

Contempt

FILED

U.S. v. Oregon



MR-OR-001-007

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CLERK OF DISTRICT COURT
DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	Civil No. 86-961-MA
Plaintiff,)	
)	
SONYA FRYER, et al.,)	
)	
Plaintiff-Intervenors,)	
)	
v.)	
)	
STATE OR OREGON, et al.,)	
)	ORDER
Defendants.)	

ROBINSUE FROHBOESE
CYNTHIA L. KATZ
GAYLE D. FIDLER
U.S. Department of Justice
Civil Rights Division
P.O. Box 37076
Washington, D.C. 20066

JACK G. COLLINS
Chief, Civil Division
Assistant U.S. Attorney
312 U.S. Courthouse
Portland, OR 97205

Attorneys for Plaintiff United States of America.

ELAM LANTZ, JR.
Oregon Advocacy Counsel
625 Board of Trade Building
310 S.W. 4th Avenue
Portland, OR 97204

Attorney for Plaintiff-Intervenors.

1 - ORDER

1 DAVE FROHNMAYER
Attorney General
2 PAMELA L. ABERNETHY
Special Counsel to Attorney General
Oregon Department of Justice
3 110 Justice Building
Salem, OR 97310

4 Attorneys for Defendant State of Oregon.

5 MARSH, Judge.

6 The present circumstances at Fairview require the court to
7 enter an order addressing the State of Oregon's performance in
8 light of the Consent Decree entered on April 14, 1989. This order
9 should not be construed as a modification of the Consent Decree.
10 Upon consideration of the United States' Emergency Motion, the
11 pleadings submitted in support thereof and in opposition thereto,
12 and the entire record herein, I am satisfied that the findings of
13 the Advisory Panel relating to deficiencies at Fairview are
14 correct. The only issue left to be addressed is the form of an
15 appropriate order to bring the performance of Fairview into full
16 compliance with the Consent Decree.

17 The filing of this case was appropriate because of significant
18 deficiencies in the administration and operation of the Fairview
19 facility. The recognition of the problem has been addressed by
20 the actions of the State of Oregon and the entry of the Consent
21 Decree.

22 Many of the more recent failings at Fairview have been the
23 result of a fragmented attempt to satisfy individualized
24 complaints emanating from plaintiff, plaintiff-intervenors and the
25 Health Care Financing Administration ("HCFA"). This fragmented
26

2 - ORDER

1 approach has dissipated the energies of the administration and
2 staff at Fairview in the constant attempt to address individual
3 resident and staff problems, thus precluding the necessary time
4 for the generation of an overall program to address systemic
5 deficiencies. I am satisfied that the present administration at
6 Fairview is sincerely attempting to carry out a well defined plan
7 which has the support and dedication of the staff. The question
8 remains, however, as to whether or not that plan is going to prove
9 sufficient. The problems at Fairview are not of such a nature
10 that they can be corrected by fiat. Rather, implementation of the
11 plan, training, monitoring and quality assurance are all factors
12 which take time. At the same time, the administration and staff
13 must be sensitive to individual problems as their existence must
14 call into question the sufficiency of the overall program.
15 Therefore, a balance must be struck in the expenditure of energies
16 by administration and staff between the implementation of an
17 overall program and the immediate needs of the residents. In
18 doing so, it must be remembered that the responsibility for the
19 administration and operation of Fairview lies with the State of
20 Oregon, not with the United States nor with plaintiff-
21 intervenors. The rightful role of the plaintiff and intervenors
22 is to point out areas of noncompliance within the Consent Decree
23 and violations of constitutional rights. Both the United States
24 and plaintiff-intervenors must be mindful that their energies
25 should not be used to fragment Fairview's efforts at improvement
26 thereby inhibiting Fairview's progress in the implementation of

3 - ORDER

its overall program.

1 Subject to careful monitoring, I find that the recommendations
2 of the Advisory Panel in its report dated August 3, 1990
3 satisfactorily ensure this balance between the implementation of
4 an overall program and the immediate needs of the residents.
5 Accordingly, it is hereby ordered that defendants shall take the
6 following remedial actions at Fairview Training Center
7 ("Fairview") by the dates indicated in order to fulfill their
8 duties and obligations under the Consent Decree:

9 1. The State of Oregon shall immediately protect all those
10 residents who have sustained or are likely to sustain significant
11 harm to themselves or are likely to cause significant harm to
12 others. Such protection shall encompass sufficient and
13 appropriate staff supervision including 1:1 supervision, as well
14 as appropriate training for all staff who work with these
15 residents to ensure that they are totally familiar with the
16 circumstances that pose a threat to each resident's safety;

17 2. Within 60 days, the State of Oregon shall consistently
18 implement training programs that conform to Fairview's September
19 18, 1989 policy on behavior programs for all residents who have
20 sustained or are likely to sustain significant harm to themselves
21 or are likely to cause significant harm to others;

22 3. Within 120 days, the State of Oregon shall consistently
23 implement training programs that conform to Fairview's September
24 18, 1989 policy on behavior programs for all residents who are
25 designated behaviorally at risk, as defined in Fairview's revised
26

4 - ORDER

1 plan submitted to the Panel on April 24, 1990; and

2 4. Fairview shall immediately retain such outside consultants
3 as are necessary to produce the outcomes described in items 1-3
4 above.

5 In implementing the mandates of this order, the State of
6 Oregon shall comply with the monitoring procedures set forth in
7 Section VII of the Consent Decree including the submission of
8 quarterly reports to the Advisory Panel and the United States
9 describing Fairview's progress and the submission of monthly
10 reports summarizing (a) statistics on the use of personal hold and
11 restraint; (b) incident report analyses; (3) statistics on
12 staffing; (d) a list of residents who died and cause of death; (e)
13 monthly hospital admission log; and (f) abuse investigation
14 reports.

15 IT IS SO ORDERED.

16 DATED this 20 day of September, 1990.

17 Malcolm F. Marsh
18 Malcolm F. Marsh
United States District Judge

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5 - ORDER