalities for individuals with assaultive or self-injurious behaviors. The HMH



1 Program Manager will identify class members residing on the IIMH Unit who are  
 2 demonstrating a recent pattern of highly assaultive or self-injurious behavior that has not been  
 3 reduced by current treatment approaches.

4           **b.** Within three business days of the identification of a class member who  
 5 has been demonstrating a recent pattern of highly assaultive or self-injurious behavior that has  
 6 not been reduced by current treatment approaches, the multidisciplinary team described in the  
 7 preceding paragraph will be notified of the need for a review. The team will meet as soon as  
 8 practicable and will make treatment recommendations. The team will meet at least quarterly,  
 9 or more often as clinically indicated, when individuals with highly assaultive or self-injurious  
 10 behavior who are not responding to current treatment approaches are identified. A written copy  
 11 of the team's recommendations and current progress will be shared with WPAS.

12  
 13 **C. Data collection, assessment, treatment planning and active treatment, behavioral**  
 14 **supports, medication administration and monitoring, consultation and second**  
 15 **opinions, and staffing levels and training.**

16           **1. Data Collection**

17           **a.** Within 90 days of the entry of this Order, defendants shall adopt a policy  
 18 regarding the administration of PRN medications to *Allen* class members. This policy shall  
 19 include provisions requiring that defendants track data regarding PRN usage in regard to the  
 20 *Allen* class members at WSH. This policy shall be developed in consultation with the mutually  
 21 agreed upon consultant as set forth in Section IV.A of this Order.

22           **b.** Within 90 days of the entry of this Order, defendants shall adopt a policy  
 23 regarding the development and implementation of a behavioral tracking system. This policy  
 24 shall include provisions requiring that defendants track data regarding class member behavior  
 25 and integrate this data into the class member's WSH treatment plan and the treatment planning  
 26 process. This policy shall be developed in consultation with the mutually agreed upon  
 consultant as set forth in Section IV.A of this Order.

1           c.       Within 90 days of the entry of this Order, defendants shall adopt a policy  
2 regarding the development of a process to measure consumer satisfaction.

3           **2.       Assessments**

4           Within 90 days of the entry of this Order, defendants shall adopt a policy  
5 regarding the development and implementation a multi-disciplinary diagnostic assessment  
6 procedure for all *Allen* class members at WSH. This policy shall be developed in consultation  
7 with the mutually agreed upon consultant as set forth in Section IV.A of this Order.

8           **3.       Treatment Planning and Active Treatment**

9           a.       Within 90 days of the entry of this Order, defendants shall adopt a policy  
10 regarding the development and implementation of a procedure for individual treatment  
11 planning, including treatment plan review and modification, and behavioral support planning  
12 and implementation for all *Allen* class members at WSH. This policy shall be developed in  
13 consultation with the mutually agreed upon consultant as set forth in Section IV.A of this  
14 Order.

15           b.       Within 90 days of the entry of this Order, defendants shall adopt a policy  
16 regarding community integration for all *Allen* class members at WSH. This policy shall be  
17 developed in consultation with the mutually agreed upon consultant as set forth in Section  
18 IV.A of this Order.

19           c.       Within 90 days of the entry of this Order, Defendants shall adopt a  
20 policy regarding the provision of vocational treatment for *Allen* class members at WSH. This  
21 policy will provide that vocational treatment is integrated with other treatment approaches of  
22 the individual treatment plan. This policy shall be developed in consultation with the mutually  
23 agreed upon consultant as set forth in Section IV.A of this Order.

24           d.       Within 90 days of the entry of this Order, Defendants shall adopt a  
25 policy regarding recreational treatment for *Allen* class members at WSH. This policy shall be  
26 developed in consultation with the mutually agreed upon consultant as set forth in Section

1 IV.A of this Order.

2 e. Within 90 days of the entry of this Order, Defendants shall adopt a  
3 policy regarding the provision of active treatment for all *Allen* class members at WSH. This  
4 policy shall provide that each class member at WSII receive individualized, active, habilitative  
5 mental health treatment and shall:

6 1) Provide that each class member shall receive, within 14 days of  
7 admission to WSH, and at such later intervals as are clinically indicated, a comprehensive  
8 assessment of the medical, psychiatric, and psychological conditions presumed to have  
9 produced the behavioral and/or psychiatric symptoms that resulted in the class member being  
10 placed at WSH, as well as his or her other clinical needs. The treatment team also will be  
11 responsible for contacting the case manager, community provider, or other concerned  
12 individual, as applicable, to inquire about antecedent conditions, including environmental  
13 conditions, that may have precipitated the current admission.

14 2) Provide that within seven days of admission, the IIMH or other  
15 relevant treatment team at WSH shall develop a diagnostically-based treatment plan that  
16 addresses the class member's identified clinical needs. The policy shall further provide that  
17 treatment plans shall be updated no later than 30 days after admission and at least quarterly  
18 thereafter, with more frequent updates occurring as clinically indicated. The treatment plans  
19 shall be updated to reflect the results of any assessments conducted, but no later than 30 days  
20 following admission.

21 3) Include a description of the methodology regarding  
22 individualized case formulation that will be applied to each class member admitted to WSII.

23 4) Require that WSH staff, upon the admission of a class member  
24 for whom it is clinically appropriate, begin the process of developing and incorporating into  
25 each class member's treatment plan the elements of a current positive behavior support plan  
26 (PBSP). The policy shall also provide that, while the elements of a PBSP are being developed,

1 WSH shall use appropriate preliminary behavioral supports, as clinically indicated and as  
2 incorporated into the treatment plan, to address the major behavioral problems that precipitated  
3 the current hospitalization.

4           5) Adopt an objective data collection system to facilitate  
5 habilitative mental health treatment team monitoring of patient progress.

6           6) Require that at least six hours per day, excluding weekends and  
7 holidays, of active, individualized, habilitative mental health treatment be available to each  
8 class member. Exceptions to this policy will require staff documentation that the patient is not  
9 psychiatrically or medically stable and is therefore unable to participate in the full six hours of  
10 treatment. The policy will further provide that class members will receive weekend and  
11 evening habilitative activities, appropriate to the class member's individual needs.

12           This policy shall be developed in consultation with the mutually agreed upon consultant  
13 as set forth in Section II of this Order.

14           **4. Behavioral Support and Restrictive Procedures**

15           Within 90 days of the entry of this Order, defendants shall adopt a policy  
16 regarding the use of restrictive procedures in regard to *Allen* class members at WSH. This  
17 policy's goal will be to minimize the use of restrictive procedures for this population and  
18 emphasize the use of less intrusive procedures. This policy will include a description of a  
19 standardized "debriefing" tool to be used with each *Allen* class member following the use of a  
20 restrictive procedure. This policy shall be developed in consultation with the mutually agreed  
21 upon consultant as set forth in Section IV.A of this Order.

22           **5. Medication Administration and Monitoring**

23           Within 90 days of the entry of this Order, defendants shall adopt a policy  
24 regarding the development and implementation of a procedure for the ongoing assessment of  
25 efficacy of medication regimens in regard to treatment goals for all *Allen* class members at  
26 WSH. This policy shall be developed in consultation with the mutually agreed upon consultant

1 as set forth in Section IV.A of this Order.

2 **6. Consultation and Second Opinions**

3 a. Within 90 days of the entry of this Order, defendants shall adopt a policy  
4 setting forth a procedure for WSH treating professionals to procure outside consultation for  
5 *Allen* class members who present refractory treatment issues. This policy shall be developed in  
6 consultation with the mutually agreed upon consultant as set forth below in Section IV.A of  
7 this Order.

8 b. Within 90 days of the entry of this Order, defendants shall adopt a policy  
9 setting forth a procedure for WSH treating professionals to obtain a second opinion for the  
10 treatment of *Allen* class members. This policy shall be developed in consultation with the  
11 mutually agreed upon consultant as set forth in Section IV.A of this Order.

12 **7. Staffing Levels and Staff Training**

13 a. Within 90 days of the entry of this Order, defendants shall adopt a policy  
14 regarding staff training in core competencies. This policy shall include the requirement that  
15 Defendants develop core competency curricula and that there is data tracking of staff training  
16 in core competencies, including identification of staff members who have received training.  
17 All staff at WSH providing supports and services to *Allen* class members will be trained in  
18 these identified core competencies. This policy shall be developed in consultation with the  
19 mutually agreed upon consultant as set forth in Section IV.A of this Order.

20 b. Defendants shall continue to track data of staffing level, including RN,  
21 LPN, and IC staff for the care and treatment of *Allen* class members at WSH.

22 c. Within 90 days of the entry of this Order, Defendants shall adopt a  
23 policy ensuring that adequate nursing services are available for *Allen* class members at WSH.  
24 This policy shall be developed in consultation with the mutually agreed upon consultant as set  
25 forth in Section IV.A of this Order.

26

1 **D. Discharge from WSH for Class Members**

2 Within 90 days of the entry of this Order, Defendants shall adopt a policy regarding  
3 discharge and discharge planning for *Allen* class members at WSH. This policy shall be  
4 developed in consultation with the mutually agreed upon consultant as set forth in Section  
5 IV.A of this Order.

6 **E. Appropriate and Timely Reports of Incidents of Alleged Patient Abuse and**  
7 **Neglect**

8 1. The implementation of the policy regarding program environment and safety, as  
9 set forth in paragraph III. B.1, shall ensure that incidents are appropriately and timely reported.

10 2. The implementation of the policy regarding restrictive procedures, as set forth  
11 in paragraph III. B.11, shall ensure that use of restrictive procedures is appropriately and  
12 timely reported.

13 3. Within 90 days of the entry of the Order, defendants shall adopt a policy  
14 regarding the reporting of incidents involving *Allen* class members providing as follows:

15 a. All administrative reports of incidents (AROI) will be reviewed by the  
16 HMH Program Manager;

17 b. Those reports which, in the opinion of the HMH Program Manager,  
18 present credible allegations of suspected patient abuse or the neglect of an *Allen* class member  
19 at WSH as defined by WSH Policy No. 3.4.4, will be assigned to a supervisor for investigation  
20 pursuant to the procedures set forth in the WSH Personnel Policy No. 545;

21 c. A copy of the AROI, described in paragraph (b) above, and the referral  
22 to the supervisor will be forwarded to the chief executive officer of WSH, Mental Health  
23 Division (MHD), and the appropriate DSHS audit team.

24 d. An appropriate DSHS audit team will review and maintain a database of  
25 the AROIs and follow up with MHD to ensure that an appropriate investigation has occurred;

26 e. The HMH program manager will review the results of the supervisor's

1 investigation and take appropriate action;

2 f. The WSH CEO will be provided with a copy of the results of the  
3 supervisor's investigation;

4 g. Copies of the AROIs will be sent to WPAS for the pendency of the  
5 monitoring period described in Section IV of the Order;

6 h. All of the AROIs that contain allegations of patient abuse and neglect, as  
7 defined by WSH Policy 3.4.4, and all security reports involving *Allen* class members at WSII  
8 which a) relate to a patient injury of unknown origin; b) allege abuse or neglect; or c) relate to  
9 probable serious injuries as a result of assault or self-injurious behavior, will be reviewed on the  
10 next business day by the quality assurance investigative team (Team) at WSH. This Team shall  
11 be independent of ward staff and include at least one RN, one physician, and an additional  
12 member of the quality assurance department and a member of the security department.

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

21 j. This policy shall be developed in consultation with the mutually agreed  
22 upon consultant as set forth in Section IV.A of this Order.

23 4. The Team shall continue to report all incidents of suspected abuse or neglect, as  
24 defined by WSH Policy No. 3.4.4, to the appropriate state agencies and law enforcement as  
25 required by law. The Team shall also report all instances of failure to report suspected patient  
26 abuse and neglect to the appropriate agencies.

1           5. Defendants will maintain a policy for the mandatory reporting of suspected  
2 patient abuse and neglect as defined by RCW 74.34 and RCW 71.124. This policy will be  
3 applicable to all *Allen* class members at WSH.

4           6. Within 90 days of the entry of this Order, all staff working with *Allen* class  
5 members will be informed or be reminded of their obligations to report suspected abuse and  
6 neglect and informed of the appropriate reporting procedure and will be informed or be  
7 reminded that the failure to report is grounds for disciplinary action and will be reported to the  
8 appropriate agencies. All new employees will receive this information at the time of  
9 orientation and sign an acknowledgment of receipt of this information. All current employees  
10 will be asked to review the reporting policy and signed an acknowledgement that they have  
11 reviewed and understand the policy annually at the time of their evaluations. Defendants shall  
12 take appropriate disciplinary action in accordance with personnel policies against any staff  
13 member found to have engaged in abuse and/or neglect of a patient as defined in WSH Policy  
14 3.4.4.

15           7. Within 90 days of the entry of this Order, each unit on the HMH unit will have  
16 an easily identifiable notebook containing all pertinent policies and forms related to incident  
17 reporting and containing an easily understandable summary of procedures that staff will follow  
18 when they obtain information related to allegations of patient abuse or neglect. The program  
19 director of the HMH unit will be responsible for ensuring implementation of this policy.

20           8. Within 90 days of the entry of this Order, defendants will develop and  
21 implement a process whereby the program director of the HMH unit, or his or her designee,  
22 shall conduct two or more unannounced spot checks of *Allen* class member records at WSII  
23 each month to ensure that incidents as defined by WSH Policy 3.4.4 have been reported on an  
24 AROI. The HMH program manager shall report the results of these spot checks to the  
25 Independent Monitor and the state's self-monitoring committee and WSH CEO and Medical  
26 Director.



1 **IV. MONITORING AND CONSULTATION REGARDING SERVICES FOR**  
 2 **ALLEN CLASS MEMBERS AT WSH**

3 **A. Appointment, Duties, and Compensation of Outside Consultant for WSH**

4 Within 30 days of the entry of this Order, defendants will take all reasonable steps to  
 5 retain a mutually agreed upon independent consultant with experience in the provision of long-  
 6 term habilitative mental health treatment to provide consultation to WSH treatment teams  
 7 providing care and treatment to *Allen* class members. If such consultant cannot be retained  
 8 within the thirty day period, defendants will retain such consultant at the earliest possible date,  
 9 and shall inform plaintiffs of its efforts to do so.

10 **B. Appointment, Duties, and Compensation of Independent Monitor**

11 1. Within 30 days of the entry of this Order, defendants will retain a mutually  
 12 agreed upon independent monitor, whose role will be to monitor the implementation of the  
 13 policies set forth in Section III, and who shall perform such role for a period of twelve months  
 14 following appointment unless the period is extended an additional six months pursuant to  
 15 paragraph 7 below. For the purposes of this Order and Settlement Agreement, the term  
 16 "monitoring period" shall mean the 12 or 18 month term of the independent monitor set forth  
 17 in this paragraph.

18 2. Upon the request of the defendants, the Independent Monitor will provide  
 19 technical assistance and training to defendants regarding the implementation of this  
 20 Agreement. The specific duties of the Independent Monitor are set forth below in this section  
 21 in paragraphs 6.a through u. The Independent Monitor shall consult with the medical director  
 22 of WSH and the program manager of the HMH unit, as he deems necessary to perform his  
 23 duties.

24 3. The parties have mutually agreed that the Independent Monitor shall be William  
 25 I. Gardner, Ph.D., an expert in the area of habilitative mental health treatment.

26 4. The Independent Monitor shall have access to the materials that he requires to

1 conduct the requisite monitoring duties as set forth in paragraph 6.a. through u. Such  
 2 materials include, but are not limited to, all data related to HMII census, seclusion and  
 3 restraint, admissions, discharge, and other relevant data; relevant WSH and HMH policies and  
 4 protocols; patient records; and incident or security reports of class members, as requested by  
 5 the Independent Monitor that are not protected by the attorney-client or attorney work product  
 6 privilege as defined by relevant state and federal law.

7       **5.** The monitoring period will commence 180 days after the entry of this Order,  
 8 unless the parties jointly provide written notice to the court of an earlier date for such  
 9 commencement. The Independent Monitor, at his discretion, may make up to three two-day  
 10 monitoring visits to WSH as part of conducting his monitoring duties with respect to the  
 11 provisions set forth in paragraphs 6.a through u below.

12               In addition, the independent monitor will conduct a one-day on-site visit for  
 13 *Rust* class members, which will occur prior to the commencement of the monitoring period for  
 14 *Allen* class members at WSH.

15       **6.** During this 12 month period, the Independent Monitor shall:

16               **a.** Monitor the implementation of the policy regarding nursing services as  
 17 set forth in section III.C.7.c.

18               **b.** Monitor the implementation of the policies regarding program  
 19 environment and safety as set forth in section III.B.1.

20               **c.** Monitor the implementation of the policy regarding staff training in core  
 21 competencies as set forth in section III.C.7.

22               **d.** Monitor the implementation of the policy regarding the use of restrictive  
 23 procedures in regard to *Allen* class members as set forth above in section III.C.4.

24               **e.** Monitor the implementation of the policy regarding the reduction of  
 25 patient-to-patient assaults as set forth in section III.B.2.

26               **f.** Monitor the implementation of the policy regarding admission of *Allen*

1 class members to WSH as set forth in section III.A.2.

2 g. Monitor the implementation of the policy regarding data tracking of  
3 staffing levels as set forth in section III.C.7.b.

4 h. Monitor the implementation of the policy regarding the administration  
5 of PRN medications as set forth in section III.C.1.a.

6 i. Monitor the implementation of the policy regarding the development  
7 and utilization of a behavioral tracking system as set forth in section III.C.1.b.

8 j. Monitor the implementation of the policy regarding the use of seclusion  
9 and restraint for all *Allen* class members at WSH as set forth in section III.C.4.

10 k. Monitor the implementation of the policy regarding the development  
11 and adoption of a multi-disciplinary diagnostic assessment procedure for all *Allen* class  
12 members at WSH as set forth in section III.C.2.

13 l. Monitor the implementation of the policy regarding the development  
14 and adoption of a procedure for the ongoing assessment of efficacy of medication regimens in  
15 regard to treatment goals for all *Allen* class members at WSH as set forth in section III.C.5.

16 m. Monitor the implementation of the policy regarding the development  
17 and adoption of a procedure for individual treatment planning, including treatment plan review  
18 and modification, and behavioral support planning and implementation for all *Allen* class  
19 members at WSH as set forth in section III.C.3.a.

20 n. Monitor the implementation of the policy regarding community  
21 integration for all *Allen* class members at WSH as set forth in section III.C.3.b.

22 o. Monitor the implementation of the policy regarding the provision of  
23 vocational treatment for all *Allen* class members at WSH as set forth in section III.C.3.c.

24 p. Monitor the implementation of the policy regarding the provision of  
25 recreational treatment for all *Allen* class members at WSH as set forth in section III.C.3.d.

26 q. Monitor the implementation of the policy regarding the provision of

1 active treatment for all *Allen* class members at WSH as set forth in section III.C.3.e.

2 r. Monitor the implementation of the policy regarding the timely discharge  
3 planning and discharge of *Allen* class members at WSH as set forth in section III.D.

4 s. Monitor the implementation of the policy regarding the development  
5 and adoption of a procedure for WSH treating professionals to procure outside consultation for  
6 *Allen* class members at WSH who present refractory treatment issues as set forth in section  
7 III.C.6.a.

8 t. Monitor the implementation of the policy regarding the development  
9 and adoption of a procedure for WSH treating professionals to obtain a second opinion for the  
10 treatment of *Allen* class members at WSH as set forth in section III.C.6.b.

11 u. Monitor the implementation of the policies and procedures regarding the  
12 reporting of incidents of alleged abuse and neglect of *Allen* class members at WSH, as defined  
13 by WSH Policy 3.4.4 and as set forth in section III.E.

14 7. If, at the end of the twelve month monitoring period, the Independent Monitor  
15 finds that the defendants have substantially complied with this Order and Settlement  
16 Agreement, the Independent Monitor shall discontinue his monitoring and defendants shall  
17 continue their self-monitoring. Following termination of Independent Monitoring under this  
18 Agreement, WPAS may, at its own expense, retain the Independent Monitor for consultation  
19 purposes.

20 8. If, at the end of the twelve month monitoring period, the Independent Monitor  
21 finds that the defendants have not substantially complied with the terms of this Order and  
22 Settlement Agreement, the Independent Monitor shall identify the specific areas of  
23 noncompliance and shall continue with his monitoring function with regard to those identified  
24 areas of noncompliance, for an additional period at his discretion not to exceed six months.  
25 During this period of additional monitoring, the Independent Monitor shall visit WSH only as  
26 is necessary to perform his responsibilities with regard to the specific areas of noncompliance.

1 At the same time, defendants shall continue their self-monitoring.

2 9. Defendants shall bear the reasonable costs of the Independent Monitor to carry  
3 out his monitoring duties.

4 **V. TERMINATION OF ORDER AND DISMISSAL OF LAWSUIT:**

5 This Order shall terminate and plaintiffs' claims relevant to services provided to class  
6 members while patients at WSII shall be dismissed without prejudice thirty days following  
7 receipt of the final monitoring report, or sixty days following the conclusion of the independent  
8 monitoring period, whichever is earlier.

9 DATED this 15<sup>th</sup> day of February, 2006.

10   
11 RONALD B. LEIGHTON  
12 United States District Judge

13 Presented By:

14  
15 /s/ Deborah A. Dorfman  
16 Deborah A. Dorfman, WSBA #23823  
17 Washington Protection & Advocacy System  
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