

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RONALD ANDERSON, et al.,

Plaintiffs,

-v-

87-CV-141

GLENN S. GOORD, et al.,

Defendants.

The parties hereto, by their attorneys, hereby stipulate and agree as follows:

WHEREAS Plaintiffs challenge the living conditions and treatment of mentally ill inmates in the Special Housing Units at Auburn and Green Haven Correctional Facilities as cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution; and Plaintiffs also allege that Defendants subject mentally ill inmates to punishment for conduct which is the product of their mental illness as cruel and unusual punishment in violation of the Eighth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution; and

WHEREAS the Defendants have denied that they have violated Plaintiffs' constitutional rights; and

WHEREAS the parties have conducted extensive discovery; and

WHEREAS counsel for the Plaintiffs and Defendants, without conceding any infirmity in their claims or defenses, have subsequently engaged in negotiations to resolve the Plaintiffs' claims as they relate to discipline of mentally ill inmates;

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties as follows:

DEFINITIONS AND ABBREVIATIONS

- A. “Auburn” shall mean the Auburn Correctional Facility and “Green Haven” shall mean the Green Haven Correctional Facility.
- B. “DOCS” shall mean the New York State Department of Correctional Services.
- C. “OMH” shall mean the New York State Office of Mental Health.
- D. “Satellite Unit” shall mean, only and without exception, the Satellite Mental Health Unit at Green Haven or Auburn Correctional Facilities.
- E. “SHU” shall mean, only and without exception, the disciplinary Special Housing Unit at Green Haven or Auburn Correctional Facilities.
- F. “Adopted” shall mean the publication of a Notice of Adoption in the New York State Register.

SUBSTANTIVE PROVISIONS

1. DOCS will seek, in accordance with the State Administrative Procedure Act, to amend 7 NYCRR Sections 251.2.2, 254.6, and 254.7 and add a new Part 310, by incorporating into the regulations procedures by which the mental health of inmates at Auburn and Green Haven will be given consideration in prison disciplinary proceedings and following their assignment to SHU. A copy of the procedures (hereinafter “the regulations”) are attached to this Stipulation as “Exhibit A.” Any and all references to “the regulations” in this Stipulation shall apply only and without exception to the underlined portions of Exhibit A.

2. DOCS shall not, during the effective period of this Stipulation, adopt amendments to the regulations, absent the written consent of Plaintiffs’ counsel, unless such amendments to the regulations are made expressly inapplicable to Auburn and Green Haven.

3. When an inmate's mental health is at issue in a DOCS disciplinary proceeding at Auburn or Green Haven, and an OMH clinician is called to give testimony in accordance with the regulations, the OMH clinician shall be familiar with the inmate's mental health status or shall review the inmate's mental health records prior to providing substantive testimony.

4. The OMH clinician's testimony at Auburn and Green Haven Correctional Facility shall include, to the extent known, the inmate's mental health diagnoses, behaviors associated with such diagnoses, any psychiatric medications, including the purpose of the medication, medication side effects and medication compliance, and the inmate's psychiatric history, including psychiatric hospitalizations. The OMH clinician's testimony that pertains to the inmate's mental condition shall be on a confidential tape outside of the inmate's presence. If an OMH clinician testifies about acts of alleged misconduct that he or she personally witnessed, that testimony will be taken in accordance with established procedures for non-confidential witnesses.

5. When it appears to the hearing officer during a Tier III hearing at Auburn or Green Haven, based on credible evidence presented at the hearing, that any of the factors identified in subparagraphs (b)(1)(i) - (b)(1)(vii) of Section 254.6 of Title 7 exist, even if not reflected on the computer generated hearing record sheet or misbehavior report, the hearing officer shall deem the inmate's mental state to be at issue at that hearing.

Notification and Training of Staff

6. The Deputy Superintendent of Security, all DOCS staff regularly assigned to act as Tier III Hearing Officers, and all DOCS staff regularly assigned to act as a member of the Special Housing Unit Case Management Committee at Auburn and Green Haven shall be provided with a copy of and shall complete training concerning this Stipulation and the resulting regulations. Such

training shall include: how a Tier III Hearing Officer is to recognize when an inmate may be mentally impaired at the time of the hearing; the need for Tier III Hearing Officers, when mental state is deemed at issue, to consider the inmate's mental state at the time of the incident in determining the appropriate hearing penalty, if any; as well as training on the nature of mental illness, techniques for managing the behavior of prisoners suffering from mental illness, the psychological needs of SHU inmates, and the recognition of behaviors which should lead to a referral of an inmate to OMH.

DURATION, ACTIVE MONITORING PERIOD AND COMPLIANCE

7. The terms of this Stipulation shall remain in effect for a period of five (5) years from the later of the following two dates: the date the Stipulation has been signed by the parties or the date the resulting regulations have been adopted, unless the effective period of the Stipulation has been extended for one or more additional one (1) year periods or the Stipulation terminated and the claims reinstated, in accordance with this paragraph or paragraph 23 below. In the event that the regulations are not adopted within six (6) months after the Stipulation is signed by the parties, this Stipulation shall, at the option of Plaintiffs' counsel, be deemed terminated and the claim shall be immediately reinstated.

8. There shall be a monitoring period by counsel for the parties of three (3) years from the later of the following two dates: the date the Stipulation has been signed by the parties or the date the resulting regulations are adopted, unless the monitoring period has been extended for one or more additional one (1) year periods or the Stipulation has terminated and the claims reinstated in accordance with the provisions of paragraph 7 above or paragraph 23 below.

Access to Clients

9. Plaintiffs' counsel shall be permitted to interview, in one of DOCS' legal visiting rooms, any class member or former class member. The interviews shall be subject to DOCS' procedures for notification and approval of legal visits. Plaintiffs' counsel may be accompanied during such legal visits by Plaintiffs' mental health expert, who shall be permitted to participate in the interviews.

Access to Records

10. During the monitoring period, Auburn and Green Haven shall once a month provide Plaintiffs' counsel with a list of all inmates confined to SHU.

11. During the monitoring period, OMH shall provide Plaintiffs' counsel with a monthly list of all Auburn and Green Haven active OMH patients confined to SHU; all inmates transferred from SHU to the satellite unit, intermediate care program or to CNYPC, and all inmates at Auburn and Green Haven transferred to SHU from the satellite unit, intermediate care program or CNYPC.

12. During the monitoring period, DOCS shall provide Plaintiffs' counsel with a weekly list of concluded Tier III hearings at Auburn and Green Haven in which the mental state of the inmate was deemed to be at issue pursuant to the regulations. The list shall identify the inmates' names, DINs, and the dates of the dispositions.

13. Up to four (4) times per year per facility during the monitoring period, Plaintiffs' counsel may request in writing and within thirty (30) days of such request shall be provided with copies of:

(a). Any directives, non-privileged memos or other documents or records that describe or discuss final OMH or DOCS practices and/or procedures applicable to Auburn and Green Haven as they may relate to the regulations or this Stipulation;

(b). All written training materials, including updates and revisions, used in the training required pursuant to paragraph 6 of this Stipulation;

(c). All inmate grievances filed at Auburn or Green Haven after the adoption of the regulations that relate to the failure to follow the terms of the Stipulation or the resulting regulations;

(d). All Tier III appeals filed by SHU inmates at Auburn and Green Haven after the adoption of the regulations alleging the failure to follow the terms of the Stipulation or the resulting regulations, and

(e). All summary notes from meetings of the Special Housing Unit Case Management Committee at Auburn and Green Haven, including any recommendations issued by the committee.

14. During the monitoring period at Auburn and Green Haven, Plaintiffs' counsel shall be permitted to review Satellite Unit and CNYPC mental health records of SHU inmates upon five (5) working days written notice and, after such review and upon written request, OMH shall mail copies of any pages of such records within twenty-one (21) days. Such reviews and requests for copies, however, must be clearly necessary in connection with monitoring activities in this case, not be overly burdensome, redundant, violate the law, jeopardize safety or security.

15. During the monitoring period, Plaintiffs' counsel shall, upon ten (10) working days written notice, be permitted to review and/or upon twenty-one (21) days written notice receive, a copy of disciplinary hearing records and Tier III hearing tapes regarding SHU inmates created at Auburn and Green Haven after the adoption of the regulations, when the inmate's mental state was deemed to be at issue at the hearing or when Plaintiffs' counsel is able to establish that the inmate's

mental state should have been at issue at the hearing. The Tier III hearing tapes shall include any tape recorded testimony of OMH personnel taken outside the presence of the inmate in connection with the regulations. The tape recorded testimony of OMH personnel taken outside the presence of the inmate and any information obtained during a review of that testimony must be kept confidential. Plaintiffs' counsel is prohibited from revealing the content of the tape to the inmate or anyone outside OMH or DOCS, except mental health experts retained by counsel, employees of counsel working on this case, and a court. Nothing herein shall require or permit the release to Plaintiffs' counsel of any other confidential testimony. Any request to review or seek copies of records or tapes, however, must be clearly necessary in connection with monitoring activities in this case, not be overly burdensome, redundant, violate the law or jeopardize safety or security.

16. Plaintiffs' counsel shall not divulge the content of any documents or other materials obtained in accordance with this Stipulation without written authorization from Defendants' counsel, except the content may be disclosed to the Court, support staff employed by Plaintiffs' counsel and mental health experts retained by Plaintiffs' counsel. No authorization from the Defendants' counsel shall, however, be required when the materials could have been obtained by the inmate under the Freedom of Information Law. At the conclusion of this litigation, all documents and other materials, not otherwise available under the Freedom of Information Law without redaction, shall be returned to the Defendants.

17. Plaintiffs' counsel shall pay to DOCS or OMH (as appropriate) ten cents per page for any photocopies and the actual cost of tapes produced in accordance with this Stipulation.

Compliance

18. Defendants shall be considered to be in “substantial compliance” with this Stipulation unless Plaintiffs establish by clear and convincing evidence that Defendants’ failures or omissions to meet the terms of the Stipulation were not minimal or isolated but were substantial and sufficiently frequent and widespread as to be systemic at Auburn and Green Haven.

19. In the event that Plaintiffs believe that Defendants are not in substantial compliance, Plaintiffs’ counsel shall notify Defendants’ counsel in writing of the facts supporting such belief. Defendants’ counsel shall then notify Plaintiffs’ counsel in writing within thirty days (30) that (a) the alleged problems have been remedied or (b) Defendants disagree with Plaintiffs’ description of the problem. The facts supporting Defendants’ conclusion shall be included in such notice.

20. Upon receipt of the response described in paragraph 19, Plaintiffs’ counsel may request a meeting with counsel for Defendants to discuss and attempt to resolve the dispute(s). Counsel for both parties, including counsel for DOCS and OMH, shall attend the meeting at a mutually agreeable place and time. Defendants’ counsel agree to meet with Plaintiffs’ counsel as many as, but not exceeding, three (3) times per year during the monitoring period. Nothing said by either party or counsel for either party during those meetings may be used by the opposing party in any subsequent litigation in this or any other lawsuit.

21. If, after five (5) days following any meeting held pursuant to paragraph 20 above, Plaintiffs’ counsel believes that Defendants are not in “substantial compliance” with the terms of this Stipulation as defined in paragraph 18 above, Plaintiffs’ counsel may request a conference with all parties before the Court concerning extending the effective or monitoring period of the Stipulation or the filing of a motion seeking to terminate the Stipulation and reinstate the dismissed claims, as

provided in paragraph 23 below. Plaintiffs' counsel may request such a conference no earlier than five (5) months from the later of the following two dates: the date this Stipulation is signed by the parties or the date the regulations are adopted.

22. Upon signing this Stipulation, the parties will jointly move the Court for entry of an order dismissing all claims in this action as they relate to the discipline of mentally ill inmates and will attach a copy of this Stipulation to such motion. This dismissal shall be without prejudice to Plaintiffs' right to move to reinstate the claims within five (5) years from the date the Stipulation is signed by the parties and the resulting regulations are adopted, subject to any one (1) year extensions of said effective period of the Stipulation pursuant to paragraph 23 below. Should the Court deny the motion for dismissal, the Stipulation shall become null and void.

23. Following any conference before the Court as set forth in paragraph 21 above, Plaintiffs' counsel may file a motion with the Court for an order terminating the Stipulation and reinstating the claims or request that the Court make a recommendation that the monitoring period or effective period of the Stipulation should be extended for one (1) additional year. Plaintiffs may not file either such motion without first requesting a pre-motion conference before the Court as provided in paragraph 21 and, if granted by the Court, participating in the conference. The Stipulation shall not be terminated and the claims reinstated nor should the Court recommend that the monitoring period or effective period of the Stipulation should be extended for one (1) additional year period unless there is clear and convincing evidence, that Defendants' failures or omissions to meet the terms of the Stipulation were not minimal or isolated but were substantially and sufficiently frequent and widespread as to be systemic. Should the court recommend that the monitoring period or effective period of the Stipulation should be extended for one (1) additional year, the parties agree to be bound by that recommendation.

24. The terms of this Stipulation shall remain in effect for a period of five (5) years from the later of the following two dates: the date the Stipulation is signed by the parties or the date the regulations are adopted, unless the effective period of the Stipulation has been extended for one or more additional one (1) year periods or the Stipulation has been terminated and the claims reinstated pursuant to paragraphs 7 or 23 above, and shall be binding on the parties, their successors, agents, employees and all persons acting in concert with them. After the five (5) year period and any one (1) year extensions, the terms of this Stipulation shall automatically cease to bind the parties, as well as their successors, agents, employees, assigns and those acting in concert with them.

25. If any provision of this Stipulation is declared invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect, unaffected or impaired.

26. This Stipulation is for injunctive relief only. Its terms are not intended to restrict, modify or enhance, in any way, any claims for money damages that a class member may have by way of a separate lawsuit, any defense(s) to such claims that may be available to Defendants, or the legal requirements, procedures or standards to be employed in determining any such claims or defenses. Any such claims for money damages, must be commenced by a separate lawsuit.

27. This Stipulation constitutes a private settlement agreement and not a court order. All enforcement of the injunctive relief herein shall be by Plaintiffs' counsel. Individual class members who believe the regulations have been violated in their disciplinary proceedings must raise those claims by appealing the disciplinary disposition and by seeking judicial review in state court.

28. This Stipulation does not constitute (a) an admission by any Defendant of any violation of law or wrongdoing, (b) an admission by any Defendant that any standard, policy, practice or procedure addressed in this action violated or failed to comply with either the language or intent of any applicable law, rule or regulation, or (c) an admission by any Defendant that its

position in this litigation was not substantially justified. Plaintiffs' willingness to enter a private settlement agreement to settle this claim in this lawsuit is based on the unique circumstances of this case including the fact that the agreed upon changes are to be made through promulgation of new state regulations. The entry of a private settlement agreement for this claim will not serve as a precedent in any other case or in the remaining claims in this case.

ATTORNEYS FEES, COSTS AND DISBURSEMENTS

29. Within ninety (90) days of the execution of this Stipulation, Defendants will pay Plaintiffs' attorneys in full satisfaction of all monetary obligations related to the disciplinary due process claim in this litigation as follows: to Prisoners' Legal Services of New York \$146,000.00 and to the Prisoners' Rights Project of the Legal Aid Society \$20,000 for attorneys' fees, costs and disbursements incurred by Plaintiffs and their counsel up to and including the date the Stipulation is executed. Said payment shall be subject to and paid in accordance with § 17 of the Public Officers Law of New York and other applicable state and federal laws. If payment is delayed beyond ninety (90) days, Defendants will also pay interest at the applicable postjudgment federal interest rate for the period of delay. 28 U.S.C. § 1961. During the initial three year monitoring period of this Stipulation, as well as during any extension of the monitoring period implemented pursuant to Paragraph 23 of this Stipulation, Plaintiffs and their counsel agree to limit their attorneys' fees, costs and disbursements to what is directly and reasonably incurred in monitoring this Stipulation for a combined total not to exceed \$50,000 per year. During the monitoring period, and any such extension of the monitoring period, Plaintiffs' counsel agrees to submit vouchers to the Defendants' counsel on a quarterly basis for their attorneys' fees, costs and disbursements, and Defendants agree to reimburse Plaintiffs' counsel within sixty (60) days of receipt of said vouchers. If payment is delayed beyond sixty (60) days, Defendants will also pay interest at the applicable postjudgment

federal interest rate for the period of delay. 28 U.S.C. § 1961. In the event that Plaintiffs' counsel successfully moves to reinstate these claims as provided in paragraph 23 of this Stipulation, Plaintiffs' counsel is not precluded from making a motion to the Court, consistent with and subject to all applicable law, for attorneys' fees, court costs and disbursements directly and reasonably incurred in relation to their motion to reinstate the claims, as well as for attorneys' fees, court costs and disbursements directly and reasonably incurred in relation to the successful prosecution of those claims.

Notice to Class Members

30. All inmates in SHU at Auburn and Green Haven at the time this Stipulation is signed by the parties and each prisoner entering SHU during the monitoring period shall receive a copy of the Stipulation, as well as a notice written in Spanish informing such prisoner that a Spanish language version is available upon request.

31. Copies of this Stipulation, in English and Spanish, shall also be available, upon request in Auburn and Green Haven's law libraries.

32. A summary of the terms of the Stipulation, in English and Spanish, shall be posted in the Satellite Unit.

33. Defendants' counsel shall be responsible for obtaining a Spanish language translation of this Stipulation. Plaintiffs' counsel may review such translation for accuracy, prior to its dispersal.

Dated:

DAVID B. ROBERTS
Assistant Attorney General
HON. ELIOT SPITZER
Attorney General of the State of New York
Attorney General
The Capitol
Albany, New York 12224
Telephone: (518) 408-2516

Dated:

BETSY C. STERLING
Associate Director
THOMAS TERRIZZI
Executive Director
Prisoners' Legal Services of New York
118 Prospect Street, Suite 307
Ithaca, New York 14850
Telephone: (607) 273-2283

Dated:

SARAH KERR
Staff Attorney
JOHN BOSTON
Project Director
Prisoners' Rights Project
Legal Aid Society
One Battery Park Plaza, 27th Floor
New York, NY 10004
Telephone: (212) 577-3530

The Court approves the private settlement agreement as to form only. Paragraph 29 is So

Ordered by the Court.

Dated:

HONORABLE NEAL P. MCCURN
United States District Judge
Northern District of New York