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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUN 28 1996

at 3 o'clock and 15 min. P.M.  
WALTER A. Y. H. CHINN, CLERK

Attorneys for the United States  
of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) Civ. No. 91-00137 DAE  
 )  
v. ) STIPULATION AND ORDER  
 )  
STATE OF HAWAII, et al. )  
 )  
Defendants. )  
\_\_\_\_\_ )

STIPULATION AND ORDER

I. INTRODUCTION

Pursuant to the United States' right to reasonable access to the facilities, records, patients\residents, and employees of Hawaii State Hospital (HSH) and the Children and Adolescent Residential Services (CARS), the United States' attorneys and consultants inspected the facilities and records of HSH, the

Castle Medical Center, and the Kailana Program, and interviewed certain patients\residents and employees of HSH, Castle Medical Center, and the Kailana Program from May 14, 1996, through May 24, 1996. After the inspection tours, the United States agreed that Defendants have made progress regarding implementation of certain provisions of the Stipulation and Order to Remedy Defendants' Contempt of Settlement Agreement and Remedial Plan entered as an order of the United States District Court for the District of Hawaii (Court) on January 19, 1995, (1995 Stipulation and Order) including the following:

A. Employment of Additional Staff:

1. Defendants have made progress in filling and continuing to fill HSH vacancies in pharmacy, laboratory, and occupational therapy services;

2. Although vacancies remain at HSH, Defendants have made progress in ensuring that sufficient numbers of permanent nursing staff are on duty at HSH such that there has been a reduction in the use of temporary staff;

3. Defendants have increased the financial remuneration of certain employees at HSH;

B. Restriction on Admissions: Defendants have controlled admissions to HSH;

C. Provision of Adequate Treatment: Defendants have made some progress in providing adequate psychosocial treatment at HSH, specifically on Unit E;

D. Protection of Patients from Unsafe and Undue Seclusion and Restraint: Defendants have made progress in reducing the use of seclusion and restraint;

E. Protection of Patients From Abuse; Development and Implementation of a Revised Abuse Investigation System: Defendants are experiencing some success with employee discipline, including some terminations, when appropriate, and have agreed to expand the role of the expert consultant who has been advising HSH on the issues of abuse and neglect; and

F. Compliance Officer: Defendants have appointed a Compliance Officer, who, together with one assistant, serves in the office of the Governor.

## II. STIPULATION AND ORDER

In order to address the areas in continuing need of correction at Hawaii State Hospital ("HSH"), the United States of America, Plaintiff, and the State of Hawaii, et al., Defendants, hereby stipulate and agree to the following:

### A. Employment and Deployment of Additional Staff:

1. a. By no later than 30 days from entry of this Stipulation, Defendants shall have sufficient nursing staff (including registered nurses, licensed practical nurses, and paramedical assistants ["PMAs"]) actually present and on duty to maintain at least 5.5 nursing care hours per patient day and to maintain at least an overall nursing staff: patient ratio on each unit of HSH:

1:3.5 first shift

1:3.5 second shift

1:7 third shift

b. In accordance with the terms of the prior Court Orders these ratios shall be met without resort to excessive use of overtime.

c. In accordance with the terms of the prior Court Orders these ratios shall be met without excessive use of agency personnel.

2. By no later than November 1, 1996, Defendants shall ensure that on a day-to-day, shift-to-shift basis, the staffing on each unit at HSH is adjusted so that there is adequate staffing to meet the acuity needs of patients and to provide adequate and appropriate supervision and safety, and also nursing responsibilities related to treatment and psychosocial rehabilitation programs.

3. By no later than August 1, 1996, Defendants shall create a pool of a minimum of twenty nursing staff positions that are available for assignment to any HSH unit to meet the acuity and treatment needs of patients.

4. By no later than October 1, 1996, Defendants shall ensure that there is adequate coverage for HSH staff who are on extended leave.

5. By no later than September 1, 1996, Defendants shall adopt and implement a policy that no HSH employee works voluntary overtime on consecutive days and that limits the number

of voluntary overtime shifts for each employee to a maximum of three shifts per week.

6. By no later than June 15, 1996, Defendants shall ensure that HSH employees use sick leave only in accordance with State policy.

B. Treatment Plans and Psychosocial Rehabilitation

1. By no later than September 1, 1996, Defendants shall ensure that every HSH patient has an adequate and appropriate individualized interdisciplinary treatment plan in accordance with the provisions in Part II.E of the Settlement Agreement.

2. By no later than September 1, 1996, Defendants shall ensure that there is adequate quality review by appropriate clinicians of the appropriateness and adequacy of treatment plans. Defendants shall also ensure that a member of each interdisciplinary treatment team is responsible and accountable for ensuring that the treatment plan is implemented and changes in the plan are made when warranted, particularly following behavioral episodes, use of restraint or seclusion, use of PRN medications, significant incidents, or injury.

3. By no later than August 1, 1996, Defendants shall identify all HSH patients who are in need of special attention due to frequent episodes of restraint or seclusion, use of restraints or seclusion as part of a behavioral management plan, or frequent injuries or incidents. Defendants shall use outside

resources, where necessary and appropriate, to address and ameliorate each area in which the patient poses special needs.

4. By no later than September 1, 1996, Defendants shall increase the frequency of Grand Rounds at HSH to a minimum of two per month. By no later than February 1, 1997, patients identified as in need of special attention in paragraph II.B.3. above shall be the subject of a case presentation at the Grand Rounds. Patients identified as in need of special attention after August 1, 1996 shall be the subject of a case presentation at the Grand Rounds within two months of being identified.

5. By no later than October 1, 1996, Defendants shall hire a Director of Psychosocial Rehabilitation at HSH. The Director shall ensure that there is a comprehensive psychosocial rehabilitation program at HSH that is coordinated between the various disciplines.

6. By no later than December 1, 1996, Defendants shall ensure that every HSH patient has the opportunity to participate in an appropriate, comprehensive, individualized psychosocial rehabilitation program. HSH shall take adequate steps to encourage patient participation.

7. By no later than December 1, 1996, Defendants shall ensure that patients with a dual diagnosis (as defined in Part I of the Settlement Agreement) receive adequate psychosocial rehabilitation and treatment.

C. Restraint and Seclusion

1. By no later than August 1, 1996, Defendants shall

achieve full compliance with Part II.F of the Settlement Agreement and section VI of the January 19, 1995 Stipulation and Remedial Plan.

2. By no later than August 1, 1996, Defendants shall ensure that there is adequate clinical oversight and review of the use of restraint and seclusion.

3. By no later than August 1, 1996, Defendants shall ensure that staff do not use excessive or inappropriate force in managing patient behavior and shall review all incidents of restraint, seclusion, and physical intervention to determine whether staff actions led to injury or abuse and, if so, to determine and implement corrective action.

D. Protection from Harm

1. Defendants shall take all necessary steps to ensure that HSH patients are adequately protected from harm and risks to their personal safety. At a minimum, Defendants agree by no later than June 1, 1997, to be in full compliance with sections IV and VIII of the January 19, 1995, Stipulation and corresponding requirements in the Remedial Plan and the November 15, 1995, Stipulation, with progress to be shown toward that result in each of the quarterly reports of Dr. Nancy Ray as required in this Stipulation, beginning with the December 15, 1996, report. In addition, the Defendants shall take the following steps:

a. By no later than July 1, 1996, institute an adequate system to ensure appropriate and timely administrative

and clinical review and follow-up of all significant incidents to address individual patient and systemic issues raised by the incident;

b. By no later than August 1, 1996, begin conducting comprehensive studies of recurring significant, systemic issues negatively impacting patient care at HSH and, within 30 days after the date of the administrator's approval of each report, develop and implement adequate action to address the issues;

c. By no later than August 1, 1996, ensure that there is adequate reporting and accountability of all incidents;

d. By no later than September 1, 1996, ensure that there is adequate evaluation and review of all professional and supervisory staff actions in serious incidents; and

e. By no later than September 1, 1996, increase the number of members of the Patient Protection Committee (PPC) to include two additional community members so that a majority of the PPC members (four out of a total of seven) are community members. The PPC may proceed to meet, deliberate, and make decisions if at least three community members and two HSH/DOH representatives are in attendance.

E. Discharge Planning

1. In order to ensure full and faithful compliance with their responsibilities under section III of the January 19, 1995, Stipulation and Sections 3 and 4 of the Remedial Plan, Defendants shall develop and implement a comprehensive plan to



meet the requirement set forth below and in the January 19, 1995, Stipulation and Remedial Plan:

a. Select or develop an appropriate tool to assess every HSH patient to identify those patients who can be discharged from HSH and served appropriately in an alternative, less restrictive setting;

b. Ensure that the assessment does not discriminate against any patients on the basis of type or severity of disability;

c. Use the tool to assess every HSH patient on a monthly basis;

d. Develop and implement an individualized plan for discharge and community placement for each HSH patient who has been assessed as appropriate for discharge that identifies all residential and other community supports as needed to meet the needs of the patient. Establish a reasonable deadline by which the patient will be discharged. In no event shall a patient be discharged to a setting that does not meet the patient's individual needs. For purposes of this paragraph II.E.1., the term "residential and other community supports" shall include such elements as residential, vocational, treatment, and case management services;

e. Identify all residential and other community supports currently available that are needed by patients upon discharge from HSH;

f. Identify all residential and other community

supports needed to meet the needs of each HSH patient who is appropriate for discharge and develop any such services that are not currently available, including housing. Defendants continue to acknowledge their obligation under the terms of the January 19, 1995, Stipulation and Order to create residential community programs for HSH patients whose only barrier to discharge is the lack of an appropriate community placement;

g. Develop and implement an adequate transition plan for each HSH patient who will be discharged into the community; and

h. Establish an adequate and comprehensive quality assurance system to monitor the continued adequacy and appropriateness of any residential and other community supports provided to discharged HSH patients to meet each discharged patient's needs; revise the residential and other community support services when necessary to meet the needs of the patient.

2. The plan developed pursuant to paragraph II.E.1. above shall contain specific steps to meet each of the above requirements and the time lines and the person responsible and accountable for carrying out each step.

3. Defendants shall submit the plan to the United States by no later than September 1, 1996. The United States shall review the plan. If the United States believes Defendants' plan to be inadequate to meet the requirements set forth in paragraph II.E.1. above, the United States shall have 60 days to submit an alternative plan to the Defendants. If the parties

cannot agree on a mutually acceptable plan, they shall petition the court for a hearing to resolve the dispute.

F. Independent Experts

1. By no later than 30 days following the filing of this Stipulation, Defendants shall contract with Dr. Nancy Ray and Technical Assistance Collaborative, Inc. ("Independent Experts") to provide technical assistance and to monitor and oversee the Defendants' compliance in the areas designated below. The Independent Experts shall:

a. Conduct at least quarterly on-site visits to HSH;

b. Be provided access to all relevant staff, records, and documents; and

c. File quarterly reports with the parties that objectively and comprehensively evaluate the status of the State's compliance and set forth recommendations for correcting identified deficiencies.

2. The Defendants shall be required to respond in writing to the recommendations made pursuant to paragraph II.F.1.c. above within 30 days after their receipt, stating whether the recommendations will be adopted and implemented or will be rejected in whole or in part, and the reasons for any rejection. If the United States does not agree with a recommendation or with the Defendants' response, the parties, along with the Independent Expert, shall confer. If after consultation between the parties no agreement can be reached,

either party may petition the Court for resolution. The United States shall have unlimited access to the Independent Experts during the course of their involvement with this case.

3. Dr. Nancy Ray shall serve as the Independent Expert in all aspects of this Stipulation and prior court Orders related to protection from harm, prevention and investigation of abuse, neglect, and serious incidents, and restraint and seclusion. Her first report shall be submitted by September 15, 1996.

4. Technical Assistance Collaborative, Inc. shall serve as the Independent Expert in all aspects of this Stipulation and prior Court Orders related to discharge planning and development of alternative community placements and support services, as described in paragraph II.E.1. of this Stipulation. Technical Assistance Collaborative, Inc. shall assist Defendants in developing and implementing the plan described in paragraph II.E.1. The first quarterly report shall be due on December 15, 1996, and the plan developed under paragraph II.E.1. of this Stipulation and submitted to the United States shall be in lieu of any earlier quarterly report.

5. By no later than 30 days following the filing of this Stipulation, Defendants shall contract with Technical Assistance Collaborative, Inc. to assist them in identifying and maximizing alternative funding sources to support the activities described in the plan that is required under paragraph II.E.1 of this Stipulation. The activities covered by this paragraph

II.F.5. shall not be subject to the requirements of paragraphs II.F.1. and II.F.2. of this section.

G. Continuing Force and Effect of Prior Court Orders: All provisions of: (1) the Settlement Agreement entered as an order of the Court in this case on September 19, 1991; (2) the Stipulation and Order to Remedy Defendants' Contempt of Settlement Agreement and Remedial Plan entered as an order of the Court on January 19, 1995; and (3) the Stipulation And Order Regarding Procedures for Reporting and Investigating Allegations of Abuse and Neglect at Hawaii State Hospital entered as an order of the Court on November 15, 1995 that do not otherwise conflict

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with the terms of this Order shall remain in full force and effect.

Dated: Honolulu, Hawaii JUN 28 1996

DAVID A. EZRA

DAVID A. EZRA  
UNITED STATES DISTRICT JUDGE

AGREED TO:

FOR THE STATE OF HAWAII



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