

MAR 02 2009

JAMES N. HORTON, Clerk
By: *[Signature]*
Deputy Clerk

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)

vs.)

CIVIL ACTION NO.:
1:09-CV-0119-CAP

THE STATE OF GEORGIA;)
SONNY PERDUE, Governor of the)
State of Georgia, in his official)
capacity only; B. J. WALKER,)
Commissioner, Georgia Department)
of Human Resources, in her)
official capacity only;)
GWENDOLYN SKINNER,)
Director, Georgia Division of)
Mental Health, Developmental)
Disabilities and Addictive Diseases,)
in her official capacity only; and)
SUSAN TRUEBLOOD,)
Administrator, Georgia Regional)
Hospital/Atlanta, in her official)
capacity only,)
)
Defendants.)

**OBJECTIONS BY THE
GEORGIA ADVOCACY
OFFICE, INC., TO THE
PROPOSED SETTLEMENT
AGREEMENT**

COMES NOW the GEORGIA ADVOCACY OFFICE, INC., pursuant to the Court's Order dated January 31, 2009, and files its Objections as a member of the coalition of mental health advocates referenced by the Court in

its Order dated January 31, 2009.

INTRODUCTION

1. The GEORGIA ADVOCACY OFFICE, INC. ("GAO") is the designated Protection and Advocacy System for Georgia. GAO is a private non-profit Georgia corporation that receives federal funds to provide advocacy and legal services for the protection and advocacy of persons with disabilities.

2. As Georgia's designated protection and advocacy system, the GAO is charged with responsibilities pursuant to:

- A. 42 U.S.C. § 10801, *et seq.*, providing for protection and advocacy for individuals with mental illness, hereinafter referred to as the "PAIMI Act";
- B. 42 U.S.C. § 15041 *et seq.*, providing for protection and advocacy for persons with developmental disabilities, hereinafter referred to as the "PADD Act";
- C. 29 U.S.C. § 796g, Protection and Advocacy for Individual Rights;
- D. 29 U.S.C. § 2201, Technology-Related Assistance for

Individuals with Disabilities;

E. 42 U.S.C. § 300d-53, Protection and Advocacy for Persons with Traumatic Brain Injury;

F. 42 U.S.C. § 15461 *et seq.*, Protection and Advocacy under the Help America Vote Act; and

G. 42 U.S.C. § 1320b-19, Protection and Advocacy for Beneficiaries of Social Security.

3. The GAO has standing to pursue legal remedies under the PAIMI Act, 42 U.S.C. § 10805(a)(1)(B), which authorizes protection and advocacy systems to:

pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; . . .

4. The GAO has standing to pursue legal remedies under the PADD Act, 42 U.S.C. § 15042(2)(A)(i), which provides that the protection and advocacy agency shall have the authority to:

pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; . . .

5. The GAO also exercises its authority under federal law to investigate abuse, neglect, and the violations of the rights of persons with mental illness (42 U.S.C. § 10805(a)(1)(A)) and persons with developmental disabilities (42 U.S.C. § 15043(a)(2)(B)). Accompanying the authority to investigate abuse and neglect is wide-ranging access to persons confined in institutions, and to the institutions and facilities where persons with disabilities are confined, and to the records of persons who are confined in institutions. 42 U.S.C. § 10805(a)((3) and (4), and 42 U.S.C. § 15043(a)(2)(H), (I), and (J).

6. The GAO has attorney-client and other advocacy-centered relationships with numerous persons confined in Georgia's seven state

institutions that confine persons with mental illness, traumatic brain injuries, and developmental disabilities. These are the same institutions that are the subject of the proposed Settlement Agreement between the United States of America and the State of Georgia.

7. The GAO conducts on-going monitoring of conditions in the seven state institutions, and has provided the United States Department of Justice (“DOJ”) with valuable and voluminous information during its investigation of Georgia’s state institutions under the Civil Rights of Institutionalized Persons Act (“CRIPA”).

8. DOJ has made written findings in two of Georgia’s state institutions: Georgia Regional at Atlanta and Georgia Regional at Savannah. Those findings are attached hereto as Exhibit One and Two, respectively. The written reports of the thorough investigation by DOJ in two of Georgia’s institutions document horrific conditions subject persons confined in them to imminent death and/or serious harm, and which substantially depart from minimum constitutional standards regarding protection from harm, treatment, and discharge planning.

9. The GAO fully supports and concurs with the factual findings made by the DOJ in its two written reports to Governor PERDUE, concerning conditions at Georgia Regional institution at Atlanta, and the Northwest Georgia Regional institution at Rome.

10. In the letter from the DOJ to the Governor dated May 30, 2008, the DOJ stated that “. . . we found conditions at GRHA to be so critically deficient that we write to you at this time to stress the urgency of necessary reforms.” (See, Exhibit One, page one) The DOJ also noted that “. . . many, if not all, of the findings we make regarding GRHA are representative of conditions encountered at the two other hospitals we have inspected to date, the Northwest Regional Hospital in Rome and the Georgia Regional Hospital at Savannah.” (Exhibit One, page one) The DOJ letter states that DOJ provided “counsel, administrators, and state officials” with an extensive debriefing of the findings contained in the letter at the end of its monitoring activities at GRHA on September 21, 2007. (Exhibit One, page two)

11. The DOJ found that conditions at GRHA violate the constitutional and statutory rights of persons confined there in that GRHA: “(1) fails to

adequately protect its patients from harm; (2) fails to provide appropriate mental health treatment; (3) fails to use seclusion and restraints appropriately; (4) fails to provide adequate nursing and health care; (5) fails to provide adequate services to populations with specialized needs; and (6) fails to provide adequate discharge planning to ensure placement in the most integrated setting.” (Exhibit One, page three)

GAO’S OBJECTIONS TO THE SETTLEMENT AGREEMENT

12. The Settlement Agreement by its terms fails to create a process to timely and effectively address the significant harms identified by the DOJ in the course of its CRIPA investigation. Attached hereto as Exhibit Three and by reference incorporated herein is an Affidavit by RUBY K. MOORE, an experienced professional and expert in the disability field who also has experience in court monitoring roles, stating why it is essential that a coherent **plan** for the implementation of the Settlement Agreement be in place along with independent monitoring and reporting on the implementation of the Agreement. An adequate plan sets “specific goals and objectives, tasks to be completed, target and deadline dates for a coordinated incremental progress,

assigns persons responsible both for task implementation and oversight, reporting requirements, and includes evaluation methods.” (Exhibit 3)

13. Without measurable standards and a clear plan, there is no clear method by which the State’s compliance with or violations of the Settlement Agreement can be judged.

14. The Settlement Agreement fails to provide proper benchmarks of time for substantial compliance by the State of Georgia.

A. The term of the Settlement Agreement is five years.

B. With the exception of Section V.E. (page 21), requiring substantial compliance within 12 months regarding choking and aspiration risk assessments and prevention, suicide risk assessment and prevention, prevention assaults between persons confined in the institutions, and the implementation of emergency medical codes, the State is under no requirement to implement other specified improvements until 12 months prior to the end of the five-year term, i.e., a period of 48 months.

C. Under the terms of the Settlement Agreement, the State will have **48 months** to substantially comply with implementing improvements in

the following areas that require urgent and immediate attention (and which should have already been in place for many years past), as follows:

(1) **Mental Health Care** including:

(a) proper assessments and making proper diagnoses
(as required for appropriate treatment planning);

(b) proper and appropriate treatment planning;

(c) limited use of seclusion and restraints;

(2) **Medical and Nursing Care**, including:

(a) requirements for adequate clinical oversight of
standard of care;

(b) sufficient nursing staff to provide nursing care
and services consistent with professional standards;

(c) competency-based training of nursing staff that
is appropriate to each nurse's duties;

(d) accurate and routine monitoring and
documenting of persons' symptoms and responses to enable treatment teams to
assess persons' status and to modify the treatment plan as needed;

(e) appropriate supervision in the administration of medications and completion of the Medication Administration Record for all staff administering medications;

(f) establishment of an effective infection control program;

(g) provision of adequate, appropriate, and timely rehabilitation and/or habilitation therapy services and appropriate adaptive equipment to persons whose special needs affect their daily functional abilities;

(h) establishment of an effective medical emergency preparedness program along with competency-based staff training and familiarity with emergency supplies and emergency drills;

(3) **Services to Persons with Special Needs** including:

(a) provision of services to persons with limited English proficiency;

(b) compliance with the requirements of the Individuals with Disabilities Education Act with proper assessments and the development and implementation of Individualized Education Plans;

(c) provision of instruction and behavioral supports appropriate to each student's learning abilities and needs, consistent with generally accepted professional standards;

(4) Appropriate **Discharge Planning**, including:

(a) treatment of persons in a manner consistent with their clinical needs and legal status and consistent with federal law, actively pursuing the clinically indicated discharge of persons;

(b) the identification of barriers of discharge, as a part of treatment planning, within three days of admission barriers to discharge, including but not limited to each person's symptoms or cognitive impairment, other barriers preventing the transition to an integrated setting, the types of resources necessary for discharge, and each person's strengths, preferences, and personal goals, and a plan to address the barriers;

(c) an opportunity for each person to be involved in the discharge process to the maximum extent possible;

(d) treatment interventions for the development of skills necessary to achieve a successful discharge;

(e) transition services consistent with generally accepted professional standards;

(f) creation of a Repeat Admissions Review Coordinator position at each institution to determine reasons for any person having repeated admissions and making recommendations to the treatment team as to ways to prevent further readmissions; and

(g) creation or revision and implementation of a quality assurance or utilization review process to oversee each institution's discharge process.

15. In Settlement Agreements and Consent Judgments with other States and public entities whose constitutional violations have been less egregious, the Department of Justice has generally required full compliance within no more than 30 months. Benchmarks of progress in other agreements have been marked at between an immediate time to 18 months, depending on the urgency and severity of the violation.

16. The Settlement Agreement fails to provide for an independent, third-party Monitor to provide continuous oversight to insure compliance with

the Settlement Agreement by the State of Georgia.

17. In most of the publicly-available Settlement Agreements and/or Consent Judgments that the Department of Justice has entered into with other States or public entities, especially those with conditions as deficient as those in Georgia, one or more expert Monitors have been required to assure the implementation of improvements by the institutions. In cases where no Monitor was required, the State or local government entity had been proactive in providing a clear plan for implementing necessary changes to its institutions, and the Department of Justice has utilized its own experts for reviews to insure compliance. The State of Georgia has not proposed any specific plan to implement changes in its institutions to bring them into compliance with minimum constitutional and statutory standards provided for in the Agreement.

18. The requirement of a plan and proper monitoring is made even more urgent in that the Governor, a defendant herein, has recommended a budget cut of approximately \$55,168,615 (9.8%) in public mental health and addictive disease services for the coming State fiscal year (July 1, 2009 – June

30, 2010), and a cut of approximately \$9,257,694 (4.3%) for developmental disability services,¹ at the same time that he has signed a Settlement Agreement promising to make substantial improvements in State facilities and programs providing services to persons with mental illness and developmental disabilities.

19. The Settlement Agreement was entered into by the State of Georgia and the United States Department of Justice without any public input by the persons confined in the State's institutions, or by their family members, advocates, guardians, or legal representatives.

20. The Settlement Agreement is contradictory on time frames for implementation. In Section IV.A., page 17, it states that the "State shall implement all reforms necessary to effectuate this Agreement" and that the "implementation of this Agreement shall begin immediately upon the

¹ Richie and Sweeny, Overview and Summary of Governor's FY 2010 Budget Proposal for the Department of Human Resources, Georgia Budget and Policy Institute, pages 3 - 4 (January 2009). A copy of this document is attached hereto as Exhibit Four and is by reference incorporated herein. **The GBPI inquires on page seven: "How will the cuts to mental health services allow Georgia to fulfill its obligations under the recently agreed settlement with the United States Justice Department?"** (emphasis added)

Effective Date.” In the very next paragraph, the Agreement provides that the State is not even required to notify the officials, employees, agents, and independent contractors who operate the institutions of the provisions of the Settlement Agreement for a **period of six months**. (Section IV.B., page 18) This would indicate to any reasonable person reading the Settlement Agreement that its terms and conditions are in no way urgent, despite the fact that people are unnecessarily dying and suffering serious abuse and neglect in the State’s institutions, as is well documented in DOJ’s factual findings.

21. There is no requirement in the Settlement Agreement that the persons who are confined in the State’s institutions, or their family members, guardians or legal representatives, be notified of the Settlement Agreement or its provisions. In addition to being excluded by terms of the Settlement Agreement as third-party beneficiaries, the persons confined in the State’s institutions are prevented from playing any role in the enforcement of the Settlement Agreement, which is ostensibly about their civil rights.

22. There is no point of contact or mechanism by which persons who are confined in the State’s institutions or their family members, advocates,

guardians, or legal representatives may be informed of how to notify DOJ of violations by the State. By this omission, the DOJ has neglected a valuable resource for helping it to insure compliance by the State.

23. The State's leadership has known about the serious unconstitutional conditions for many years. The DOJ's letter about GRHA documents that similar findings were made by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, Survey of Georgia Regional in Atlanta (June 14, 2006), which described the "failure to meet federal regulatory standards in protection from harm, mental health treatment, nursing and health care, and specialized needs services, resulting in injuries to patients, including death). (Exhibit One, page three) The DOJ letter also documents that Memorandum from Peter Buckley, M.D., and Nan Lewis, M.P.H., of the Medical College of Georgia to William P. Kissell of the Georgia Department of Human Resources entitled "Audit Summary – Georgia Regional . . . – Atlanta", dated May 3, 2007, "describing deficits in protection from harm, mental health treatment, seclusion and restraint usage, nursing and health care, and discharge planning, resulting in staff and patient injuries".

(Exhibit One, page three)

24. Serious and ongoing abuse and neglect, deaths, and violations of the rights of persons confined in the State's institutions have continued since the DOJ notified the Governor of its investigation.

25. The conditions and practices in the State's institutions require immediate action to protect the rights of persons confined in the institutions, and to prevent further deaths, abuse, and neglect.

CONCLUSION

Persons who are confined in Georgia's state institutions are vulnerable to ongoing and serious abuse, neglect and rights violations. They cannot wait four or five years for the State to comply with a Settlement Agreement to reach only what is constitutionally required. They have a right to be protected **now** from death and other serious harms in the further violation of their constitutional and other legal rights. To prevent further harms, confusion and needless delay, the parties should be required to timely create and implement a clear plan for curing the serious deficiencies found by the DOJ. Accordingly, the GEORGIA ADVOCACY OFFICE, INC., requests that the Court:

- A. consider the Objections stated above and by the collaborative mental health advocates (CYNTHIA WAINSCOTT, *et al.*) to the Settlement Agreement proposed by the United States Department of Justice and the State of Georgia;
- B. require the parties to develop an Agreement that more adequately addresses with specificity the harms identified in the DOJ findings;
- C. require that notice of the Settlement Agreement and its provisions, and a method for meaningful inquiries to be made about the Agreement, be given to persons who are confined in the State's institutions and their family members, advocates, guardians, and legal representatives, and to persons who are subsequently admitted (during the term of the Agreement) to the State's institutions and their family members, advocates, guardians, and legal representatives;
- D. require an Agreement that provides for a role for persons who are confined, or who will be confined during the term of the Agreement, in the State's institutions, and their family members, advocates,

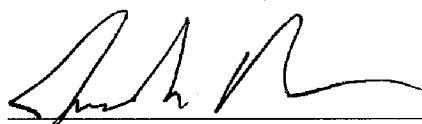
guardians, and legal representatives; and

E. grant such further relief as the Court deems to be just, proper, and equitable to protect the lives, safety, and health of persons with disabilities who are confined in the State's psychiatric and developmental services institutions.

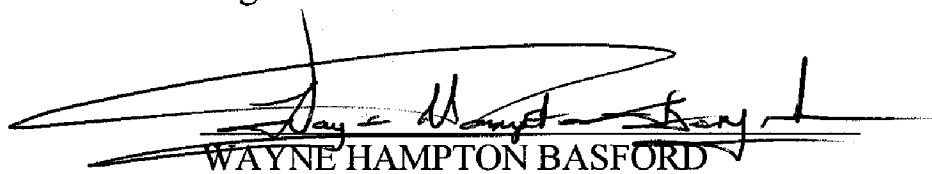
RESPECTFULLY SUBMITTED on this 2nd day of March,

2009.

GEORGIA ADVOCACY OFFICE, INC.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing OBJECTIONS BY THE GEORGIA ADVOCACY OFFICE, INC., TO THE PROPOSED SETTLEMENT AGREEMENT has been served by regular United States Mail on:

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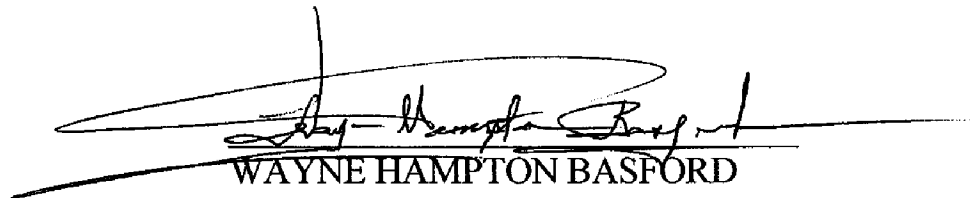
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on this 2nd day of March, 2009.



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