

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) Civ. No. 91-00137  
)  
Plaintiff, )  
) JOINT STIPULATION AND ORDER  
v. ) REGARDING PLAN FOR COMMUNITY  
) MENTAL HEALTH SERVICES  
)  
STATE OF HAWAII, LINDA LINGLE, )  
Governor, CHIYOME L. FUKINO, )  
Director of Health; MICHELLE R. )  
HILL, Deputy Director, Behavioral )  
Health Administration of the )  
Department of Health; WILLIAM T. )  
ELLIOTT, Acting Administrator, )  
Hawaii State Hospital, )  
)  
Defendants. )  
)

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
OCT 26 2005  
at 10 o'clock and 30 min. AM  
SUE BEITIA, CLERK

**JOINT STIPULATION AND ORDER REGARDING  
PLAN FOR COMMUNITY MENTAL HEALTH SERVICES**

Plaintiff, United States of America (United States) and Defendants, State of Hawaii, Governor Linda Lingle, Director of Health Chiyome L. Fukino, Deputy Director for Behavioral Health Michelle R. Hill, and Hawaii State Hospital Acting Administrator William T. Elliott (Defendants), by and through their respective counsel, having met and conferred, submit for the Court's approval this Joint Stipulation and Order Regarding Plan for Community Mental Health Services.

1. Whereas, United States filed this action on March 7, 1991, pursuant to the Civil Rights of Institutionalized

Persons Act (CRIPA), 42 U.S.C. §§ 1997 - 1997j (1980), for the purpose of protecting the constitutional and statutory rights of the patients of Hawaii State Hospital (HSH); and

2. Whereas, United States sought an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at HSH set forth in the complaint, and requiring Defendants to take such action as will provide constitutional conditions of care to persons who reside at HSH; and

3. Whereas, on May 17, 2001, this Court appointed Magistrate Judge Kevin S. C. Chang to serve as Special Master in this action with the powers and responsibilities set forth in the Order of Reference filed on June 19, 2001; and

4. Whereas, pursuant to the Order of Reference, the Special Master:

a. Employed Kris McLoughlin, first as an expert, and then as the Special Monitor in this case;

b. Convened a summit of experts to draft the final Hawaii State Hospital Remedial Plan for Compliance (HSH Remedial Plan), which HSH Remedial Plan was adopted as an order of this Court on February 22, 2002; and

c. Recommended approval of the Plan for Community Mental Health Services (Community Plan) prepared by the Special Monitor, the parties and their counsel, which Community Plan was approved and adopted as an Order of the Court on January 23, 2003.

5. Whereas, in that same Order filed January 23, 2003, the Court found that the HSH Remedial Plan and the Community Plan "constitute the 'omnibus plan' referred to in the Order Amending Order Setting Powers of Special Monitor filed on April 10, 2000, and the Order of Reference filed on June 19, 2001[;]" and

6. Whereas, the Special Master employed a team of experts to evaluate Defendants' progress toward compliance with the HSH Remedial Plan and the Community Plan (Evaluation Team); and

7. Whereas, upon the Evaluation Team's findings and the Special Master's recommendation, the Court dismissed with prejudice the HSH Remedial Plan and the prior court orders referenced therein, except for Defendants' continuing responsibility to implement the provisions of Section I.1.xi of the HSH Remedial Plan; and on December 10, 2004, the Court entered an Order to that effect; and

8. Whereas, the Order of December 10, 2004 also provided that the original two-year deadline for implementation of the Community Plan was extended to June 30, 2006; and

9. Whereas, as evidenced by the Special Master's Tenth Report and Recommendation, Defendants are unlikely to achieve substantial compliance by the current June 30, 2006 deadline for completion of the Community Plan; and

10. Whereas, continuation of the litigation to the point at which all parties agree that the Community Plan has been fully implemented might involve diversion of substantial resources which the parties believe could be better spent on implementation of the Community Plan.

NOW, THEREFORE, THE UNITED STATES AND DEFENDANTS AGREE AND STIPULATE AS FOLLOWS:

A. Defendants' deadline for compliance with the Community Plan remains June 30, 2006.

B. From the date of this Stipulation and Order until the conclusion of this action, the Special Monitor and the Evaluation Team shall provide on-going technical assistance to Defendants toward achieving substantial compliance with the Community Plan. Periodically, or on an as needed basis, the Special Monitor shall report to counsel on the status of Defendants' progress.

C. As soon as practicable after the filing of this Stipulation and Order, Defendants shall submit to the Special Master, the Special Monitor, the Evaluation Team, and the United States an appropriate Action Plan, including timelines needed to achieve substantial compliance with the Community Plan.

Defendants, in coordination with the Evaluation Team and the United States, shall prepare an additional document summarizing the timelines (Timelines), submit the Timelines to the Court for approval, and upon the Court's approval, the Timelines shall become an order of the Court.

D. The Action Plan shall address the particular steps Defendants shall take in order to implement the Community Plan in the areas of Community Plan implementation found by the Evaluation Team to be incomplete as set forth in the Evaluation Team members' reports attached to the Special Master's Tenth Report and Recommendation. Plaintiff and Defendants understand that the areas of incomplete implementation include, but are not limited to tasks related to crisis services, utilization management, case management, recovery planning, the quality improvement system, the consumer protection system (especially consumer grievances and appeals as referred to in the Community Plan at Section IV.B.1.b), target population and other data

reports, Community Mental Health Centers (CMHC) system, and forensic services.

E. The United States, Defendants, the Special Monitor, and the Evaluation Team members shall collaborate on the implementation of the Action Plan. The Special Monitor and the parties shall prepare a schedule for site visits by the Evaluation Team.

F. Defendants shall set forth their reasonable best efforts to achieve substantial compliance with all previously entered court orders related to the Community Plan.

G. In the event that the Court determines that Defendants have not achieved substantial compliance with the Community Plan by June 30, 2006, Defendants shall present to the Court a detailed description of the processes, procedures, structures and programs to complete implementation of the Community Plan. Defendants shall continue their efforts to implement the Community Plan under the supervision of the Court, the Special Master, and the Special Monitor until termination on or before November 30, 2006. This lawsuit shall terminate nevertheless on November 30, 2006 by a dismissal with prejudice, as there are no conditions precedent to dismissal with prejudice on November 30, 2006.

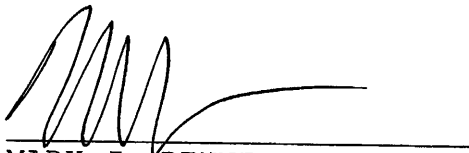
H. The lawsuit may terminate prior to November 30, 2006, in the event the Court, in its sole discretion, determines that Defendants have achieved substantial compliance with the Community Plan.


I. Defendants agree that they will not file a motion challenging the jurisdiction of the United States District Court for the District of Hawaii in this matter.

J. The United States and Defendants agree to bear their respective fees and costs. Defendants shall continue to pay the reasonable fees and expenses of the Special Monitor, the Evaluation Team, and Chad Koyanagi, M.D.

K. On a regular, periodic basis, Defendants agree to report to the United States and Evaluation Team concerning the status of their compliance with the Action Plan, the Timelines, and related Orders in this action.

AGREED TO:

  
MARK J. BENNETT  
Attorney General  
State of Hawaii

  
BRADLEY J. SCHLOZMAN  
Acting Assistant Attorney General  
Civil Rights Division

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ATTORNEYS FOR THE  
STATE OF HAWAII  
AND OTHER NAMED  
DEFENDANTS

SO ORDERED:

DATED: OCT 26 2005, at Honolulu, Hawaii.

DAVID ALAN EZRA

DAVID A. EZRA  
United States District Judge

USA v. State of Hawaii, et al.  
Civil No. 91-00137 DAE KSC  
"Joint Stipulation and Order Regarding  
Plan for Community Mental Health Services"