

plaintiff, R.R.'s past hospitalizations at the Vermont State Hospital wherein her DPOA was not honored; and,

b. except as stated in paragraph 1(c) below, to dismiss with prejudice the Amended Complaint filed in Washington County Superior Court entitled R.R. et al. v. Vermont State Hospital et al., Docket No. 414-7-97 Wncv; and,

c. to dismiss all claims with prejudice made by the plaintiffs in the aforementioned Amended Complaint except the parties agree to request a declaratory judgment regarding whether it is a violation of the plaintiff R.R.'s civil and statutory rights to be involuntarily medicated under any circumstances against her expressed wishes as set forth in her DPOA.

2. In consideration of the acts and promises of the plaintiffs, as set forth herein, the defendants agree:

a. to pay the plaintiffs the sum of Thirty Thousand Dollars and No Cents (\$30,000.00), inclusive of attorneys' fees and costs, payable when the Washington County Superior Court establishes as grantor an Irrevocable Special Needs Trust pursuant to 42 U.S.C. § 1396t(d)(4)(A) and Vermont's Medicaid Policy Manual, M237.2;

b. that when R.R. is involuntarily hospitalized at Vermont State Hospital they will give effect to R.R.'s DPOA, dated February 9, 1995, unless it is intentionally and validly revoked pursuant to 14 V.S.A. § 3457, without requiring a medical certification of incapacity as set forth in the DPOA itself and in the statute governing DPOA's codified at 14 V.S.A. § 3453(c); and,

c. as regards R.R., to be bound by the state statute governing DPOA's codified at 14 V.S.A. § 3451 et seq. and the federal Patient Self-Determination Act codified at 42 U.S.C. § 1396(w) and the regulations promulgated thereto, including, but not limited to, the following:

(i) treating R.R. as any other citizen in the State of Vermont who is in need of medical treatment, involuntarily hospitalized and has a DPOA, subject to the limitation set forth above in paragraph 2(b) of this Agreement;

(ii) following and causing all employees, including on-call doctors, to obtain the informed consent from R.R.'s designated agent for medical treatment as provided by 14 V.S.A. § 3459, except under emergency circumstances pending the declaratory judgment action specified in paragraph 1(c) of this Agreement;

(iii) providing a copy of this Agreement to all of the on-call doctors and informing each of them that they are fully bound by the terms hereof and are to follow the physician's orders of R.R.'s attending physician as set forth in her medical chart, and under no circumstances shall they deviate from the terms of this Agreement or the said treating doctor's orders, except under emergency circumstances pending the declaratory judgment action specified in paragraph 1(c) of this Agreement; and,

(iv) providing the designated agent, at her request, any information, oral or written, regarding R.R.'s physical and/or mental health, including, but not limited to, all medical and hospital records, for the purpose of making health care decisions on R.R.'s behalf; which access shall include receiving copies of the medical records every day at a cost no greater than the state allowance.

d. that, in order for the designated agent to adequately perform her duties to R.R. under the DPOA, when the DPOA is in effect, she must be:

(i) subject to the definitions set forth herein at paragraph 3, after consultation with R.R.'s attending physician, and other health care providers, as necessary, free to make all health care decisions for R.R., except under emergency circumstances pending the declaratory judgment action specified in paragraph 1(c) of this Agreement, in accordance with her knowledge of R.R.'s wishes and religious or moral beliefs, as stated orally, or as contained in

her DPOA; and, if R.R.'s wishes are unknown, in accordance with her assessment of R.R.'s best interest;

(ii) free from personal searches (including staff requests that she remove personal adornments, such as pendants and jewelry), unless there is a realistic concern that the agent is bringing a weapon, or other contraband, or objects that would otherwise endanger the safety of the persons on the hospital ward; if requested, the designated agent must leave all baggage outside the ward with hospital staff (excluding legal and other necessary papers, a notebook, personal schedule book, pen, gifts for R.R. such as clothing and cigarettes, and photographs the agent might bring to share with R.R., unless there is a realistic concern that these objects may endanger R.R. or the safety of the ward);

(iii) allowed personal access to R.R. according to the current arrangement agreed to by the parties, or according to a similar agreement if needed;

(iv) allowed access to R.R.'s chart at every visit;

(v) when requested, given information regarding R.R.'s status each shift of each day via telephone by ward staff, not including call-backs to staff regarding emergency interventions, if the agent is unable to visit, including information in R.R.'s chart and/or to be directed to a staff person on duty at that time who is personally familiar with R.R.'s current status;

(vi) notified in a timely manner of treatment and discharge planning meetings and allowed to attend and contribute to said meetings, or, in the event the agent is unable to attend a meeting, consulted regarding R.R.'s status, and medical and discharge needs ahead of time; however, while the date of R.R.'s discharge remains solely within the treatment team's discretion, the treatment team should make every effort to ascertain R.R.'s practical discharge needs and not discharge her without those needs in place;

(vii) consulted with for the purpose of seeking approval of all medical treatment decisions before they are implemented;

(viii) consulted with and consent to all standing PRN orders for non-emergency treatment;

(ix) notified at the time of any emergency intervention, if possible, but in any case, no later than 24 hours after the emergency intervention, including, but not limited to: seclusion and restraints, and provided with a factual, behavioral description of what occurred during the incident and intervention, and given access to the people personally involved in the incident if no one can provide her with a factual description;

(x) allowed to contact Vermont State Hospital medical staff directly using their direct telephone line and leaving a voice mail message if not available; and said providers shall make reasonable efforts to return the agent's calls within 24 hours; and,

(xi) allowed to make reasonable requests for specific treatments which R.R.'s medical providers will implement if not harmful and reasonably available; however, inadequate staffing shall not be grounds to deny beneficial treatments to R.R.

3. For the purposes of this Agreement, medical treatment and health care is defined as anything that is ordered by a physician and includes, but is not limited to: medication, ward rights, off-ward rights, visitation and phone rights, therapy groups or sessions, occupational therapy, recreation, and hospital passes. Ward, off-ward and hospital rights may be withheld when R.R. poses a danger of harm to herself or others. Staff must justify and document all decisions they make to deny R.R. any ward, off-ward and hospital rights that are based upon R.R. being a realistic danger to herself or others. Also, for the purposes of this Agreement, an emergency is defined as a significant change in the patient's behavior resulting in the imminent threat of serious bodily harm to the patient or others, so that some action is immediately necessary to protect the patient or others, and it is impractical to first obtain informed consent.

4. The agent hereby waives liability for any personal injury or economic loss of any kind or nature that may result from her access to and interactions with R.R.

5. Nothing herein shall be construed to mean that R.R. has waived any claims, causes of actions, or demands she may have, in law or in equity, for medical malpractice or other kinds of negligence, not related to the allegations contained in the Amended Complaint, that may have been the proximate cause of harm to her of which she has yet to have knowledge or discovered.

6. This Agreement shall bind the parties hereto and their respective successors, heirs and assigns. However, in the event R.R. designates a new agent, the new agent shall not be bound by this Agreement. In addition, the defendant State of Vermont hereby agrees to hold the Commissioner of the Department of Developmental Disabilities and Mental Health Services responsible to make reasonable efforts in obtaining cooperation from all mental health care facilities designated by the Commissioner to carry out involuntary treatment for patients who are in the care and custody of the Commissioner to abide by the terms of this Agreement. Such facilities include, but are not limited to, Fletcher Allen Health Care, Central Vermont Medical Center, Windham Center for Psychiatric Care, Rutland Regional Medical Center, and the Brattleboro Retreat. If these facilities are uncooperative, R.R. may elect to be transferred to the State Hospital or such facility that is designated to care for those who are involuntarily hospitalized in the event the state has shut down the hospital in Waterbury.

Nothing contained in this Agreement waives R.R.'s right to intentionally and validly revoke her DPOA, dated February 9, 1995, at any time, pursuant to 14 V.S.A. § 3457. In no event shall the defendants discriminate or retaliate against R.R. for having and enforcing her DPOA, pursuant to 42 U.S.C. § 1396(w)(1)(c), nor shall defendants in any way urge, encourage or pressure R.R. to revoke her DPOA.

7. Nothing contained in this Agreement waives the parties' rights and privileges under 14 V.S.A. § 3451 et seq.

8. Notwithstanding the provisions contained herein with regard to non-emergency medical treatment, and pending the declaratory judgment action specified in paragraph 1(c) of

this Agreement, the defendants do not waive whatever rights and remedies they may be able to obtain from the court or human services board in a J.L. and/or Act 114 hearing. However, the plaintiffs in no way concede any of their rights, arguments, or remedies available to them under state and federal law pertaining to advance directives and/or durable powers of attorney for health care, as the case may be, and the common law of informed consent. Further, plaintiffs do not waive their argument that the principal's preferences as to medical treatment is absolute and overrides any medical provider's judgment or opinion.

9. The parties agree that they have entered into this Agreement in order to resolve any differences between them in an amicable manner and further agree that, prior to entering into this Agreement, each party has had an opportunity to consult with counsel of their choice and has taken advantage of that opportunity to review this Agreement with counsel. The parties warrant that they enter into this Agreement knowingly and voluntarily without any promises or representations other than those contained herein.

10. Because there are so many parties to this Agreement, the date of execution shall be deemed to be the latest date it has been signed by any one or more of them.

11. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of Vermont.

12. This constitutes the entire Agreement between the parties and supersedes all prior agreements and cannot be modified except in writing, signed by the parties.

13. If any provision of this Agreement or the application thereof to any person or circumstance shall be ruled invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. The parties hereto state and represent that they have carefully read this Agreement, know the contents hereof, and freely and voluntarily assent to all the terms and

LAW OFFICES OF
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conditions hereof, and understand the final and binding effect of this Agreement and sign the same as their own free act and deed.

15. The terms of this Agreement apply only to R.R. and not to any other involuntarily hospitalized person. Nothing contained herein shall have precedential or persuasive value in any future litigation except for litigation ensuing from this Agreement, brought by or on behalf of R.R.

Dated at WATERBURY, Vermont this 30th day of November, 1999.

Xenia S. Williams
Xenia Williams, as Next Friend
of R.R.

STATE OF VERMONT
~~WASHER~~ COUNTY, SS.

On this 30th day of November, 1999, Xenia Williams personally appeared before me and acknowledged this Agreement & Release, by her subscribed, to be her free act and deed as Next Friend for R.R.

Before me, [Signature]
Notary Public
My commission expires: 2/10/2003

Dated at WATERBURY, Vermont this 30th day of November, 1999.

Xenia S. Williams
Xenia Williams, Individually

STATE OF VERMONT
~~WASHER~~ COUNTY, SS.

On this 30th day of November, 1999, Xenia Williams personally appeared before me and acknowledged this Agreement & Release, by her subscribed, to be her free act and deed.

Before me, [Signature]
Notary Public
My commission expires: 2/10/2003