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Superintendent

PENNHURST CENTER

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July 16, 1979

Ms. Carla Morgan
Acting Special Master
649 South Henderson Road
King of Prussia, PA 19406

Dear Ms. Morgan,

I would like to present the following comments on the March 5, 1979 Plan for the Interim Operation of Pennhurst, in lieu of testifying at the up-coming public hearing. I will list my comments in the order they appear in the Plan.

1. Introduction - beyond the tardiness of this "quarterly" review, I am concerned about the "several documents responding more specifically to the program needs of Pennhurst residents during their temporary tenure at Pennhurst Center", as promised by the Judge. When will these documents be unveiled? And, will further reviews of this Interim Plan be held in a more timely fashion?

2. Section 1.3 - The Liaison from the Office of the Special Master has noticeably absented himself from the process of monitoring this facility's compliance with the Order. My staff and I form the action arm of the monitoring process, yet our interface with the Liaison has been negligible. We provide to him weekly reports of incidents requiring investigation and monthly summaries of client accidents and of restraint usage. He has stated that these are sufficient for his needs, as long as our daily logs are open to him. Yet he has chosen to view those logs only once in the four months since March 5th. If, in fact, it was necessary for the Court to "guarantee" the rights of Pennhurst's clients and to install a shadow bureaucracy to oversee this guarantee, why has so little actual "monitoring" taken place? If the OSM and the Court truly believe that the rights of our clients may suffer without their constant intervention, why has this monitoring been so negligible? I will address this issue further in my comments, when discussing more specific components of the plan.

3. Section 1.5 - To date, no "Due Process Procedure" has been established or utilized. When will this be done?

4. Section 3.2.1. - Thru 3.2.4. - The mandated follow-up reports on physical and chemical restraints are done each day by my staff. They have accumulated a file of reports verifying the proper/improper use of each restraint employed here. These records are available on a daily basis to the Liaison, who opted for that method, rather than require a separate report to him every 24 hours as called for in the Order. Yet he has never consulted or reviewed these individual follow-up reports. Also, to my knowledge, the Liaison has never "regularly and randomly" monitored the procedures set out in Section 3.2.3. (a), (b) or (c).

Special Note: You may wonder why I am singling out so vehemently the shortcomings of the "Monitoring" systems, as established in the Interim Plan. The trial record in the Halderman case was very calculatedly constructed to paint a picture of not only neglect but also callous mistreatment of the clients' of Pennhurst. Based on this false picture, the Judge ordered specific safeguards, to protect the clients from reoccurrences. Since then, the OSM and the the plaintiff attorneys have trumpeted in many different forums the value and need for these safeguards. Yet, in reality,

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the Interim Plan merely enjoins us to follow existing facility policies, (policies that pre-date the trial by some years and which we have followed scrupulously since their inception). In fact, the state regulations on Restraints and Abuse, cited in section 3.2, grew out of policies initiated at Pennhurst in the early 1970s. I find it personally galling to hear the OSM virtuously praise, in public releases and in digests of the Court Order, the "safeguards" that are "now present" at Pennhurst. When I contrast the public statements on these "safeguards" against the actual performance of the "monitoring", my anger increases.

5. Section 3.3.- The call for a "detailed behavior management policy" in this section was met by this facility within the allotted sixty days. Yet, to date, no formal critique or acceptance of our proposed plan has been received from the Liaison. This disregard of the Court's deadline further strengthens my feeling that the monitoring process has been a sham. If such monitoring is needed, then it should be done. If it is not needed, as I believe we have proven, then it should be eliminated from the revised Interim Operation Plan.

6. Section 5.1 - To date, Pennhurst has not been exempted from the SCAR process. This information is known to the Liaison and the OSM. On June 27, 1979, in conversation with Thomas Gilhool of PILCOP, I confirmed this information to him. Upon being asked for specific numbers of vacancies, length of time vacant, etc. I informed him that the best way to obtain these figures would be to have the Liaison speak with members of our Personnel Department, specifically Ms. Betty Finkbiner, who oversees recruitment and hiring. As of late afternoon, July 11th, no one from the OSM had contacted her to pursue this question. If the OSM has no intention of following through on this "other Provision", it should be deleted from the Plan.

7. Section 6.0 - What "system of review" has been set up to deal with people who have failed "to comply with any procedures contained" in the Plan? Is the staff of the OSM susceptible to penalty when they fail to meet the obligations set out for them in the Orders of the Judge?

Special Note: As an overall recommendation, I believe the entire first part of the Interim Operations Plan should be scrapped, as it is a trick on the public. Those specific subsections I have not addressed (i.e. Medication, Sanitation, etc.) are as equally superfluous as the ones I have mentioned. They merely point out normal operating procedures, to which we regularly adhere, and in no way do they constitute "safeguards" against past or present abuses. The paucity of "Action Checks" shows this. There is no reason to maintain the charade of "protecting" our clients, under the supervision of the Court, when there is no evidence that the "protections" put forth in the Plan are either needed or being enforced.

8. Introduction to Part II - This section calls for, among other items, the employment of a "Regional Coordinator of Monitoring". At a public meeting on July 9, 1979, you stated that such a position had been projected in early drafts of the Interim Plan but was later felt to be unnecessary. Yet the position remains part of the court-ordered plan. It obviously should be deleted, with the deletion accompanied by an explanation as to what caused the OSM to decide that they could overrule the Court on this.

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9. Section 7.2 and 7.3.1 - These sections speak to supports for the "residents of Pennhurst and any other individuals affected by the Court Order". Yet, the question of who actually belongs to the Plaintiff Class still remains open to debate, at least in the mind of the Acting Special Master, according to your public comments. Judge Broderick, in his opinion filed December 23, 1977, describes the plaintiff class thusly; "All persons who as of May 30, 1974, and at any time subsequent, have been or may become residents of Pennhurst.... The members of the class are persons residing at Pennhurst, persons residing in (the 5 counties of the Southeastern Region) who are on a waiting list for placement at Pennhurst and persons residing in (the 5 counties) who, because of the unavailability of alternate services.... may be placed at Pennhurst." The class was so certified on November 26, 1976. It is important that the question of Class membership be answered quickly, so that planning can begin for those members of the Class who are not presently in residence at Pennhurst (i.e. transfers to Woodhaven, Embreeville, etc., made since May 30, 1974; all PLF clients, who by state Law, must be, by definition, members of the waiting list; and any others). If the Class does not correspond to Judge Broderick's description, then we may be faced with a violation of the Federal Rules of Civil Procedure (Rule 23 § c.3) which requires that any judgement in a class action include an accurate description of the class members. If the class does not include "other individuals", the Plan should be changed to reflect this.

10. Section 8.1 - If the plaintiff Class is indeed as inclusive as described by Judge Broderick (and I fail to see how it could not be, as it is the responsibility of the Court to make such a determination) then the Case Managers face a very large and arduous task. Their case loads will be increased dramatically.

Special Note: As a side-bar issue, not related to the Interim Plan, it must be determined if all of the under-21 age Class members are susceptible to the June 8, 1979 Order of the Court, namely that they move to community alternatives before September 1, 1979. If that Order is interpreted to include the entire plaintiff class, under the age of 21, then plans must be made for such persons currently in Woodhaven (who had previously been in Pennhurst), for all under-21 age clients of Pinehill (who are, legally, residents of Pennhurst, under both the state MH/MR Act and in the eyes of the Social Security Administration), and for all such persons currently residing in PLFs.

11. Section 10.1 thru 10.3 - The Individual Plan (commonly called the IHP) has become a bone of contention, both in the manner of its composition and the review of the final document. In a letter addressed to me on June 21, 1979, Wes Perkins promised that he would be providing a written diagram of the IHP process, from beginning to end. I hope this will be a part of the revised plan. I must reiterate my belief, stated at the HRC meeting of July 9th, that it is imperative that a formal, specific meeting be held with all appropriate parties in attendance, where the life needs of the client can be clearly identified and ranked in priority order. Participation by a cross-section of Pennhurst staff is essential to this process. Also, I believe a review by the developmental team members of the proposed IHP is needed before it is approved by the OSM. To insure that the presentation made by the Case Manager accurately portrays the intention of the participants (especially the client and his family).

12. Section 10.4 - The Impartial Hearing process must allow involvement from persons other than the client, his family, or a certified advocate. Prior sections limit the requesting of a certified advocate to the client or his family. This effectively removes from the stream of protections and due process promised to them, those clients who have no families and who are unable to understand the options presented to them and/or request the appointment of an advocate. The closed circle of review within the

OSM may not always choose the "best" interest of the client, given it's stated mission. With no advocacy available because of the lack of an acceptable "request", the client stands in danger of being railroaded. Some loosening of this process is essential.

13. Appendix E. - The actual "Action Check", "Follow-Up" and "Verification" forms currently in use should be substituted for rough draft copies included here.

14. The Addendum analysing the testimony given at the public hearing on the original draft plan contains many valuable suggestions which were not adequately addressed in the final Order. These are primarily listed as "Recommendations Appropriate to Subsequent Plans." I have already noted the failure of the OSM to produce any such further plans. Will these "appropriate" recommendations be addressed in this revision? Chief among these earlier recommendations, made by myself and many others, was an expansion of the program availability for Pennhurst clients now. We are still forced to stretch limited resources well beyond their furthest limits. Yes, we are providing a full day of structured activities and programs for our clients (as witnessed by our recent, permanent licensure as a provider of ICF/MR services), but we still need to do more. The professional level therapist is essential to the provision of habilitative programming. Our number of those crucial people, (which was never sufficient) is actually dwindling now, not increasing. Please refer to my complete comments on the first draft plan, as stated in my letter to Dr. Audette of October 24, 1978, for a more detailed explanation of my feelings.

A Final Special Note: I understand that it is the intention of the OSM to prepare their own list of additions/deletions or revisions to the Interim Operations Plan. This is to be submitted to the Judge without any public review. I believe this violates both the spirit and letter of the intended purpose of a public review process; such a process exists to insure that planning is responsive to and reflective of the needs of consumers and of interested others. This was the intention of Judge Broderick when he made the planning process a public one. To hold a public hearing for comments on an old plan, while at the same time, a second, secret set of recommendations is being formulated away from the eyes of the public, seems pointless and borders on fraud. It is important that the public know what the OSM intends to recommend for the revised plan, so that the public can review those recommendations, also. From the track record to date, it seems highly likely that the Court will approve whatever is sent to it by the OSM. If that submission has had no prior review, how will the public's interest be served? I feel that this course of action by the OSM makes the August 1st hearing a travesty.

In addition, as long as the OSM "analyses" and edits the comments of the public before passing them on to Judge Broderick he will remain sealed off from the true feelings of the public. Dr. Audette had originally stated that all comments would be appended to the plan submitted to the Court; not an edited version with everything reduced to 3 or 4 word phrases. It is essential that the Judge see for himself what is being said about his Plans and his Orders, not that he see just what the OSM deems essential or germane.

I realise my comments have been lengthy and at times harsh and brutally frank. I speak this way for one reason only. People's lives are at stake here. Many are people I have known, worked with and in cases, loved for nearly 10 years. I do not

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see them benefitting from the process swirling around them so far. If anything, the actions of the OSM have only antagonized people needlessly, further polarized the issues and driven a wedge between community adherents and the progressive forces working to change Pennhurst. I have believed in and fought for alternatives to the "old Pennhurst" for 10 years. I see that fight being lost, not won, if present trends continue. So you see, I have no choice but to be harsh, no choice but to fight for what I believe in.

Sincerely,

J. Gregory Pirmann
Special Assistant to the Superintendent

JGP/sjm

cc: George A. Kopchick, Jr.
Peter H. O'Meara
Judge Raymond J. Broderick, Jr.