

5. The Defendants are the State of Mississippi; Kirk Fordice, Governor of the State of Mississippi; Albert Randel Hendrix, Executive Director, Mississippi Department of Mental Health; Roger McMurtry, Chief, Bureau of Mental Retardation; and Suzie Lassiter, Director, Boswell Regional Center (Boswell). All individual Defendants are sued in their respective official capacities.

6. The Defendants have authority and responsibility for the operation of Boswell and are officers of the Executive Branch of the State of Mississippi.

7. On July 23, 1990, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of Mississippi, the Attorney General of Mississippi, and the Director of Boswell of his intention to commence an investigation of alleged unlawful conditions of confinement at Boswell Regional Center located in Sanatorium, Mississippi, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. Section 1997.

8. On November 21, 1991, after a thorough investigation, the Attorney General, by and through the Assistant Attorney General, Civil Rights Division, informed the Governor of Mississippi, the Attorney General of Mississippi, and the Director of Boswell pursuant to CRIPA, of the alleged unconstitutional conditions of confinement at Boswell, the supporting facts giving rise to the alleged conditions and the minimum measures necessary to remedy those conditions.

9. Upon notification of the needed remedial measures, Mississippi state officials initiated immediate steps to improve conditions at Boswell and have cooperatively worked with the

Department to resolve this matter amicably and in the best interests of the mentally retarded residents of the Center. State officials have cooperated in all respects with each aspect of the United States' investigation and have, from the onset, indicated a willingness to remedy deficiencies identified by the United States at Boswell.

10. The United States recognizes that the State of Mississippi and its officials and agencies are acting in good faith and have voluntarily undertaken this commitment to bring about improvements at Boswell and throughout Mississippi's mental health system.

11. The parties agree that the care, confinement, treatment, and training of residents at Boswell implicate rights that are secured and protected by the Constitution of the United States. The parties entering into this Agreed Order, recognize these constitutional interests, and for the purposes of avoiding protracted and adversarial litigation, and in the best interests of the mentally retarded citizens of Mississippi, agree to the provisions set forth herein. This Agreed Order provides for procedures that both the State of Mississippi and the United States deem constitutionally required and Mississippi has agreed to fully implement these procedures.

12. In entering into this Agreed Order, the Defendants do not admit any violation of law and this Agreed Order may not be used as evidence of liability in any other proceeding.

13. The provisions of this Agreed Order are a fair and appropriate resolution of this matter.

14. This Agreed Order, voluntarily entered into, shall be

signed and entered by the United States District Court for the Southern District of Mississippi and shall be enforceable as an order of the Court.

15. This Agreed Order shall be applicable to and binding upon all the parties, their officers, agents, employees, assigns, and successors.

I. Purposes and Objectives

The State of Mississippi and the United States stipulate and agree that the purposes and objectives of this Agreed Order are to achieve and maintain the following conditions at Boswell in order that residents at the facility will be afforded rights, privileges or immunities secured and protected by the Constitution of the United States:

1. Training must be developed by qualified professionals that are designed to reduce or eliminate unreasonable risks to personal safety, to facilitate the resident's ability to function free from undue restraints, and to prevent the deterioration and regression of skills.

2: Adequate care must be provided to protect all residents from unreasonable risks to their personal safety both by the conduct of staff and by other residents.

3. Psychotropic and other medications must be prescribed and administered to residents when necessary, pursuant to the exercise of professional judgment by qualified professionals.

4. Bodily restraint and seclusion procedures, when appropriate, must be administered safely and pursuant to the exercise of professional judgment by qualified professionals.

These purposes and objectives shall be achieved at Boswell by

implementing the requirements set forth in Parts III, IV and V below.

II. Definitions

As used in this Agreed Order, the following definitions shall apply:

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

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

3. "Direct Care Worker": Staff immediately responsible for implementing training programs and providing care to residents.

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

5. "Bodily Restraints": (a) Any physical or mechanical device used to restrict the movement of a resident or the movement or normal function of any portion of the resident's body, excluding those devices used only to provide support for the achievement of functional body positions or balance and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and (b) chemical substances used solely to restrict the movement of a resident, including behavior management drugs as defined herein.

6. "Seclusion": Placement of an individual alone in a locked room, or a room from which the resident is physically prevented from

egress.

7. "Time Out": A behavior management technique whereby a resident is isolated from other residents.

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

9. "Behavior Management Drugs": Drugs which are prescribed or administered for the purpose of modifying behavior. Included are the major and minor tranquilizers and anti-depressants. Excluded are drugs that may have behavior modifying effects but that are not prescribed or administered for that purpose, such as anti-convulsants.

10. "Training Program": A program of steps and activities, including behavior management and the teaching of basic self-care skills, determined by a qualified professional consistent with professional judgment to be necessary to protect a resident from unreasonable risks to personal safety, to facilitate his or her ability to function free from undue bodily restraint and from unreasonable use of behavior modifying drugs, and to prevent regression or deterioration of skills.

11. "The State": The Government of the State of Mississippi specifically including the Mississippi Department of Mental Health, the Bureau of Mental Retardation, the Administration of Boswell Regional Center, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees or assigns.

12. "Professional Judgment": A decision by a qualified professional that is not such a substantial departure from accepted professional opinion, practice, or standards as to demonstrate that

the person responsible did not base the decision on such professional opinion, practice, or standards.

III. Corrective Measures

1. By no later than one (1) year from entry of this Agreed Order the State shall ensure that a sufficient number of psychologists are employed to assure attainment and consistent maintenance of at least the ratio of 1:25, psychologist-to-resident, at Boswell.

2. At the State's discretion, the ratios may be obtained by hiring additional needed staff or by reducing the resident population at Boswell by placing residents in appropriate community-based programs. The State agrees that, if the population of the facility is reduced through the transfer of residents to alternative programs, the determination as to which residents shall be discharged and the places to which they are transferred will be made by professional staff qualified to make such decisions. If such placements are to be made, the State shall file with the Court a plan for such transfers no later than ninety (90) days prior to implementing the transfers. The United States shall have thirty (30) days to comment on the plan. Any such plan shall become part of this Agreed Order and shall be fully enforceable.

3. Psychiatric consultation will be available at Boswell at the rate of one hour per week for every ten (10) residents on psychotropic drugs or those residents on behavior programs requiring psychiatric services. Such consultation shall include the systematic review of the use of behavior management drugs for individual residents and may be provided by employing full-time psychiatrist(s)

or engaging the services of psychiatrist(s) on a part-time basis.

4. The State will make reasonable best efforts to assure that at least one-third of the psychologist positions at the Boswell Regional Center will be filled with individuals possessing a doctorate in psychology. When hiring psychologists for new or vacant positions, the State shall make reasonable best efforts to maintain the ratio of one (1) Ph.D. level psychologist for every three (3) psychologists. However, first priority for hiring will be given to those persons who have a background in applied behavioral analysis. The parties agree that, while a Ph.D. level applicant with a background in applied behavioral analysis will receive first priority in hiring, a Masters' level applicant with this background shall be hired before a Ph.D. level applicant without this background. Quarterly reports from Mississippi to the Department of Justice shall specify whether the State has maintained the ratio of one Ph.D. for every three psychologists. Where the State does not maintain this ratio, the State will describe with particularity, including supplying any supporting documentation, efforts it has made to hire a Ph.D. psychologist for the new or vacant positions.

IV. Plan of Implementation

1. Submitted herewith, and incorporated herein by reference as a part of this Agreed Order, are the State's Plan of Implementation and the appendices thereto which serve to implement the terms of and fulfill the purposes and objectives of this Order. This plan and appendices set forth the following:

a. The steps that the State will take in order to meet the psychologist-to-resident ratio required under the terms of this Order. Appropriate steps may include the transfer of residents to

appropriate community-based programs, and the use of measures calculated to attract and retain qualified staff.

b. The number and categories of staff that will be utilized to implement plans required by Paragraphs 1(c) to (j), below.

c. The policies and procedures to be utilized (1) to provide regular, periodic professional evaluations of each resident in order to identify those in need of training programs; and (2) to provide a sufficient number of training program hours to each resident for whom such training program is necessary.

d. The policies and procedures to be utilized to provide for consultation and communication of relevant information between and among personnel regarding residents' care, medical treatment, and training needs.

e. Recordkeeping systems and administrative procedures to be utilized with respect to each resident's care, medical treatment, and training. Such records shall include current information with respect to each resident's care, medical treatment, and training, and shall be organized in a fashion that will enable those reviewing a resident's records to exercise professional judgment in providing care, medical treatment, and training to the individual. Further, the State shall require staff to utilize such records in making care, medical treatment and training decisions.

f. The policies and procedures that will govern the use of drugs, particularly behavior management drugs, including policies and procedures concerning the handling and storage of drugs, monitoring and review of whether the drugs prescribed for and

administered to each resident are appropriate for the needs of that resident, drug side effects, drug dosage levels, use of two or more behavior management drugs, telephone orders and PRN prescriptions, and utilization of drugs with a behavior modification program.

g. The policies and procedures that will be utilized to provide that bodily restraints, seclusion, and time out (1) are administered only pursuant to the judgment of a qualified professional; (2) are not to be used for the convenience of staff or in lieu of training programs prescribed by a qualified professional; but (3) may be used, when appropriate, to control residents when they engage in isolated incidents of violence and/or dangerous behavior. Said policies and procedures provide that the decision to place a resident in restraints, seclusion, or time-out shall be recorded promptly in the resident's records and shall be reviewed by a qualified professional at specified reasonable intervals to determine whether the continuation of such restraint, seclusion, or time-out is professionally justified.

h. The policies and procedures that will be utilized to provide that residents shall be protected from unreasonable risks of bodily harm to their personal safety by the conduct of staff or other residents, including requirements to report alleged incidents of bodily harm or unreasonable risk of bodily harm. Said policies and procedures include requirement for investigating such allegations, disciplinary rules and procedures, and sanctions to be followed upon any findings of bodily harm or unreasonable risk of bodily harm. Procedures will be devised to ensure adequate staff supervision and to provide for sufficient grounds and other security personnel designed to protect residents.

i. The enforcement mechanisms that will be utilized, including disciplinary measures and sanctions where appropriate, to provide for staff compliance with all policies, rules, and standards of job performance and behavior.

j. The specific terms and reasonable detail of the actions to be taken by the Defendants, the dates of such actions, the text of the procedures, regulations, or protocols to be promulgated and issued by the Defendants, and the name and qualifications of the professional responsible for ensuring that the Plan as submitted is implemented.

2. The Plan of Implementation states the specific date(s) by which each requirement shall be completely implemented but in no event shall the final implementation date of the Plan or portion thereof be later than three years after entry of said Plan.

3. The State of Mississippi agrees that all remedial measures undertaken pursuant to the Plan shall be implemented in a fashion designed to achieve the purposes and objectives stated herein. Once those purposes and objectives have been obtained, the above referenced remedial measures shall be continued in place until such time as this Order is terminated.

4. The United States has reviewed and approved the Plan of Implementation filed with this Agreed Order.

V. Construction and Implementation

In construing and implementing the terms of this Agreed Order, the following are agreed to by the parties:

1. The State of Mississippi agrees to implement all provisions of the Plan of Implementation and appendices thereto,

which is incorporated herein, and that said Plan of Implementation and appendices thereto shall be enforceable as a court order.

2. If state officials decide to modify the Plan or any portion thereof, state officials shall notify in writing the Court and the United States of the proposed modification. After notice of such a proposal by the State, if the United States objects to the modification sought, state and federal officials shall meet or otherwise confer, in a good faith effort to resolve their differences concerning the proposed modification. If state and federal officials are unable to resolve their differences through negotiation within thirty days of receipt of the notice, either party may submit the proposal to the Court, who shall determine whether such proposal is acceptable under the Agreed Order. The Court's determination shall be based upon the purposes and objectives set forth in Part I of this Agreed Order. The State shall have the burden to persuade the Court the modification sought is warranted.

3. The State shall submit periodic compliance reports to the United States and the Court. The reports shall be filed quarterly, fifteen (15) days after the end of each quarter, beginning 60 days after entry of this Agreed Order, and continue until such time as this Agreed Order is terminated.

4. The format of these compliance reports shall be within the discretion of the State. The content of the reports shall include specific information describing the State's progress towards implementation of and compliance with the provisions of this Agreed Order and the Plan submitted pursuant thereto. The United States may from time-to-time request that the State include additional information in the compliance reports.

5. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, residents, and employees of Boswell upon reasonable notice to the State for the purpose of ascertaining compliance with the Order. Such access shall continue until this Agreed Order is terminated.

6. The State shall provide to the United States, within twenty (20) days of receipt, specific written answers to specific written questions from the United States regarding the State's compliance reports on the status of implementation of its plans.

7. All parties shall bear their own costs, including attorney fees.

VI. Termination of Decree

1. The parties contemplate that the Defendants shall have fully and faithfully implemented all provisions of this Agreed Order and the Plan of Implementation submitted herewith three (3) years from the date of entry of this Order by the Court.

2. The Court shall retain jurisdiction of this action for all purposes under this Agreed Order until the State shall have fully and faithfully implemented all provisions of the Agreed Order and Plan of Implementation submitted thereto and until this case is dismissed.

3. The State may move to dismiss this Agreed Order at such time as it has fully and faithfully implemented all provisions of this Agreed Order and the Plan of Implementation submitted pursuant thereto. The State shall serve any such motion upon the United States which shall have sixty (60) days to respond. If that State moves to dismiss the Agreed Order, it shall have the burden of persuading the Court that the requirements of this Agreed Order have

been fully and faithfully implemented.

CONSENTED TO BY THE UNDERSIGNED:

FOR THE STATE OF MISSISSIPPI

FOR THE UNITED STATES OF AMERICA

Mike Moore

MIKE MOORE
Attorney General

James P. Turner

JAMES P. TURNER, Acting
Assistant Attorney General
Civil Rights Division

Albert Randel Hendrix

ALBERT RANDEL HENDRIX
Executive Director
Mississippi Department of
Mental Health

David Deutsch

DAVID DEUTSCH
Attorney
Civil Rights Division
U. S. Department of Justice
Washington, D.C.

Suzie Cassiter

SUZIE CASSITER
Director, Boswell Regional
Center

WHEREFORE, the parties to this action having agreed to the provisions in the Agreed Order set forth above, and the Court being advised in the premises, this Agreed Order is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this the 9th day of March, 1994, at Jackson, Mississippi.

s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE