

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DARRYL PELICHET, *et al.*

Plaintiffs,

No. 2:18-cv-11385

v

HON. ANTHONY P. PATTI

ELIZABETH HERTEL, *et al.*,

Defendants.

Laurence H. Margolis (P69635)
James M. Gallagher (P73038)
Ian T. Cross (P83367)
Margolis, Gallagher & Cross
Attorneys for Plaintiffs
214 S. Main St., Suite 202
Ann Arbor, MI 48104
(734) 994-9590
larry@lawinannarbor.com
jim@lawinannarbor.com
ian@lawinannarbor.com

Chris E. Davis (P52159)
Simon Zagata (P83162)
Michigan Protection & Advocacy
Service, Inc.
Attorneys for Plaintiff MPAS
4095 Legacy Parkway, Suite 500
Lansing, MI 48911
(517) 487-1755
cdavis@mpas.org
szagata@mpas.org

Katherine J. Bennett (P75913)
Darrin F. Fowler (P53464)
Ashlee N. Lynn (P78789)
Assistant Attorneys General
Michigan Department of Attorney General
Attorneys for MDHHS Defendants
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
bennettk1@michigan.gov
fowlerd1@michigan.gov
LynnA@michigan.gov

Thomas G. Cardelli (P31728)
Cardelli Lanfear, P.C.
Attorney for Defendant Hegira
322 W. Lincoln Ave
Royal Oak, MI 48067
(248) 544-1100
(248) 544-1191 Fax
tcardelli@cardellilaw.com

TABLE OF CONTENTS

I.	INTRODUCTION AND RECITATIONS	2
II.	PATIENT RIGHTS INFORMATION	3
III.	THE DEPARTMENT'S POLICIES, PROCEDURES, AND CONTRACT LANGUAGE	4
IV.	EDUCATION AND TRAINING	5
V.	DATA COLLECTION AND MONITORING	6
VI.	ATTORNEYS FEES, COSTS, AND EXPENSES	7
VII.	RELEASE AND SETTLEMENT OF CLAIMS	7
VIII.	COURT APPROVAL AND ENFORCEMENT POWERS	7
IX.	MISCELLANEOUS PROVISIONS	8

FINAL SETTLEMENT AGREEMENT

I. INTRODUCTION AND RECITATIONS

Plaintiff, Michigan Protection and Advocacy Service, Inc. (MPAS)¹ and the Michigan Department of Health and Human Services (Department) enter into this Final Settlement Agreement (Final Agreement) to settle the litigation captioned above.

The Parties to this Final Agreement (the Parties) consist of MPAS and the Department. The Parties agree to comply with the following terms. This Final Agreement is enforceable in federal court.

The Parties hereby stipulate and agree as follows:

WHEREAS Plaintiffs have filed a lawsuit against the Department and others in the United States District Court for the Eastern District of Michigan, styled *Pelichet et al. v. MDHHS et al.*, Case No. 2:18-cv-11385;

WHEREAS Plaintiff MPAS claimed violations of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, and the U.S. Constitution, based upon Defendants' alleged failure to provide appropriate mental health services in the least restrictive setting and failure to provide proper due process to individuals deemed Not Guilty by Reason of Insanity (NGRI);

WHEREAS on September 20, 2019, the Court issued its Opinion and Order Denying in part a motion to dismiss filed by the Department, Robert Gordon, Sharon Dodd-Kimmey, Craig Lemmen, Kimberly Kulp-Osterland, Lisa Marquis, Martha Smith, Dave Barry, Kelli Schaefer, Joseph Corso, and Diane Heisel (the MDHHS Defendants);

WHEREAS the MDHHS Defendants have denied and continue to deny such violations;

WHEREAS on November 6, 2020, the Court entered a Stipulated Order Approving Interim Settlement Agreement Between MPAS and MDHHS and Dismissing

¹ MPAS changed its name under which it conducts business to Disability Rights Michigan (DRM). This name change became effective June 30, 2020.

MPAS' Claims Against the NGRI Committee Defendants, which dismissed with prejudice MPAS' claims against Defendants Dodd-Kimmey, Lemmen, Kulp-Osterland, Marquis, Smith, Barry, Schaefer, Corso, and Heisel;

WHEREAS through the Interim Settlement Agreement (Interim Agreement), the parties agreed to collaborate on a series of objectives and to enter into the Final Agreement once those objectives were met;

WHEREAS the Parties' respective obligations under the Interim Agreement have been completely fulfilled;

WHEREAS the Parties desire, through this Final Agreement, to resolve and settle the litigation without the costs and burdens associated with further litigation with respect to any remaining or potential claims raised by MPAS and defenses raised by the MDHHS Defendants in response to MPAS' claims;²

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and which consideration includes, but is not limited to, the mutual promises and covenants contained herein, the Parties hereby agree to be bound as follows:

II. PATIENT RIGHTS INFORMATION

1. The Parties collaborated to develop a handbook detailing the rights of individuals deemed NGRI. Within 30 days of this Final Agreement, the Department will provide or make available a copy of the NGRI patient handbook ("the Handbook") attached as Exhibit A to every NGRI individual currently receiving inpatient or outpatient treatment in the State of Michigan.
2. Within 180 days of this Final Agreement, the Department will ensure all future NGRI patients and their guardians receive the Handbook upon the patient's admission. The Department will publicize the existence of the Handbook within any state-operated hospital in which an NGRI patient is treated. The Department will provide the Handbook to anyone else upon request and may provide it in electronic format.

² This Final Agreement does not waive or resolve the MDHHS Defendants' defenses in response to the individual Plaintiffs' claims.

3. The Department will provide MPAS documentation demonstrating that current NGRI patients received the handbook and that the Department has a procedure by which future NGRI patients will also receive the handbook.

III. THE DEPARTMENT'S POLICIES, PROCEDURES, AND CONTRACT LANGUAGE

4. The Parties collaborated to revise and update the Department's NGRI policies and procedures, hospital policies and procedures, and Community Mental Health Service Provider (CMHSP)/Prepaid Inpatient Health Plan (PIHP) contract language in accordance with the guidelines set forth in the Interim Agreement. These documents, as amended, are attached as Exhibits B-F. However, instead of revising Authorized Leave Status (ALS) contract language as contemplated in the Interim Agreement, the Parties have agreed to the elimination of ALS contracts. The contents of these agreed-to documents can be summarized as follows.
 - A. Any NGRI patient placed on an assisted outpatient treatment (AOT) order will receive an AOT Individual Plan of Service (IPOS) with risk mitigation strategies overseen by the NGRI Committee, in accordance with Exhibit B. These risk mitigation strategies must be tied to the person's behavioral health treatment needs.
 - B. Any NGRI patient with an AOT IPOS will receive notification of the NGRI Committee's oversight via the language in Exhibit C, attached to their IPOS.
 - C. Per Exhibit B, NGRI Committee oversight of NGRI patients will end when the risk mitigation goals in a patient's AOT IPOS are met or when the patient ceases to meet the definition of a person requiring treatment in Mich. Comp. Laws § 330.1401. NGRI committee oversight will not exceed five (5) continuous years during which the person is on an AOT order.
 - D. The Parties have agreed to guidelines for completing clinical certificates, attached as Exhibits D and E.

- E. The Parties have agreed on new contract language between the Department and the CMHSPs/PIHPs, attached as Exhibit F.
- F. All NGRI patients (and their guardians) will receive proper due process when rehospitalization is recommended following authorized leave in excess of ten days, as described in Mich. Comp. Laws § 330.1408.
- G. For implementation purposes, the Parties agree that any NGRI patient currently subject to an ALS contract will have their contract terminated at the time their current hospitalization order expires or upon individual request, whichever occurs first. At that time, the new policies and procedures described herein will be applied to such patients.

IV. EDUCATION AND TRAINING

- 5. The Department will provide educational written materials, to professional state hospital staff, independent contractors that provide services to NGRI patients under contracts with the Department, and CMHSP providers serving NGRI patients regarding the revisions and changes made as a result of this litigation. The Department and MPAS have agreed upon the language of those materials, attached as Exhibit G. Distribution will occur no more than 30 days from the date the Final Agreement is approved by the Court.
- 6. Upon request, the Department will also make these written educational materials available to disability advocacy organizations, probate court judges, appointed defense counsel, and the general public.
- 7. No less than 180 days after this Final Agreement is approved by the Court, the Department will train all professional hospital staff on the new policies and procedures, announced in advance, and open with invitations to the groups named in paragraphs 5 and 6 above, as well as NGRI patients, their families, and guardians. This training will be recorded and made publicly available on the Department's website.
 - A. The Parties have agreed on the training topics and content to be delivered, outlined in Exhibit G.

- B. The Department will invite MPAS to attend all trainings and provide the option for MPAS to present at these trainings.
- C. The Department will further provide additional appropriate education to hospital staff involved in treatment decisions and rights protections for NGRI patients (not excluding social workers and recipient rights staff) to ensure awareness of the new policies and procedures that are set forth for them to follow. This targeted hospital staff training will be held biannually for a two-year period. Thereafter, the training will be held at all new employee orientations.

V. DATA COLLECTION AND MONITORING

- 8. The Department will collect data to ensure the policies and procedures and contracts are being implemented effectively. It will collect this data every 180 days for a two-year period after the policies are made effective.
- 9. The Parties have agreed to the data to be collected as laid out in Exhibit H.
- 10. The Department will collect and track data in an easy-to-use format and will react to the data (including but not limited to evaluations of NGRI patients performed by medical professionals, number of petitions filed by each medical professional, etc.) and take steps necessary to ensure proper compliance with its revised policies and procedures. Further, the Department will ensure individuals are receiving proper treatment in the least restrictive setting pursuant to the revisions made as a result of this litigation. The Department will make this data available to MPAS within seven business days of a MPAS request. The Department will also provide MPAS with redacted copies of all documents, records, or data it requests (for example individualized treatment records, court orders, certifications, treatment recommendations, due process documents, AOT orders, and the like) so that MPAS can monitor compliance with this agreement. Upon request, the Department will provide MPAS evidence that the Department has taken steps necessary to respond to data collected to ensure compliance with its revised policies, procedures, and contracts. The Department and MPAS have agreed to the escalation and

resolution process outlined in Exhibit I, should any concerns arise from MPAS' review of the data.

11. The Parties agree that MPAS' monitoring role may continue for two calendar years following the date the Court approves this Final Agreement. Further, the Parties agree the Department will utilize Exhibits A-G for this same two-year period, unless circumstances require changes to be made, such as an amendment to governing laws. The Department may also revise Exhibit G over time to reflect evidence-based practices. The Parties agree to collaborate in good faith in the event changes to these materials becomes necessary, as described in Paragraph 20 below.

VI. ATTORNEYS FEES, COSTS, AND EXPENSES

12. In settlement of all of MPAS' claims, the Parties agree that within 30 days of the date this Final Agreement is approved by the Court, the Department shall pay \$30,000.00 to MPAS

VII. RELEASE AND SETTLEMENT OF CLAIMS

13. Plaintiff MPAS hereby releases and discharges all individuals named as MDHHS Defendants, including their successors and assigns, of and from any and all claims or causes of action arising out of the matter described in the Plaintiff's Complaint filed with the U.S. District Court for the Eastern District of Michigan in Case No. 2:18-cv-11385. This includes claims in any official or individual capacity.
14. Plaintiff MPAS agrees to dismiss with prejudice all claims against the Department and its Director in Case No. 2:18-cv 11385 upon the Court's approval of this Final Agreement, subject to the continued enforcement powers of the Court.
15. The Parties agree that the Court shall retain jurisdiction over this Final Agreement.

VIII. COURT APPROVAL AND ENFORCEMENT POWERS

16. Upon execution of this Final Agreement, the Parties shall jointly move the Court for approval of this Final Agreement and dismissal of MPAS'

claims against the Department and its Director. This dismissal shall be with prejudice subject to the Court's ongoing authority to enforce the terms of this Final Agreement. The Court will retain jurisdiction over this action for one year and shall have the power to enforce all terms of this Final Agreement. Approval of this Final Agreement by the Court is a condition precedent to the Final Agreement's effectiveness.

IX. MISCELLANEOUS PROVISIONS

17. This Final Agreement constitutes the entire Agreement between the Parties. There were no inducements or representations leading to the execution of this document, except as stated within the document itself.
18. This Final Agreement is final and binding on the Parties and their successors in interest. Each Party has a duty to so inform any such successor in interest.
19. Failure by MPAS to seek enforcement of this Final Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances and/or provisions.
20. In the event that a court determines that any provision of this Final Agreement is unenforceable, such provision will be severed from this Agreement and all other provisions will remain valid and enforceable, provided however that if the severance of any such provision materially alters the rights and obligations of the Parties hereunder, the Parties will attempt, through reasonable, good faith negotiations, to agree upon such other amendments to this Final Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.
21. The MDHHS Defendants deny any liability in this litigation, and this Final Agreement should not be construed as an admission of liability. Further, nothing in this Final Agreement may be used against the MDHHS Defendants in the continuing litigation with the individual Plaintiffs.

This Final Agreement is effective when the Court enters an Order approving it.

For Plaintiff MPAS:

Simon J

Dated: 7/20/21

For the Department:

Dated: _____