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FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

SEP 19 1991

at 10 o'clock and 15 min. AM.
 WALTER A.Y.H. CHINN, CLERK

UNITED STATES DISTRICT COURT FOR THE
 DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CIVIL NO. 91-00137 (DAE)
)	
Plaintiff,)	JOINT MOTION FOR ENTRY
vs.)	OF SETTLEMENT AGREEMENT;
)	SETTLEMENT AGREEMENT;
)	ORDER
STATE OF HAWAII; JOHN WAIHEE,)	
Governor; JOHN LEWIN, Director))	
Department of Health; HENRY)	
FOLEY, Deputy Director,)	
Behavioral Health Services)	
of the Department of Health;)	
NALEEN N. ANDRADE, Acting)	
Superintendent, Hawaii State)	
Hospital,)	
Defendants.)	
)	

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF HAWAII

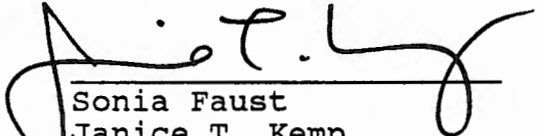
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 91-00137 (DAE)
)	
STATE OF HAWAII; JOHN WAIHEE,)	JOINT MOTION FOR ENTRY
Governor; JOHN LEWIN, Director,)	OF SETTLEMENT AGREEMENT;
Department of Health; HENRY)	SETTLEMENT AGREEMENT
FOLEY, Deputy Director,)	
Behavioral Health Services)	
of the Department of Health;)	
NALEEN N. ANDRADE, Acting)	
Superintendent, Hawaii State)	
Hospital,)	
Defendants.)	

JOINT MOTION FOR ENTRY OF SETTLEMENT AGREEMENT

Plaintiff, the United States of America, and Defendants,
the State of Hawaii, et al., respectfully move for adoption and
entry of the accompanying Settlement Agreement, jointly
proposed and agreed upon by the parties, as the order and

judgment of this Court in this case.

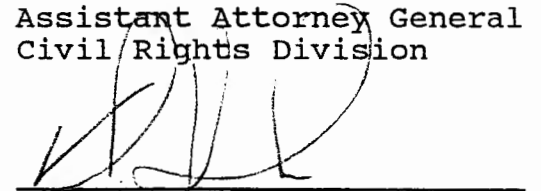
Warren Price, III
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Respectfully submitted,

John R. Dunne
Assistant Attorney General
Civil Rights Division



Robinsue Frohboese
Verlin Hughes
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) Civil No. 91-00137 (DAE)
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Plaintiff,) SETTLEMENT AGREEMENT AND
) ORDER
vs.)
)
STATE OF HAWAII; JOHN WAIHEE,)
Governor; JOHN LEWIN, Director,)
Department of Health; HENRY)
FOLEY, Deputy Director,)
Behavioral Health Services)
of the Department of Health;)
NALEEN N. ANDRADE, Acting)
Superintendent, Hawaii State)
Hospital,)
)
Defendants.)
_____)

SETTLEMENT AGREEMENT

INTRODUCTION

1. This case was filed by plaintiff, the United States of America, on March 7, 1991, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. Section 1997 et seq.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. Section 1345. Venue is appropriate pursuant to 28 U.S.C. Section 1391(b).

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. Section 1997a and has satisfied all prerequisites for the initiation of a civil action prescribed by that statute.

4. The Defendants are the State of Hawaii; the Honorable John Waihee, Governor of the State of Hawaii; John Lewin, Director, Department of Health; Henry Foley, Deputy Director, Behavioral Health Services Administration of the Department of Health; and Naleen N. Andrade, Superintendent, Hawaii State Hospital. All individual defendants are sued in their respective official capacities.

5. The Defendants have authority and responsibility for the operation of Hawaii State Hospital and the Children and Adolescent Residential Services "CARS," and are officers of the Executive Branch of the State of Hawaii.

6. On November 6, 1989, the Attorney General of the United States, by and through Acting Assistant Attorney General James P. Turner, notified Governor Waihee of his intent to investigate alleged unconstitutional conditions of confinement at the Hawaii State Hospital (HSH) in Kaneohe and Honolulu, Hawaii.

7. Following the investigation, on March 1, 1990, the Attorney General of the United States, by and through Acting Assistant Attorney General James P. Turner, notified Governor Waihee of the alleged unconstitutional conditions of confinement at HSH and the minimal measures necessary to remedy these alleged conditions, pursuant to 42 U.S.C. Section 1997b(a)(1). The parties agree that the confinement, care and treatment of patients at HSH and residents at CARS implicate

rights secured and protected by the United States Constitution. The parties recognize the importance of these constitutional interests and, to avoid protracted and adversarial litigation, and in the best interest of the patients/residents confined at HSH and CARS, agree to the provisions set forth herein.

8. It is the shared goal of the parties to ensure that the conditions of confinement for patients at HSH and CARS satisfy constitutional requirements. It is recognized that the State has already made improvements in certain areas. The purpose of this Settlement Agreement is to achieve and maintain constitutional conditions of confinement, care and treatment for HSH patients and CARS residents. The provisions of this Settlement Agreement shall be construed in a manner consistent with, and to further, that purpose.

9. The Defendants do not admit to any violation of law, and this Settlement Agreement may not be used as evidence of liability in any other proceeding.

10. The provisions of this Settlement Agreement are a reasonable, lawful and fundamentally fair resolution of this case.

11. This Settlement Agreement shall be applicable to and binding upon all of the parties, their officers, agents, servants, employees, assigns, and their successors, and upon those persons in concert or participation with them who receive actual notice of this agreement.

PART I. DEFINITIONS

As used in this Settlement Agreement, the following definitions apply to the terms below:

"Acute wards": The Pali Ward (in the Goddard Building at HSH), Closed Intensive Security Unit "CISU" III (in the Guensberg Building at HSH), and the Adult Open and Closed wards in the Ma'eli'eli and Maka-wili-wili buildings.

"Bodily restraints": (1) Physical or mechanical devices used to restrict the free movement of a patient/resident or the movement or normal function of any portion of the patient/resident's body, excluding those devices used only to provide support for the achievement of functional body position or balance, and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and (2) Chemical substances used for the sole purpose of controlling the behavior of a patient/resident, and not for treatment purposes.

"CARS": Children and Adolescent Residential Services: Non-acute residential placements for children and adolescents operated by the Child and Adolescent Mental Health Division of the Department of Health.

"Direct care worker": Paramedical assistants and child counselors assigned to wards who are immediately responsible for implementing treatment and providing care to patient/residents.

"Dual diagnosis": Patient/residents who have been diagnosed by a qualified professional as having a mental illness, and mental retardation, or mental illness and a substance abuse disorder.

"Emergency circumstance": A situation where a patient/resident, due to a behavioral episode, is posing a serious and immediate threat of bodily injury to him/herself or others.

"Forensic non-acute wards": The CISU I and CISU II wards (in the Guensberg Building at HSH).

"HSH": Hawaii State Hospital, Kaneohe, Hawaii.

"Long term care wards": All Psychosocial Rehabilitation Empowerment Programs "PREP" at HSH.

"Physician": A medical doctor lawfully entitled to practice medicine in the State of Hawaii.

"Polypharmacy": Concurrent use of two or more psychotropic medications of a single class.

"PRN": A treatment modality ordered on a pro re nata or "as needed" basis.

"Professional judgment": A decision by a qualified professional shall be deemed to be a reasonable exercise of professional judgment unless it can be shown that the decision is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.

"Psychiatrist": A physician (a) who is certified by or is eligible for certification by the American Board of Psychiatry and Neurology, or (b) who has successfully completed an approved residency program in psychiatry and upon completion of requisite post-residency will become eligible for examination for such certification.

"Psychologist": A person who has attained at least a master's degree in the field of psychology.

"Psychotropic medication": Chemical substances used in the treatment of mental illness which exert an effect on the mind and are capable of modifying mental activity or behavior.

"Qualified professional": A person competent, whether by education, training, or experience, to make the particular decision at issue.

"Seclusion": A form of bodily restraint whereby a patient/resident is placed alone in a locked room, or a room from which the patient/resident is physically prevented from egress.

"State": The Executive Branch of the government of the State of Hawaii, specifically including the Governor of Hawaii, the State Department of Health, the administration of Hawaii State Hospital, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees, or assigns.

"Time out": A behavior management technique which removes a patient/resident from a situation for a period of time for the purpose of modifying a specific inappropriate behavior and to eliminate positive reinforcement following the inappropriate behavior.

"Training program": A program of steps and activities, including behavior management and the teaching of basic self-care skills, determined by qualified professionals consistent with professional judgment to be appropriate to protect a patient/resident from unreasonable risk to personal safety and necessary to enable a patient/resident to function free from undue bodily restraint or seclusion.

"Treatment": Therapeutic steps and activities, including psychological and psychiatric services and medication, determined by qualified professionals consistent with professional judgment to be appropriate to protect a patient/resident from unreasonable risks to personal safety and necessary to enable a patient/resident to function free from undue bodily restraint or seclusion.

"5.5 nursing care hours per patient day": A number representing staffing hours which is calculated by multiplying 5.5 times the number of patients, dividing the total by eight (8) and allocating forty percent (40%) of the total to the first shift, forty percent (40%) of the total to the second shift, and twenty percent (20%) of the total to the third shift.

"5.0 nursing care hours per patient day": A number representing staffing hours which is calculated by multiplying 5.0 times the number of patients, dividing the total by eight (8), and allocating forty percent (40%) of the total to the first shift, forty percent (40%) of the total to the second shift, and twenty percent (20%) of the total to the third shift.

PART II. REMEDIAL MEASURES

A. CONDITIONS REQUIRING IMMEDIATE CORRECTION

In order to eliminate and avoid conditions which pose an immediate and unlawful threat to the life, health, and safety of patients at HSH and residents of CARS, the State agrees to meet the following requirements:

1. Immediately upon filing this Settlement Agreement, ensure that all patients/residents who are placed in physical or mechanical restraint or seclusion are monitored adequately by appropriate medical personnel and that no patient/resident is restrained or secluded for a period greater than that necessary for the patient/resident to no longer exhibit behaviors demonstrating an imminent threat of serious harm to self or others.

2. Immediately upon filing this Settlement Agreement, provide 1:1 staffing when ordered by a physician.

3. Immediately upon filing of this Settlement Agreement, ensure that all PRN orders for psychotropic medications:

- a. Are limited to a maximum of 24 hours;
- b. Are accompanied by the ordering physician's progress note documenting the justification and rationale for the PRN, and the effect of the PRN, if administered;

- c. Describe in clear and objective terms, the specific indications and behaviors for which the PRN is to be administered;
- d. Set forth the maximum number of doses to be administered within a 24 hour period; and
- e. Are accompanied by a nursing progress note for each administration in which the nurse administering the PRN documents the reason for using the PRN, the lesser restrictive steps leading up to the administration of the PRN, and the effect of the PRN.

4. Immediately upon filing this Settlement Agreement, continue to provide all patients at HSH and residents of CARS with access to adequate clothing and provide appropriate personal hygiene items, including toothbrushes, bar soap, shampoo, and towels.

5. Within fourteen (14) days after filing this Settlement Agreement, unless another deadline is specified below, take the following actions to eliminate building hazards and other conditions posing threats to the health and safety of HSH patients and residents of CARS:

- a. House no more than one patient in HSH patient rooms housing newly civilly committed or newly voluntarily admitted patients, or housing any other HSH patient or CARS resident admission where the patient/resident's clinical condition requires a separate room;

- b. Ensure that each unit at HSH and CARS does not exceed its patient/resident capacity;
- c. Within sixty (60) days, replace all HSH bedroom doors in areas in which acute patients sleep with doors that open outward;
- d. Eliminate all hazardous conditions at HSH which pose undue suicide risks to patients, including non-breakaway shower and curtain rods; and within sixty (60) days, eliminate all hazardous conditions at CARS which pose undue suicide risks to residents, including non-breakaway shower and curtain rods; and
- e. Take all necessary steps to ensure that all seclusion rooms are free from hazards or conditions exposing patient/residents to harm.

B. FIRE-SAFETY

1. No later than forty-five (45) days after the filing of this Settlement Agreement, the State shall conduct a thorough fire-safety survey of all HSH and CARS areas currently housing patients or providing patient services, and all areas intended to house patients or provide patient services within twelve months of filing this Settlement Agreement, to identify those conditions which pose unreasonable fire safety risks to HSH patients and CARS residents.

2. Within forty-five (45) days after the survey is completed, the State shall submit a plan to the United States detailing the measures it intends to take to correct the deficiencies identified through the survey. The United States shall have forty-five (45) days to review the plan and submit comments and objections to the State and to the Court. The State shall have thirty (30) days from the date of receipt of the comments and objections of the United States, to submit a response to the Court. The plan, once approved by the Court as submitted or modified based on the comments and/or objections of the parties, will be fully enforceable as part of this Settlement Agreement.

3. Within 180 days after the filing of this Settlement Agreement, the State shall implement a preventive-maintenance fire and environmental safety program for all HSH and CARS areas currently housing patients/residents or providing patient services and all areas intended to house patients or provide patient/resident services.

C. STAFFING REQUIREMENTS

1. Within the time frames set forth below, the State shall ensure that HSH and CARS have a sufficient number of appropriately qualified psychiatrists, psychologists, social

workers, rehabilitation services staff, nurses and direct care staff to assure attainment and consistent maintenance of at least the staff to patient/resident ratios and other requirements as delineated below. The State shall seek university affiliation, to the extent possible, for the professional staff at HSH and CARS. At the State's discretion, the ratios may be attained by hiring additional staff or by appropriately reducing the patient/resident population of HSH and CARS. HSH and CARS shall maintain a daily patient/resident population consistent with this goal and the census shall only be increased if staff is available as set forth in the ratios as delineated below. The State agrees that if it decides to reduce the population of HSH or CARS through the transfer or diversion of a substantial number of patients/residents to alternate programs, the determination as to which patients/residents shall be transferred or diverted elsewhere shall be made by professional staff qualified to make such decisions. If such transfers or diversions are to be made, the State agrees to file a plan for such transfers or diversions no later than sixty (60) days prior to implementing the transfers or diversions. The United States shall have thirty (30) days in which to comment on the plan. If the United States does not oppose the plan, the plan shall become part of this Settlement Agreement and shall be fully enforceable. If the United States

opposes the plan, or any part thereof, and the parties are unable to resolve their differences after good faith negotiations, the adequacy of the plan shall be determined by the Court.

2. HSH Staffing

a. Psychiatrists:

By no later than October 1, 1991:

1:15 for each acute ward;

1:20 for each forensic non-acute ward;

1:25 for each long term care ward

By no later than July 1, 1992:

1:12 for each acute ward;

1:15 for each forensic non-acute ward;

1:20 for each long term care ward

b. Psychologists:

By no later than October 1, 1991: 1:25

By no later than March 1, 1992: 1:20

c. Social Workers:

As of the time of filing this Settlement Agreement:

1:17

By no later than March 1, 1992: 1:15

d. Rehabilitation Services Staff (occupational and recreational therapy staff): As of the time of filing this Settlement Agreement: 1:9

e. Nursing Staff (registered nurses, licensed practical nurses and paramedical assistants): As of the time of filing this Settlement Agreement, the following shall apply:

- (i) Acute Wards: HSH shall consistently maintain at least an overall nursing staff:patient ratio of 1:3.5 present and on duty for the first shift; 1:3.5 present and on duty for the second shift; and 1:7 present and on duty for the third shift.
- (ii) Long Term and Forensic Non-Acute Wards: HSH shall consistently maintain at least an overall nursing staff:patient ratio of 1:4 present and on duty for the first shift; 1:4 present and on duty for the second shift; and 1:8 present and on duty for the third shift.
- (iii) The following conditions shall apply to the above nursing staff ratios for acute, and long term and forensic non-acute wards:
 - (a) There shall be at least one registered nurse on each ward on each shift;
 - (b) The nursing staff shall be deployed in such a manner so as to ensure that at least thirty percent (30%) of the staff on each ward on each shift shall be registered nurses. If there is no licensed practical

nurse on duty on any ward for any shift, a registered nurse must therefore prepare and administer medications. The number of registered nurses present and on duty on the ward shall be adequate to ensure a sufficient number of registered nurse hours for supervision of other staff and patient treatment;

- (c) Nursing staff shall be deployed in such a manner so as to ensure that there are at least 5.5 nursing care hours per patient day, as defined herein, on each acute ward and at least 5.0 nursing care hours per patient day, as defined herein, on each long term and non-acute forensic ward;
- (d) The total number of nursing staff present and on duty each shift shall be increased, when necessary, to ensure adequate supervision, health, safety, and treatment of each HSH patient; and
- (f) Any 1:1 and special assignment staff are in addition to the nursing ratios set forth in sections e. (i) and e. (ii), above, and are not counted in the ratios.

f. Within 120 days after filing this Settlement Agreement, HSH shall employ and retain at least one psychiatrist who will have primary responsibility for supervising, monitoring, and coordinating all clinical care and treatment activities and operations at HSH and who possesses at least the following minimum qualifications:

- (i) Demonstrated skills and competence in both clinical and psychiatric practice and supervision of other psychiatrists and physicians in an institutional setting; and
- (ii) Certification by the American Board of Psychiatry and Neurology.

g. Within ninety (90) days after filing this Settlement Agreement, HSH shall employ and retain at least one psychologist possessing a Ph.D. in the field of psychology, who has been licensed or certified by the State, has at least three years of supervisory experience in an institutional setting, and who will have primary responsibility for supervising, monitoring, and coordinating all psychological care activities and operations at HSH.

- h. Within ninety (90) days after filing this Settlement Agreement, HSH shall employ and thereafter retain a Master's level prepared psychiatric nurse, or the equivalent thereof, as the Director of Nursing "DON". This person shall have responsibility for supervising, monitoring and coordinating all nursing care personnel, including registered nurses, licensed practical nurses, and paramedical assistants, and the quality of all nursing services and activities at HSH. The DON shall coordinate all nursing in-service activities and ensure that nursing staff attend all in-service training necessary to attain and maintain current generally accepted standards of professional nursing care.
- i. HSH shall further ensure that at least one physician continues to be on-grounds at the HSH campus at all times and is readily available and accessible for patient care.

3. ADOLESCENT RESIDENTIAL SERVICES

- a. Psychiatrists: .6:8
- b. Ph.D. Psychologists: .3:8
- c. Social Workers: 1:8
- d. Rehabilitation Services Staff (occupational therapists, substance abuse counselors, recreational therapists, activities therapists) 1:8

- e. Nursing Staff (registered nurses, licensed practical nurses, child counselors):
 - 1st shift: 1:4
 - 2nd Shift: 3:8
 - 3rd Shift: 1:4
- f. Adequate and appropriate education shall be provided in the Adolescent Residential Services program. The staffing on the Adolescent Residential Services program shall reflect and emphasize skill development and a psycho-social learning model.

4. CHILDREN'S RESIDENTIAL SERVICES

- a. Psychiatrists: .6:12
- b. Ph.D. Psychologists: .8:12
- c. Social Workers: 1:12
- d. Occupational Therapists: 1:12
- e. Nursing Staff (registered nurses, licensed practical nurses, child counselors):
 - 1st shift: 1:4
 - 2nd shift: 1:3
 - 3rd Shift: 1:4
- f. Nursing staff shall be deployed in such a manner so as to ensure that there is at least one registered nurse on each shift.

g. Adequate and appropriate education shall be provided in the Children's Residential Services programs. The staffing on the Children' Residential Services shall reflect and emphasize skill development and a psycho-social learning model.

h. Within ninety (90) days after filing this Settlement Agreement, the Children's Residential Services program shall employ and thereafter retain a Master's level prepared psychiatric nurse, or the equivalent thereof, as the Program Director. This person shall have responsibility for supervising, monitoring and coordinating all nursing care personnel, including registered nurses, licensed practical nurses, and child counselors, and the quality of all nursing services and activities at the Children's Residential Services program. The Program Director shall coordinate all nursing in-service activities and ensure that nursing staff attend all in-service training necessary to attain and maintain current generally accepted standards of professional nursing care.

D. ROUTINE, SPECIALIZED, AND EMERGENCY MEDICAL CARE

All HSH patients and CARS residents shall be afforded adequate medical care, including, within forty-five (45) days after filing this Settlement Agreement:

1. Ensuring that all patients/residents have timely access to necessary diagnostic and treatment services, either on-grounds or at medical facilities which are off facility grounds, as appropriate. Facility administrators shall ensure that appropriate documentation of a patient/resident's physical illness accompanies the transfer of the patient/resident and that, upon return to the facility, the records of the course of treatment afforded the patient/resident returns to the facility with the patient/resident and is immediately made a part of the patient/resident's HSH or CARS medical record.

2. Providing, as appropriate, medical specialists to meet the specialized medical needs of HSH patients and CARS residents.

3. Ensuring that adequate emergency medical care, appropriate to the medical needs of the population at HSH and CARS, is provided.

4. Ensuring that each HSH patient has an appropriate and adequate nursing care plan in accordance with accepted professional standards of care.

E. PSYCHIATRIC CARE AND PSYCHOTROPIC MEDICATION

1. The State shall provide sufficient treatment and/or training programs to patients at HSH and residents of CARS. This shall include the following actions, effective with the filing of this Settlement Agreement:

- a. Providing each patient with a physical and mental status examination and review of behavioral status at the time of admission to HSH; and ensuring that each resident admitted to CARS has already had a complete diagnostic and assessment evaluation and a determination has been made that a residential placement is appropriate;
- b. Providing each patient/resident with an initial psychiatric, nursing, and psycho-social assessment and initial treatment plan within sixty (60) hours of the time of admission to HSH or CARS;
- c. Within fourteen (14) days of admission to HSH or CARS, developing for each patient/resident, an individualized treatment and/or training program which is consistent with professional judgment, and which is developed by an interdisciplinary team of professional staff, including psychiatrists, medical physicians, nurses, psychologists, social workers, physical therapists, occupational therapists, and direct care workers, as appropriate. Each treatment plan shall contain at least the following elements:

- (i) Statements describing the nature of the specific problems and needs of the patient/residents;
- (ii) A statement that HSH or CARS is able to meet the individual needs for each specific patient/resident for psychiatric and medical care;
- (iii) A description of clear, objective, and measurable intermediate and long range goals and objective for each patient/resident, including time-frames for the achievement of each;
- (iv) A delineation of the specific treatment and or training programs to be afforded to each patient/resident, including a schedule(s) for the conduct of such programs;
- (v) A statement and rationale for the planned course of treatment, including treatment and/or training programs, designed to achieve the specified short and long term goals specified in the plan;
- (vi) Designation of specific staff responsible for the implementation of each component of the treatment plan and/or training programs;
- (vii) Criteria for release and/or discharge, and

(viii) Alternate, professionally appropriate plans if the patient/resident refuses treatment and/or training programs.

d. The treatment plans and/or training programs shall be reviewed and revised by qualified professionals when necessary due to behavioral episodes, use of seclusion or bodily restraints, use of PRN medications, or occurrence of an injury.

e. The treatment and/or training programs shall be consistently implemented by:

(i) Adequately trained staff who are qualified to implement such programs; and

(ii) The safe and timely transport of patients/residents to such treatment programs, whether on or off grounds.

2. In addition to the above actions:

a. Within 180 days of the filing of this Settlement Agreement, the State shall evaluate or re-evaluate each current patient at HSH and resident at CARS to ensure a current, accurate diagnosis and to identify the individual needs of each patient/resident.

b. Within ninety (90) days of the filing of this Settlement Agreement, the State shall develop policies and procedures to provide for the evaluation of the

effectiveness of patient/resident treatment and/or training programs by the patient/resident's treatment team on at least a quarterly basis or more frequently as specified in section E., paragraph 1., d., above, so that appropriate review and revision of such programs are made.

3. Effective with the filing of this Settlement

Agreement, psychotropic medication shall be prescribed and administered to patients/residents only pursuant to the professional judgment of a qualified professional.

Psychotropic medication shall not be used for the convenience of staff, to compensate for inadequate staff, as punishment, or in lieu of professionally developed treatment and/or training programs including:

- a. Ensuring that psychotropic medication is used only as an integral part of a patient/resident's treatment and/or training program;
- b. Ensuring that a specific and appropriate psychiatric diagnosis justifies the use of each drug; such justification shall be specified in the patient/resident's medical records;
- c. Ensuring that antipsychotic medication is not solely used for the management of aggression in any patient/resident;

- d. Prohibiting polypharmacy without specific justification and a second concurring opinion, both of which shall be recorded in the patient/resident's medical record prior to the implementation of the polypharmacy;
- e. Prohibiting administering medications that exceed maximal dosages (either as a standing order or standing order in combination with a PRN) without specific justification and a second concurring opinion, both of which shall be recorded in the patient/resident's record prior to implementation of the medications;
- f. Ensuring that the minimum effective dose of medication is administered and documenting efforts to reduce patient/residents to the minimum effective dose;
- g. Ensuring that the dose is appropriate to achieve therapeutic blood levels, when such blood levels are indicated;
- h. Providing a written justification, in accordance with professional standards of care, of the simultaneous prescription of a long acting, injectable antipsychotic and oral supplementation of the same medication;
- i. Ensuring that medications are administered as ordered by a physician;

- j. Regularly monitoring each patient/resident receiving or being weaned from psychotropic medication for drug-induced side effects and take appropriate action to reduce or eliminate such side effects; and
- k. Developing and maintaining a data collection system sufficient to determine for each patient/resident receiving psychotropic medication whether HSH and CARS is adhering to the medication practices consistent with the parameters outlined in section E., paragraphs 3., a. through j., above.

F. USE OF RESTRAINT, SECLUSION, AND TIME-OUT

Effective with the filing of this Settlement Agreement, the State shall ensure that bodily restraint, seclusion, and time-out are administered at HSH and CARS only pursuant to the judgment of a qualified professional and are never used for the convenience of staff, for punishment, or in lieu of professionally developed treatment and/or training programs including:

1. Using bodily restraint, seclusion, and time-out, except in emergency circumstances, only in conjunction with a written treatment and/or training program.
2. Ensuring that any treatment and/or training program utilizing bodily restraint, seclusion, or time-out shall be

reviewed by an appropriate committee comprised of facility professionals as well as by an external entity.

3. Ensuring that any treatment plan utilizing seclusion, bodily restraint, or time-out specifies:

- a. The behavior to be eliminated and the specific behavior, clearly and objectively defined, which triggers use of the method;
- b. The method to be used;
- c. The duration for use of the method, when employed;
- d. The person responsible for the program;
- e. The data to be collected to assess progress toward the objectives; and
- f. Justification that other less restrictive behavior modification techniques have been systematically tried and have been demonstrated to be ineffective.

4. Reviewing the use of seclusion, time out, and bodily restraint for each patient/resident on at least a monthly basis and only continuing such use if reliable data supports the necessity of the continued use of seclusion, time-out, or bodily restraint.

5. Developing appropriate policies and procedures, consistent with professional standards and judgment, to provide for the emergency use of bodily restraint, seclusion or

time-out. A mechanism must also be developed to ensure that HSH and CARS staff adhere to the emergency restraint policy and procedures.

6. The emergency use of bodily restraint, seclusion, or time-out three times in one month shall trigger a review by the patient/resident's interdisciplinary treatment team of the patient/resident's psychiatric condition to determine the need for a new, different, or otherwise modified treatment and/or training program.

G. DEVELOPMENT AND IMPLEMENTATION OF POLICIES AND PROCEDURES

Within 270 days following the filing of this Settlement Agreement, the State shall develop and implement appropriate policies and procedures, consistent with professional standards and judgment, to provide for all routine, day-to-day clinical activities and hospital and facility operations. A mechanism must also be developed to ensure that HSH and CARS consistently adhere to these policies and procedures.

H. PATIENTS WITH A DUAL DIAGNOSIS

The State shall ensure that as of the time of the filing of this Settlement Agreement all HSH patients and CARS residents with a dual diagnosis receive sufficient treatment

and training necessary to avoid unreasonable risks to their personal safety and undue bodily harm including:

1. Ensuring that qualified professionals evaluate all patients with a dual diagnosis, develop an accurate and complete diagnosis, and determine each patient/resident's individual need for treatment and training;

2. Ensuring that qualified professionals develop and consistently implement treatment and training programs for such persons; and

3. Evaluating the use of psychotropic medications administered to patients/residents with a dual diagnosis consistent with the requirements of section E, paragraphs 3., a. through j., above.

I. RECORDKEEPING

Within 120 days after filing this Settlement Agreement, the State shall develop and implement a system of records for each HSH patient or CARS resident, developed and maintained under the supervision of a competent individual whose responsibility will be to ensure patient/resident records are properly maintained. Each patient/resident's records shall be readily available to all staff. Information shall be incorporated in the patient/resident's record in sufficient

detail to enable those persons involved in the patient/resident's treatment and training programs to provide effective and continuing implementation of such treatment and/or training. All entries shall be legible, dated, titled by discipline, and have the signature and identification of the individual make the entry.

J. FACILITY ORGANIZATION

Within sixty (60) days after filing of this Settlement Agreement, the State shall develop and implement an organizational structure at HSH that will establish clear lines of authority and responsibility among the various aspects of HSH operations and personnel. The organizational structure of HSH will be developed to ensure that HSH will meet the requirements of this Settlement Agreement. The organizational structure of HSH will also include adequate and sufficient quality assurance monitoring to ensure that the requirements of this Settlement Agreement are being met.

K. STAFF TRAINING AND PERFORMANCE

1. The State shall ensure that all staff who provide services to HSH patients and CARS residents are adequately

trained to fully implement the provisions of this Settlement Agreement by the required dates and are thereafter provided with in-service training on a regular basis. The training shall include, but not be limited to: behavior management techniques; implementation of individualized treatment and training programs; emergency medical response; use of restraint and seclusion; including recordkeeping for such procedures; and preparation and administration of medication, including recordkeeping for such administration.

2. Staff evaluation and job performance at HSH and the Children's Residential Services shall include, but not be limited to:

- a. Regular job performance appraisal relating directly to the employee's job description;
- b. Corrective plans of action for unsatisfactory job performance; and
- c. Completion of appropriate staff development and training.

L. TECHNICAL ASSISTANCE

The State shall retain such external technical assistance as is necessary to ensure that it meets the requirements of this Settlement Agreement.

PART III. STATUS REPORTS

A. The State shall provide to the United States, monthly status reports, on progress made toward implementation of this Settlement Agreement, beginning one month after filing this Settlement Agreement. The status reports shall be submitted to the United States no later than ten working days after the end of each reporting period, and shall include:

1. For each month of the reporting period, the average daily patient/resident population and the actual full time equivalency for each category of staff listed in part II., section C. above, identified by ward and shift.

2. The name and age of every patient/resident who has died during the reporting period, the date and cause of death, and any autopsies, death review summaries, and investigative findings related to the death.

3. The text of any policies and procedures promulgated to achieve the requirements of this Settlement Agreement.

4. The number and duration of uses of all uses of seclusion, time-out, and bodily restraint.

5. The number of injuries sustained by patients/residents and staff.

B. The State shall provide to the United States, quarterly status reports on progress made toward implementation

of this Settlement Agreement, beginning three (3) months after filing this Settlement Agreement. The status reports shall be submitted to the United States no later than ten working days after the end of each reporting period, and shall include:

1. The status of compliance with each and every requirement in this Settlement Agreement and the date the State will comply with each requirement not met.

2. All staff training plans developed to implement the requirements of this Settlement Agreement, the frequency of which training has been provided, the duration and content of the training, and the categories and numbers of staff to which it has been provided.

3. A description of all university affiliated activities and technical assistance provided under part III, section L., herein.

C. Upon written request by the United States, the State shall provide additional information or documents relating to the State's compliance with this Settlement Agreement.

D. Within 20 days of receipt of written questions from the United States relating to the State's compliance with the Settlement Agreement, the State shall provide to the United States specific written answers and any requested documents regarding the State's compliance with requirements of the Settlement Agreement.

E. Nothing in this Settlement Agreement precludes the United States from conducting discovery pursuant to the Federal Rules of Civil Procedure on matters relating to enforcement of or compliance with this Settlement Agreement.

PART IV. ACCESS TO HSH AND CARS

A. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, patients/residents, and employees of HSH and CARS upon reasonable notice to the State for the purpose of ascertaining compliance with this Settlement Agreement. Such access shall continue until this Settlement Agreement is terminated, as set forth in part VI, below.

B. A designee of the State may be present during tours or inspections of facilities and records.

C. HSH and CARS employees may be interviewed by the counsel for the United States or consultants retained by the United States during tours of HSH and CARS. At the employee's option, such interviews may be private or conducted in the presence of the States' designee.

PART V. NON-COMPLIANCE AND ENFORCEMENT

If the United States finds that the State has failed to implement this Agreement, or any part thereof, United States' officials shall confer with Hawaii officials in a good faith effort to attempt to resolve any alleged deficiencies prior to seeking enforcement of any of the provisions set forth in this Settlement Agreement. Except in instances of bad faith, the United States agrees not to seek imprisonment of any Defendant as a sanction for violation of this Settlement Agreement.

PART VI. TERMINATION OF SETTLEMENT AGREEMENT

A. The parties expect that the State shall fully and faithfully implement all provisions of this Settlement Agreement on or before December 31, 1993. This Settlement Agreement shall conclude on December 31, 1993, provided the parties file with the Court a stipulated order of dismissal.

B. The Court shall retain jurisdiction of this action for all purposes under this Settlement Agreement until the State shall have fully and faithfully implemented all provisions of the Settlement Agreement and plans submitted pursuant thereto and until this case is dismissed.

C. The State may move to dismiss this Settlement Agreement at such time as it has fully and faithfully implemented all provisions of this Settlement Agreement and the plans submitted pursuant thereto. The State shall serve any such motion upon the United States which shall have 60 days to respond. If the State moves to dismiss the Settlement Agreement, it shall have the burden of persuading the Court that the requirements of this Settlement Agreement and the plans required pursuant to its terms have been fully and faithfully implemented.

IT IS SO ORDERED, this 19th day, of Sept., 1991,
at Honolulu, Hawaii.

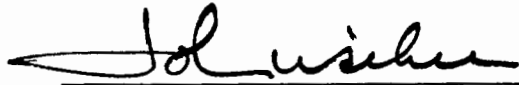
DAVID A. EZRA

U.S. DISTRICT JUDGE


USA v. State of Hawaii, et al.,
Civ. No. 91-00137DAE
Settlement Agreement

AGREED TO:

FOR THE STATE OF HAWAII:



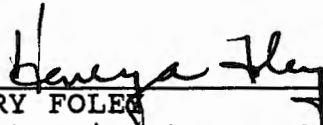
HONORABLE JOHN WAIHEE
Governor
State of Hawaii



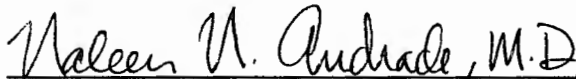
WARREN PRICE, III
Attorney General
State of Hawaii



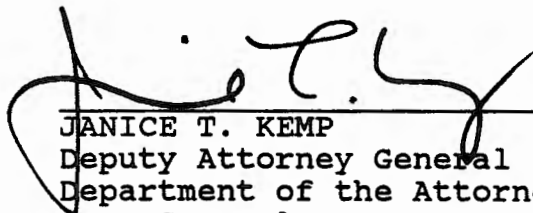
JOHN C. LEWIN
Director
Department of Health



HENRY FOLEY
Deputy Director, Behavioral
Health Services Administration,
Department of Health

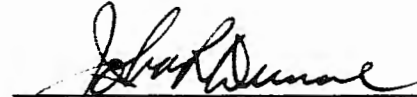


NALEEN N. ANDRADE
Superintendent
Hawaii State Hospital

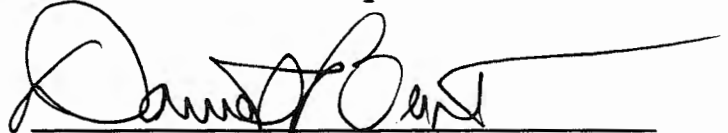


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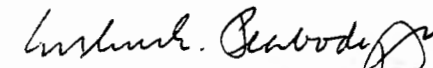
FOR THE UNITED STATES:



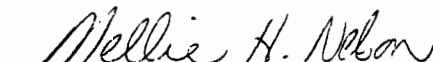
JOHN R. DUNNE
Assistant Attorney General



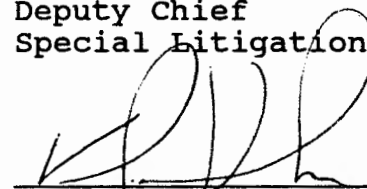
DANIEL A. BENT
United States Attorney



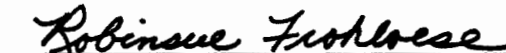
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Settlement Agreement, U.S.A. vs. State of Hawaii, et al.;
Civil No. 91-00137 (DAE), U.S.D.C. - Hi.