

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated,

Civil No. 09-1775 (DWF/FLN)

Plaintiffs,

v.

ORDER

Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota,

Defendants.

Margaret Ann Santos, Esq., Mark R. Azman, Esq., and Shamus P. O'Meara, Esq.,
Johnson & Condon, PA, counsel for Plaintiffs.

P. Kenneth Kohnstamm and Steven H. Alpert, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, counsel for Defendant Scott TenNapel.

On September 25, 2012, the Court received and has since reviewed the *Second Report to the Court: Procedural Requirements on Restraint* ("Report") (Doc. No. 167), filed by the Independent Consultant and Monitor, David Ferleger. No party has filed comments or objections to the Report.¹

The monitor concluded that Defendants are generally in compliance with the procedural requirements for the seven restraints which occurred at MSHS-Cambridge and are covered in his review.

The Settlement Agreement calls for a list of five experts "pre-approved by Plaintiffs and Defendants." Sec. V.E.; Monitor's Evaluation Criterion ("E.C.") 17. That list was never established. In the absence of the list, Defendants utilized consultation with their internal medical officer. Sec. V.F.; EC 23-25. That internal consultation, however, is already required under the settlement. *Id.* The monitor requested the parties to provide him with their views on this issue in writing by October 19, 2012, if they were unable to resolve it without his assistance. He stated, "The monitor shall thereafter report

¹ A draft of the report had previously been provided to the parties on September 12, 2012; the parties did not submit any comments or objections to the monitor. Report at 4. As the monitor reminded the parties, any comments or objections to the Report were required to have been filed with the Court within 21 days of the Report's filing. Order of September 28, 2012 n. 1; Report at 4.

to the Court his recommendations on compliance with Evaluation Criteria 16 and 17.”
Report at 12.²

Another protection regarding restraints is that the DHS internal reviewer, Dr. Richard Amado, consults “in order to assist eliminating the use of manual and mechanical restraints.” The monitor found that this internal effort was not a robust review, but rather essentially a “limited paper review” of individual cases. Report at 10. He provided numerous suggestions for improvement. DHS was requested to review the monitor’s recommendations in this regard and to respond in writing by October 17, 2012. Report at 12.³

As the Court expressed in its Order of July 17, 2012, appointing the monitor, the Court expects its orders to be implemented fully and promptly. In that regard it is important that the monitor’s comments and recommendations in the pending and in future reports and communications, and his requests for responses, receive the parties’ timely attention so that, as he may deem appropriate, disputes can be brought to the Court’s attention for resolution.

² The monitor advises that at the October 24, 2012 parties’ meeting, the parties agreed that DHS will make a renewed effort to establish the list of Third Party Experts.

³ The monitor advises that, since his report, the Defendants have accepted his recommendations for improvement of the Internal Reviewer’s scope of work.

ORDER

1. The Independent Consultant and Monitor's *Second Report to the Court: Procedural Requirements on Restraint* (Doc. No. [167]), is hereby **ADOPTED** and **ACCEPTED**.

2. The Independent Consultant and Monitor shall proceed immediately to make recommendations to the Court on any issues discussed in the Report and not yet resolved, and to provide the parties with seven (7) calendar days notice before filing with the Court.

Dated: November 5, 2012

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge