

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civ. No. 99 -)

THE COMMONWEALTH OF PUERTO RICO;)

PEDRO J. ROSSELLO, GOVERNOR OF THE)

COMMONWEALTH OF PUERTO RICO;)

DR. CARMEN FELICIANO VDA. DE)

MELECIO, SECRETARY, DEPARTMENT OF)

HEALTH; JOSE DE LEON, DIRECTOR,)

MENTAL RETARDATION PROGRAM,)

Defendants.)

INTERIM SETTLEMENT AGREEMENT

I. INTRODUCTION

A. The parties enter into this Interim Settlement Agreement with the understanding that this Interim Settlement Agreement provides interim remedial relief to address the most imminent deficient conditions and practices at the institutional facilities identified below while the Commonwealth carries out its decision to establish a community-based service system plan for individuals with developmental disabilities.

B. This case was instituted by the United States pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.

C. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

D. Venue is appropriate pursuant to 28 U.S.C. § 1391(b).

E. The United States is authorized to institute this civil action by 42 U.S.C. § 1997a and has met all prerequisites for the institution of this civil action prescribed by the statute.

F. The Defendants are the Commonwealth of Puerto Rico, Pedro J. Rossello, Governor of the Commonwealth of Puerto Rico, Dr. Carmen Feliciano Vda. de Melecio, Secretary, Department of Health, Jose de Leon, Director, Mental Retardation Program. All individual Defendants are sued only in their official capacities.

G. In 1997, the United States investigated six Commonwealth facilities: Centro Servicios Integrales in Rio Piedras, Puerto Rico ("Rio Piedras"), Centro Reeducacion Adultos Minusvalidos in Bayamon, Puerto Rico ("Bayamon"), Facilidad de Cuidado Intermedio in Cayey, Puerto Rico ("Cayey"), Centro Rosario Bellber in Aibonito, Puerto Rico ("Aibonito"), Centro Cuidado Gentil Las Mesas in Mayaguez, Puerto Rico ("Mayaguez"), and Centro Servicios Multiples Camaseyes in Aguadilla, Puerto Rico ("Aguadilla"). Since the time the United States conducted its investigations, the Commonwealth moved the residents living in Rio Piedras to Centro de Servicios Integrales para Adultos con Retardacion Mental ("CSIARM") located at the MEPSI Medical Center in Bayamon, Puerto Rico, and moved the residents living in the Mayaguez facility to the Mayaguez Regional Hospital Health Care Center in Mayaguez, Puerto Rico ("Mayaguez Hospital"). The Commonwealth operates CSIARM but does not own the building. Mayaguez Hospital serves the Commonwealth's residents pursuant to a contract with the Commonwealth. The Commonwealth moved the residents living in

Centro Reeduccion Adultos Minusvalidos in Bayamon to another building on the same campus and retained the same name of the facility. The facility in Bayamon has remained a state owned and operated facility.

H. The Commonwealth has responsibility for the care of and services provided to residents of the aforementioned facilities in Bayamon, Cayey, Aibonito and Aguadilla, and at CSIARM and Mayaguez Hospital (hereinafter "residents").

I. On May 15, 1996, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of the Commonwealth of Puerto Rico, the Attorney General of the Commonwealth of Puerto Rico, the Secretary of the Puerto Rico Department of Health, and the Superintendent of Centro Servicios Integrales in Rio Piedras, that it was conducting a CRIPA investigation of allegations of unconstitutional and unlawful conditions at the facility in Rio Piedras. On June 11, 1997, the Attorney General of the United States, by and through the Acting Assistant Attorney General, Civil Rights Division, notified the Governor of the Commonwealth of Puerto Rico, the Attorney General of the Commonwealth of Puerto Rico, the Secretary of the Puerto Rico Department of Health, and the Superintendents of the facilities in Bayamon, Cayey, Aibonito, Mayaguez, and Aguadilla that it was conducting a CRIPA investigation of allegations of unconstitutional and unlawful conditions at these facilities.

J. Following an investigation of the facility in Rio Piedras, on June 11, 1997, the Attorney General of the United States, by and through the Acting Assistant Attorney General, Civil Rights Division, informed the Governor of the Commonwealth of Puerto Rico, the Attorney General of the Commonwealth of Puerto Rico, the Secretary of the Puerto Rico Department of Health, and the Superintendent of Centro Servicios Integrales in Rio Piedras that there was reasonable cause to believe that persons residing in or confined to the facility in Rio Piedras were being subjected to conditions that deprived them of their legal rights and of their rights, privileges, and immunities secured by the laws and Constitution of the United States.

Following an investigation of the facilities in Bayamon, Cayey, Aibonito, Mayaguez, and Aguadilla, on December 11, 1997, the Attorney General of the United States, by and through the Acting Assistant Attorney General, Civil Rights Division, informed the Governor of the Commonwealth of Puerto Rico, the Attorney General of the Commonwealth of Puerto Rico, the Secretary of the Puerto Rico Department of Health, and the Superintendents of the facilities in Bayamon, Cayey, Aibonito, Mayaguez, and Aguadilla that there was reasonable cause to believe that persons residing in or confined to these facilities were being subjected to certain conditions that deprived them of their legal rights and of their rights, privileges, and immunities secured by the laws and Constitution of the United States.

K. The parties agree that the care, conditions of confinement, education, and training of the residents in the facilities in Bayamon, Cayey, Aibonito and Aguadilla, and the former residents of Rio Piedras (now residing at CSIARM) and the former residents of Mayaguez (now residing at Mayaguez Hospital) implicate rights that are secured and protected by the Constitution and laws of the United States. The parties entering into this Interim Settlement Agreement recognize these federal rights, and for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

L. In entering into this Interim Settlement Agreement, Commonwealth officials do not admit any violation of law and this Interim Settlement Agreement may not be used as evidence of liability in any other civil proceeding.

M. The provisions of this Interim Settlement Agreement are a lawful, fair and appropriate interim resolution of this case.

N. The parties shall request that this Interim Settlement Agreement, voluntarily entered into, be entered by the United States District Court for the District of Puerto Rico and be enforceable as an order of the Court.

O. This Interim Settlement Agreement is legally binding and judicially enforceable by the parties and it shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

P. Unless otherwise provided, all provisions of this Interim Settlement Agreement are applicable to the facilities at

Bayamon, Cayey, Aibonito, Aguadilla, CSIARM, and Mayaguez Hospital, and any other facility or community placements of individuals transferred from these six facilities.

Now, therefore, the parties hereby agree as follows:

II. INTERIM REMEDIAL MEASURES

A. The Commonwealth shall ensure that residents are provided with adequate food, medications, clothing, shelter, and basic care to maintain their optimal health. To this end, at a minimum at each facility, the Commonwealth shall immediately:

1. Ensure that residents at each facility have sufficient quantities of nourishing food and drink to fully meet the daily nutritional intake needs of every resident.
2. Provide each resident with three well-balanced and nutritionally adequate meals a day, which include the provision of fresh fruits and vegetables, and that whatever supplementary food or drink any resident requires is promptly furnished to him or her without condition consistent with medical orders.
3. Provide each resident with sufficient quantities of fresh water daily to ensure that each resident is properly hydrated.
4. Ensure that each resident receives the medications he or she requires every day and that no dose is missed for any resident due to medication shortages. The Commonwealth shall ensure that each facility has sufficient funds and resources with which to purchase any and all medications

necessary for the residents or that such medications are provided from other Commonwealth health facilities.

5. Fully stock each facility with or ensure that each facility has ready access to sufficient quantities of cleaning products. Each facility shall utilize these cleaning products to ensure that each facility is clean and that the bathrooms are free of mildew.

6. Ensure that all residents are able to keep and maintain their own clothing and other personal possessions in their own sleeping areas and that each facility protects such possessions from theft, loss, or damage while assuring free access to each individual's possessions. Each facility shall ensure that every resident is dressed in the resident's own clean clothing and that each resident's clothing is changed, as necessary, throughout the day and night.

7. Repair fully existing physical plant deficiencies and thereafter maintain the physical plant on a daily basis to ensure that residents' needs for adequate shelter are fully met. If any situation develops which compromises the physical integrity of the facility building(s) (including the roofs), the lighting, or the plumbing (including the toilets, showers and baths) in the facility building(s), the Commonwealth shall promptly repair the problem. At a minimum, to this end:

a. The Commonwealth shall devote sufficient staffing resources and sufficient maintenance personnel to maintain each facility in a habitable condition pursuant to this Interim Settlement Agreement.

b. The Commonwealth shall ensure that overhead lights work throughout each facility, particularly in the bathrooms and in the bedrooms. The Commonwealth shall ensure that electrical sockets and light switches are safe, functional, and repaired fully when necessary and that lighting is adequate.

c. The Commonwealth shall ensure that the toilets in each facility are repaired so that they flush properly and ensure that they continue to function properly, are maintained in hygienic fashion, and that they are conducive to teaching toileting skills.

d. The Commonwealth shall ensure that all sinks in each facility are functional, conducive to teaching hygienic skills, and that sink stands and basins are not leaking and are repaired when damaged.

e. The Commonwealth shall ensure that showers and tubs in each facility are functional with working shower heads, and drains that sufficiently remove water from the shower, tub or floor.

f. The Commonwealth shall ensure that peeling paint is removed wherever it exists in each facility and that each facility is repainted when necessary.

g. The Commonwealth shall ensure that ventilation in each room is adequate.

h. The Commonwealth shall repair and replace all damaged doors, ceilings, walls, floors, and tiles in each facility. The Commonwealth shall ensure that all windows are functional and repaired if damaged. The Commonwealth shall ensure that the roof at each facility does not leak.

B. Within 90 days of the filing of this Interim Settlement Agreement, the Commonwealth shall ensure that residents' wheelchairs are fully functional, adapted, and sufficient to meet residents' needs based on the ongoing evaluations and input of qualified physical therapists. For damaged wheelchairs, the Commonwealth shall repair and replace them to ensure that they are fully functional and adapted to individual needs.

C. The Commonwealth shall ensure immediately that residents are properly bathed, washed and groomed to maintain proper resident hygiene, including at least daily bathing, washing as needed throughout the day, regular shaving, trimmed nails, and groomed hair and that these activities are part of habilitation based on individual needs.

D. The Commonwealth shall ensure that residents are provided with reasonably safe conditions and that they are free from staff abuse and neglect. The Commonwealth shall prevent undue risk of harm associated with the aggression or other maladaptive behaviors of other residents. At a minimum, to this end, the Commonwealth shall immediately:

1. Ensure that staff members do not physically, emotionally, verbally, sexually, or in any other way, abuse residents.
2. Ensure that staff members do not neglect residents.
3. Ensure that staff take whatever steps necessary to prevent undue risk of harm to residents from other aggressive residents. The Commonwealth shall eliminate other situations which pose an undue risk of harm to residents.
4. Staff the facility with enough direct care and professional staff to ensure that residents are adequately supervised, educated, trained, and protected. To this end, each facility shall maintain a direct care staff to resident ratio of 1:3 on the morning and afternoon shifts, and 1:4 on the night shift. These ratios shall be maintained every day and night, including weekends and holidays. When necessary, residents who require more enriched staffing shall receive it to protect them or others from harm or risk of harm. All staffing patterns shall be based on the individualized needs of the residents. When necessary, one to one staffing shall be made available to residents to prevent harm to themselves or others and to ensure adequate habilitation.
5. In the event that a resident is injured, the Commonwealth shall ensure that the injured resident receives prompt medical attention and any other intervention necessary to protect the resident's health and welfare,

including removing any suspected worker from resident contact, pending determination of fault by competent authority.

6. In the event that a resident suffers an injury, the Commonwealth shall promptly remove the resident from the situation posing a risk and shall remove the cause of the situation or environment posing a risk.

E. Within 90 days of the filing of this Interim Settlement Agreement, the Commonwealth shall ensure that restraints are used only pursuant to accepted professional standards and that they are not used as punishment, in lieu of training programs, or for the convenience of staff. The Commonwealth shall not lock or confine residents for the convenience of staff.

F. Within 90 days of the filing of this Interim Settlement Agreement, the Commonwealth shall provide adequate and appropriate routine and emergency psychiatric and mental health services in accordance with accepted professional standards to residents who need such services.

G. Within 30 days of the filing of this Interim Settlement Agreement, the Commonwealth shall ensure that residents receive adequate preventive, chronic, routine, acute, and emergency medical and nursing care in accordance with generally accepted standards of care.

H. Within 60 days of filing this Interim Settlement Agreement, the Commonwealth shall develop and implement a training program to ensure that all professional and direct care

staff who provide services to residents are trained adequately to implement the requirements of this Interim Settlement Agreement and are provided thereafter with in-service training on a regular basis.

I. The United States and its agents shall have the right to tour any of the facilities and community placements, request, inspect, review and copy facility records, resident charts and other documents related to the level and delivery of care to residents, conduct interviews with residents and staff outside the presence of supervisory staff, and observe activities normally conducted at each facility to assess compliance with this Interim Settlement Agreement. The United States agrees to provide reasonable notice to the Commonwealth prior to conducting any tours.

J. Defendants remain fully responsible for the timely and complete implementation of this Interim Settlement Agreement.

K. This Interim Settlement Agreement shall remain in full force and effect until a comprehensive Settlement Agreement, addressing all of the conditions requiring remedial action affecting the residents of these facilities, identified in the June 11, 1997 and December 11, 1997 letters to the Governor of the Commonwealth of Puerto Rico, and creating a community-based service system for individuals with developmental disabilities, is filed with the Court. The parties agree to negotiate in good faith in an effort to reach agreement on the comprehensive Settlement Agreement within 180 days of filing this Interim

Settlement Agreement. To this end, the Commonwealth shall develop a community-based service system plan. The Commonwealth shall submit a completed draft of this plan to the United States for its approval within 90 days of the filing of this Interim Agreement. The United States shall have 30 days to review the plan and to provide comments to the Commonwealth. Where necessary, the parties shall meet to discuss such comments and to attempt to reach a compromise. The parties may agree to extend the deadlines in this section. In the event that the parties are not able to resolve their differences about the community services plan or any other provision in the comprehensive Settlement Agreement within 180 days of filing this Interim Settlement Agreement, the United States reserves the right to litigate the underlying claims and to seek appropriate remedies from the court.

L. The United States may seek enforcement of this Interim Settlement Agreement or any other appropriate remedy from the Court in the event that it determines that the Commonwealth has failed to comply with any provision of this Interim Settlement Agreement. The United States agrees to consult with officials from the Commonwealth before instituting enforcement proceedings.

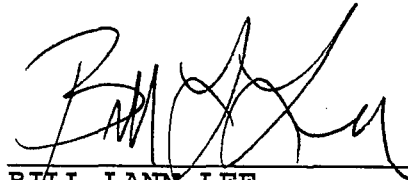
M. The parties reserve the right to withdraw consent to this Interim Settlement Agreement in the event that this Interim Agreement is not approved by the Court in its entirety.

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

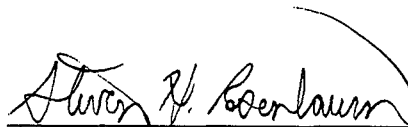
CONSENTED TO BY THE UNDERSIGNED:

FOR THE PLAINTIFF:

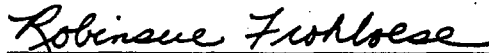
GUILLERMO GIL
United States Attorney
District of Puerto Rico
Federal Office Building
Room 452
150 Carlos E. Chardon Ave.
Hato Rey, Puerto Rico 00918
787-766-5656



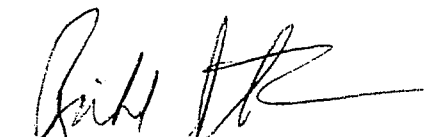
BILL LANN LEE
Acting Assistant
Attorney General
Civil Rights Division



STEVEN H. ROSENBAUM
Chief
Special Litigation Section



ROBINSUE FROHBOESE
Deputy Chief
Special Litigation Section



RICHARD J. FARANO
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
601 D Street, N.W., Room 5118
Washington, D.C. 20004
202-307-3116

FOR THE DEFENDANTS:

JOSE FUENTES AGOSTINI
Secretary of Justice
Commonwealth of Puerto Rico

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

IT IS SO ORDERED, this _____ day of _____, 1999, at _____, Puerto Rico.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
Plaintiff

vs.

COMMONWEALTH OF PUERTO RICO,
et al
Defendants

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CIVIL CASE NO. 99-1435 (PG)

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INTERIM PARTIAL JUDGMENT

The Court having entered an order approving the parties "Interim Settlement Agreement", it is

ORDERED and ADJUDGED that said interim settlement agreement be, and is hereby binding between the parties. FURTHER, it is

ORDERED and ADJUDGED that said interim settlement agreement be, and is hereby made part of this judgment as though set forth in extenso. FURTHER, it is

ORDERED and ADJUDGED that the Court will enter a final judgment once the terms and conditions of the interim settlement agreement are implemented and fully complied with.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 20th day of July, 2000.

Juan M. Pérez-Giménez
JUAN M. PÉREZ-GIMÉNEZ
U. S. District Judge