

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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UNIVERSITY LEGAL SERVICES, INC.,)	
<u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:05-00585 (JMF)
)	
DISTRICT OF COLUMBIA,)	
)	
Defendant.)	
_____)	

PROPOSED PERMANENT INJUNCTION AND DECLARATORY JUDGMENT

Plaintiff University Legal Services, Inc. (“ULS”), having been designated as the federally mandated Protection and Advocacy agency for all individuals with mental illness within the District of Columbia, and Plaintiffs A and B, have filed suit alleging that, in violation of various federal and state constitutional, statutory and regulatory requirements, Defendant has failed to provide adequate treatment and has also failed to provide safe, sanitary and adequately staffed facilities to persons with mental illness at the public mental health hospital known as St. Elizabeths Hospital (“St. Elizabeths”). Plaintiff ULS also alleges that Defendant has further failed to provide ULS with the information necessary for ULS to discharge its duty to monitor treatment and conditions at St. Elizabeths. St. Elizabeths houses both civilly and criminally committed individuals with mental illness. Patients who are criminally committed reside in the part of the Hospital known as the John Howard Pavilion. Having conducted a trial and having considered all matters of record in this case, the Court hereby issues the following permanent injunction and declaratory judgments as set forth below.

Having reviewed the evidence, the Court hereby declares that:

1. The District of Columbia has failed to implement procedures that ensure that residents of St. Elizabeths Hospital receive individualized active treatment. The evidence showed that St. Elizabeths has not prepared an individualized treatment plan for each patient, and the District has no procedure to ensure that such plans required by law are made. The Court hereby declares that the District has a duty to prepare an individualized treatment plan for each patient at St. Elizabeths, and has a further duty to implement such plans as to each patient. The District's chronic failure to prepare and implement such plans violates the rights of patients under federal law and under the law of the District of Columbia, specifically consisting of the rights to adequate care under the Fifth Amendment to the United States Constitution and to various rights guaranteed in the D.C. Mental Health Consumers' Rights Protection Act of 2001.

2. The District has also failed to implement procedures and follow-up monitoring to insure that St. Elizabeths Hospital is adequately staffed and that conditions at the Hospital are safe and sanitary. The District's own records show that it has been chronically understaffed, with the explanation that insufficient funds have been allotted to the Hospital to cover its staffing needs. The Court declares that the District has a duty to budget adequate funds to adequately staff the Hospital. The District must fund its constitutionally mandated duties before it allocates funds to other discretionary activities. The District has more than sufficient revenue to cover the staffing needs of the Hospital, and it has a duty to allocate to the Hospital a share of those funds sufficient to provide adequate staffing. During the two years that this litigation has been pending, the District has acknowledged understaffing in nurses, physicians, psychologists and other personnel and yet there has been no net increase in the staffing for these positions. This is unacceptable and is a violation of the rights of patients under federal and local law.

3. The District has failed to ensure the safety of patients and staff. There have been numerous injuries over the last three years that occur during patient-patient or patient-staff altercations. In each instance, the presence of additional staff and training likely would have contributed to less tragic results. The Court declares that it is a violation of patients' rights to adequate protection from harm provided by the Fifth Amendment of the United States Constitution and D.C. law to permit the continuation of a process in which patients periodically suffer injury or die in episodes of violence or involving efforts to restrain patients.

4. The District has failed to implement procedures that prevent an excessive use of seclusion and restraint, in violation of the right to freedom from unnecessary restraint as provided by the Fifth Amendment of the United States Constitution and D.C. law.

5. St. Elizabeths Hospital, by all accounts, is old and decrepit. The District is planning to build a new hospital. The promise of a new hospital is not an excuse to confine residents to a present existence in a depressing and unsanitary facility in violation of the right to habitable and safe conditions of care provided by the Fifth Amendment of the United States Constitution and D.C. law.

6. The District makes no regular effort whatsoever to monitor the patient population to identify those individuals with mobility and cognitive disabilities and ensure that their needs are accommodated, in violation of the patients' right to access to adequate treatment, services, programs or activities in the most integrated setting appropriate to the individual's needs as provided by Title II of the Americans with Disabilities Act and the Fifth Amendment of the United States Constitution and D.C. law.

7. The District's operation of St. Elizabeths in an underfunded and understaffed mode violates basic standards of professional care governing the operation of a public mental

health facility. There is simply no justification for the District to have persistently underfunded the Hospital, thereby ensuring that it is understaffed and that periodic tragic events involving patient deaths become a virtual certainty.

IT IS HEREBY ORDERED THAT:

1. Defendant is to comply with the requirements of the Constitution, federal and District law.

2. Defendant shall take immediate steps to recruit and hire all personnel needed to fill the positions identified on Fields' Deposition Exhibit 11. Defendant shall report every 60 days to Plaintiffs and the Court on the progress being made under this requirement. All such positions shall be filled no later than December 1, 2008.

3. Defendant shall undertake a review to ensure that each patient at St. Elizabeths has an individualized treatment plan, and shall submit a report to the Court within 120 days certifying that such a plan exists for every patient at the hospital. The District shall also adopt procedures to insure that treatment plans are being implemented and shall report to the Court twice a year on the extent to which individualized plans are or are not being implemented.

4. Defendant shall take immediate steps to ensure and demonstrate that each patient at St. Elizabeths is receiving individualized and adequate treatment, including but not limited to, treatment that provides patients with a realistic opportunity to be discharged.

a. Within 10 days of the entry of this Order, Plaintiffs and Defendant shall each provide the Court with the resumes of up to three (3) experienced psychiatrists, one of

whom shall be selected by the Court as an independent expert who will be responsible for reviewing all patient medical records, Hospital records and Hospital conditions every 90 days, and issuing reports to the Court and the parties as to whether patients are receiving adequate treatment, whether St. Elizabeths is adequately staffed and whether conditions are safe and sanitary. The psychiatrist candidates for this position must have been board certified in psychiatry for at least 10 years.

b. Within 30 days of his or her appointment, the Court-selected psychiatrist, along with whatever additional experts, assistants and staff he or she needs to perform the tasks set forth in this Order, shall conduct an initial review of all records of all patients, along with a review of conditions and staff at the Hospital, and shall issue his or her first report. The expert shall be provided unimpeded access to all records concerning patients and the operation of the Hospital, as well as access to all personnel and patients for information gathering. Additional reports shall be issued every 90 days thereafter. The reports shall address, at a minimum, treatment, discharge readiness, discharge planning (including interface with the community provider system for continuity of care), failures to discharge, access to care for those patients with mobility and cognitive disabilities, as well as those with co-occurring chemical dependence, access to interpreters for non-English speaking consumers, over-medication, polypharmacy and medication monitoring, the use of restraint and seclusion, staffing, staff training and competency, quality improvement (including identifying and assessing adherence to the Hospital's own policies), hospital management, patient advocacy and facility conditions, including the status of fire and other safety inspections and the functioning of plumbing, heating, elevator and other basic systems in the facility. In issuing reports, the expert shall exercise his or her professional judgment and may rely on various sources, including federal, state and

private hospital accreditation standards, to inform his or her judgment. The expert shall be given access to any prior reports delivered to or prepared concerning the Hospital in the past five years that evaluated the Hospital for accreditation and/or other review purposes. The expert shall develop comparative statistical reports on various issues at the Hospital, looking for guidance and categories of information from the Joint Commission on Accreditation of Healthcare Organizations and/or the National Association of State Health Mental Program Directors, including the NASHMPD Research Institute.

c. This independent review will be for an initial period of 60 months. Plaintiffs are free to seek an extension of this oversight at the end of the five-year period and at any time thereafter for good cause shown. All medical records reviewed will be held in the strictest confidence and references to particular patients will be shown only to the Court and the parties to this litigation. In the event that the Court-selected expert identifies in a periodic report or at any other time inadequacies in treatment, staffing or conditions, Defendant shall have 30 days to rectify all issues and shall confirm the same to the parties and the Court. If there are issues that require a remedy on a faster track than 30 days, Plaintiffs and/or the expert are free to so argue, and the Court shall hold a hearing to determine whether a different schedule should be set, unless Defendant agrees to remedy issues before the 30 day period.

d. The Court-selected expert's reports shall be provided to both Plaintiff ULS and to Defendant. The parties shall have the right to comment on the reports within 10 days of receipt of the filing, and shall be free to suggest issues for the expert's attention. The Court shall issue orders as necessary to ensure that any changes required by the reports and the parties' comments are implemented and enforced.

e. The expert selected hereunder shall be appointed for a five-year term, with the understanding that that the parties are free to petition the Court to appoint a replacement for good cause shown and are also free to petition the Court to address any issue that might arise during the expert's term where the requested relief is an Order or directive to the expert from the Court.

f. Within one year of the expert's first report, and on each anniversary of that date thereafter until the end of the expert's term, Plaintiff ULS and Defendant shall each file with the Court and serve on opposing counsel their own assessment of the expert's work during the preceding year, pointing out any areas where either side believes there is a deficiency or other problem.

g. The expert shall submit invoices for his or her services and expenses, and the services of supporting staff, every 30 days, and the invoices shall be paid by Defendant within 15 days of receipt.

5. In December 2004, Defendant retained Dr. Richard A. Fields of Fields & Associates, Inc. to conduct a systems review at St. Elizabeths. Dr. Fields issued a report on January 14, 2005, making various findings and recommendations. Unless otherwise recommended by the Court-selected expert, Defendants shall implement each recommendation in the Fields Report and shall set forth a plan and a schedule for implementation of the Fields Report within 30 days from the date of this Order, subject to the approval of Plaintiff and the Court-selected expert.

6. To ensure that Plaintiff ULS can discharge its duty to protect and advocate for its constituency, commencing within 20 days of this Order, Defendant will provide the information described below to Plaintiff ULS on an ongoing basis until further Order of the

Court. After providing the first set of lists and reports set out below, Defendant shall issue the reports below every 30 days until further Order of the Court:

- a. A list of all patients deemed ready for discharge, the name of the patient's core service agency ("CSA") and/or assertive community treatment ("ACT") team provider, and a detailed explanation of why each patient is not yet receiving services in the community;
- b. The names of all patients receiving more than four (4) emergency medications to control behavior - whether as a PRN or otherwise - in the last 30 days and the documentation supporting the reasons for the administration of such medication;
- c. The names of all patients placed in seclusion or restraint, along with the physician's orders, the post-seclusion briefing, and any additional documentation supporting the reasons for such orders;
- d. All unusual incident reports, investigations, and corrective action plans, including the names of the individual consumers involved, and any patient grievances alleging abuse or neglect;
- e. The names and contact information for all patients who have died at the facility within the last year, the mortality review reports conducted in connection with each patient's death, and root cause analyses;
- f. The names of all patients involuntarily medicated within the last 30 days and any reporting required by law confirming the appropriateness of the involuntary medication;

- g. Tracking information on consumers diverted from admissions to Saint Elizabeths, including the date of the diversion, the length-of-stay at CPEP, involvement of the CSA and/or ACT team and the patient's disposition;
 - h. The reports on medication errors, adverse drug reactions and any other reports of medical mistakes;
 - i. Any environmental surveys and temperature readings; and
 - j. Defendant shall certify to Plaintiff ULS and to the Court-selected expert every 30 days that it has provided the lists and reports set forth above, and that the Hospital is providing adequate individualized treatment to every consumer at the Hospital and is adequately staffed. If Defendant is unable to so certify, Defendant shall set forth its deficiencies, and in each succeeding certification shall report on how those deficiencies have been or are being addressed.
7. Defendant shall take reasonable steps to ensure safe and sanitary conditions.
8. Defendant shall ensure that the following staffing changes are made

effective immediately:

- a. Hire licensed registered nurses, licensed practical nurses and psychiatric technicians in sufficient numbers to ensure that each ward is always staffed with a minimum of four nursing staff, including at least one registered nurse. This minimum shall not include nursing supervisors or managers unless they are providing direct patient care or staff acting as one-to-ones. Defendant will provide Plaintiff on a monthly basis with a

record of the names of the nursing staff who actually worked each shift, including whether the staff is a registered or licensed practical nurse or a psychiatric technician. The number of total staff assigned to each ward shall be based on census, patient acuity, and treatment needs, and shall be a minimum of four (4) staff on each ward. The minimum number of total staff assigned to the in-take, step-down, and behavior management wards shall be a minimum of six (6). The minimum number shall not include those staff acting as one-on-ones.

- b. Ensure that no licensed registered nurse, licensed practical nurse or licensed psychiatric technician is assigned to a unit unless the Hospital determines that he or she has demonstrated competence in providing care for the particular unit and has also received Hospital orientation sufficient to provide care on the unit. Competency to provide care will include, but not be limited to, orientation of unit procedures, location of medical and emergency equipment, and sufficient clinical knowledge about each individual patient. Nursing personnel from temporary agencies shall not be responsible for patient care on a unit without having demonstrated clinical competence, including, but not limited to, orientation of unit procedures, location of medical and emergency equipment, and sufficient clinical knowledge about each individual patient.
- c. Ensure that a minimum of five (5) of the psychologists that are hired pursuant to this order have specialized training in behavior management

and treatment of individuals with a dual-diagnosis of mental illness and cognitive disabilities.

9. Within 60 days of the entry of this Order, Defendant shall ensure that any and all staff at Saint Elizabeths who has direct contact with any patients receive adequate training by an individual qualified to provide such training in the areas of:

- a. appropriate use of seclusion and restraint, as required by federal and D.C. law and the Hospital's own policies;
- b. compliance with regulations and policies concerning involuntary medication;
- c. the rights guaranteed by the D.C. Mental Health Consumer Right's Protection Act;
- d. appropriate documentation in patients' records ("charting"), as required for licensed staff; and
- e. appropriate emergency procedures, e.g., calling Code 13, Code Blue and/or 911.

10. Within 60 days of this Order, Defendant shall provide the Court and Plaintiff ULS's attorneys with documentation demonstrating that 90 percent of the staff have participated, within the last six months, in competency-based training in the areas set forth in paragraph 9.

11. Defendant shall also require that all Saint Elizabeths staff having direct contact with patients at the Hospital demonstrate comprehension and competency in the training required by paragraph 9 of this Order. Defendant shall ensure that this training is provided on an

ongoing basis to new staff and continue on an annual basis. Any staff member that has not received training in these areas shall attend training within 60 days of this Order.

12. Within 30 days of this Order, Defendant will demonstrate that all patients who have disabilities affecting their mobility are provided access to all treatment and leisure activities on and off the Hospital campus that are available to other patients at Saint Elizabeths Hospital. This includes, but is not limited to, the use of an accessible van to provide transportation, as well as adequate numbers of staff to assist such individuals in getting to and participating in such activities.

13. Within 30 days of this Order, Defendant will demonstrate that all patients who need interpreter services or sign language services are receiving such services for assessment and treatment.

14. Within 30 days of this Order, Defendant will demonstrate that individuals housed on the four wards certified by the Centers for Medicare and Medicaid Services (“CMS”) and those housed on non-certified wards have equal access to the same quality of clinical care, including but not limited to psychology services for developing and implementing behavior management plans for patients with behavior management needs.

15. Within 30 days of this Order, a licensed psychologist shall assess and evaluate every patient that exhibits self-injurious or aggressive behaviors. The psychologist shall determine if the patient would benefit from a behavior management plan and will develop and monitor the implementation of the plan. Defendant will provide a list of those patients whose records were reviewed and a statement of whether a plan was developed for the patient.

16. Within 90 days of the entry of this Order, Defendant shall conduct a review of all patient records to insure that there are no medication irregularities in terms of

conflicting polypharmacy (prescribing multiple drugs that have known adverse interactions), involuntary medications, PRNs, and failures to document required medication monitoring and shall issue a report 30 days after the review to identify any patients with medication irregularities and the remedies adopted to prevent reoccurrences. The District shall repeat this process every 90 days.

17. Defendant will provide this Court and Plaintiff ULS with a report within 45 days of this Order documenting that Defendant has complied with each of the requirements herein. For those time frames that extend beyond 30 days, Defendant shall supplement the original report with documentation that the additional requirements have been fulfilled.

18. In the event that the Court finds that Defendant has failed to substantially comply with the terms of this Order, the Court may Order any penalty or relief the Court deems legally appropriate.

19. The Court shall retain jurisdiction over this matter on an ongoing basis, and the parties are free to file motions to seek any relief warranted during the pendency of this matter.

20. Defendant shall pay Plaintiffs' attorneys fees for time spent in preparation of this lawsuit and for the duration of the litigation. Plaintiff shall prepare fee reports on a regular basis and present them to Defendant for payment. Plaintiffs' attorneys shall be paid in accordance with amounts set by the *Laffey* matrix. Defendant shall pay all costs and expenses incurred by Plaintiffs to date.

SO ORDERED,

This _____ day of _____ 2007.

UNITED STATES DISTRICT JUDGE