

# United States Department of Justice Findings Letters in Psychiatric Hospital CRIPA Cases: An Aid or a Distraction?

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The Civil Rights of Institutionalized Persons Act (CRIPA) of 1980 allows the United States Department of Justice (DOJ) to investigate and file lawsuits against certain institutions, including state and county psychiatric hospitals, where individuals within may face unconstitutional conditions. Subsequent to an investigation and before negotiations or litigation, the state is provided a Findings Letter generated by the DOJ that generally contains recommended remedial measures. It has never been determined to what extent a Findings Letter provides a state with a recommendation specific to the institution for corrective action before the state enters into negotiations with the DOJ. Three study groups were derived from a sample of 15 Findings Letters written to states concerning their psychiatric hospitals between 2003 and 2009. The individual recommended remedial measures, labeled texts of interest (TOI), were identified, and the degree of overlap among the Findings Letters was determined. To a surprising degree, TOIs overlapped to various extents, from exact copies of text to paraphrased versions, in Findings Letters written between 2003 and 2009 to different states and for multiple state hospitals in the same state. The recommended remedial measures provided in the DOJ's Findings Letters are not specific to each state hospital's deficiencies. The Findings Letters offer limited guidance to the state on how to remedy the deficiencies before negotiating with the DOJ. This lack of specificity causes inefficient and delayed remediation of unconstitutional conditions and other deficiencies in care and treatment in psychiatric hospitals. While the current process most often leads to improvements in state hospitals, it is a costly, inefficient remedy, despite the possibility of alternative remedial processes of less expensive and equal or greater effectiveness.

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In the 1940s, during World War II, conscientious objectors assigned to work in public psychiatric facilities and muckraking journalists exposed abysmal conditions in the nation's state hospitals.<sup>1</sup> In the aftermath of WWII, states initially turned their attention to improving state hospitals, but soon thereafter redirected their efforts to depopulating their hospitals instead.<sup>2,3</sup> This movement was given great impetus by the introduction of Medicaid, which allowed states to obtain federal money for persons with mental illness who were served outside of state hospitals.

Under the Institution for Mental Disease (IMD) rule, federal funding was limited for mentally ill patients in state psychiatric hospitals or other congregate living arrangements with more than 16 beds and with more than half the population there primarily because of a psychiatric disorder. In these cases, the state paid all costs.<sup>4</sup> The federal government paid 50 to 75 percent of the cost for patients in community sites, giving the state substantial incentive to discharge patients from public psychiatric hospitals to alternative settings.

Thus, by the 1970s, there was little evidence that states were actively attending to improving care or treatment provided in the deteriorating environments of their state hospitals.<sup>2</sup> With a suspicion that the states were actually violating patients' civil rights, the federal government was poised to take action. This task was to be undertaken by the United States

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Civil Rights Division of the Department of Justice (DOJ), which was created after the enactment of the Civil Rights Acts of 1957.

Despite the DOJ's interest in tackling these civil rights concerns, there was at that time no legal standing for the DOJ to initiate lawsuits against the acts of the state at state psychiatric and developmental disability facilities. Their involvement was limited to cases initiated by individuals or advocacy groups, with the DOJ serving as *amicus curiae* or intervener in landmark cases enforcing federal civil rights statutes. These cases included *Wyatt v. Stickney* (1972),<sup>5</sup> *NY State Association for Retarded Children v. Rockefeller* (1973),<sup>6</sup> and *Halderman v. Pennhurst State School and Hospital* (1977).<sup>7</sup> The DOJ also attempted to initiate two lawsuits against facilities for persons with developmental disabilities in Maryland and Montana: *United States v. Solomon* (1976 and 1977)<sup>8,9</sup> and *United States v. Mattson* (1979),<sup>10</sup> respectively. These lawsuits were dismissed on the basis of the doctrine of separation of powers and the fact that the DOJ had no legal standing to bring the lawsuits.<sup>11</sup>

Limitations on the DOJ's pursuit of legal redress against institutions with what the DOJ considered unconstitutional treatment led to the introduction of a Senate bill, S.1393, on April 26, 1977, by Senator Birch Bayh (D-Indiana). Concerns of increased federal involvement in state affairs resulted in opposition from members of Congress, specifically Senators Robert Morgan (D-NC) and Strom Thurmond (R-SC).<sup>11</sup> As a result, the bill never reached the Senate floor during that session.<sup>11</sup>

The original bill was modified and, almost two years later, a new version of the bill, S. 10, was introduced by Senator Bayh on January 15, 1979.<sup>12</sup> Its house counterpart, H.R. 10, titled the Civil Rights of Institutionalized Persons Act (CRIPA) was also introduced the same day, sponsored by Representative Robert W. Kastenmeier (D-WI).<sup>13</sup> Bill H.R. 10 was passed in lieu of S. 10 on February 28, 1980, by a majority vote in the House of 342 to 62 and in the Senate of 55 to 36. It was signed into public law by President Jimmy Carter on May 23, 1980.<sup>13</sup>

Finally, the DOJ had the legal authority it needed to redress civil rights violations in institutions (including jails and prisons, juvenile correctional facilities, mental health facilities, developmental disability facilities, and nursing homes), run by the state or local government or any facility that housed people

and provided services to these populations on the state's behalf.<sup>14</sup> As a result of CRIPA, the DOJ can initiate investigations where there is reasonable cause to believe that there is "a pattern or practice" of "egregious or flagrant conditions" resulting in "grievous harm," depriving individuals of their civil rights.<sup>14</sup>

Although the DOJ could investigate the conditions of institutions, limitations were included in the CRIPA law to allow remediation of deficiencies by the state to intercept civil action.<sup>14</sup> The DOJ is required to send notification to the state seven days before initiating the investigation; provide the state with a Findings Letter after the investigation that includes "the facts giving rise to the alleged conditions" and "the minimum measures the Attorney General believes may remedy the alleged conditions. . ."; and allow no less than 49 calendar days before taking civil action after issuing the Findings Letter.<sup>14</sup>

The Findings Letters, upon which state facilities may rely to take corrective action before litigation, are based on reports of DOJ expert consultants. Despite the inclusion of specific findings and recommendations in the experts' reports provided to the DOJ, the DOJ's Findings Letter contains only examples at best of what DOJ attorneys consider unconstitutional conditions. Minimum remedial measures to redress the unconstitutional conditions may be contained in the Findings Letter, may follow the letter, or may be negotiated with the state before the letter is sent; these measures are also drafted by DOJ attorneys.

To redress the conditions at the institutions, those bringing CRIPA cases have always sought negotiations between the state and DOJ rather than litigation, preferring to settle the case by formal agreement or consent decree.<sup>11</sup> It has been nearly always true that only when states enter into good faith negotiations with the DOJ are they allowed to see the DOJ experts' reports. Thus, states do not see the evidence against them or the expert's specific recommendations before deciding how to proceed.

As a consequence, most states are less than fully informed when they enter into agreements with the DOJ. States enter such agreements based on vague findings and recommendations. Nevertheless, if the minimal corrective actions are not met, a lawsuit may result in which the DOJ seeks action for equitable relief, to ensure that corrective actions are taken that meet constitutional standards.<sup>14</sup>

The legal basis for what is determined to be constitutional standards is found in the Supreme Court case *Youngberg v. Romeo*.<sup>15</sup> In this case, it was the decision of the Supreme Court of the United States that the process for determining the reasonable requirements to protect the liberty interest of confined individuals is that the determination is made by and “must show deference to the judgment exercised by a qualified professional, whose decision is presumptively valid” (Ref. 11, p 307).

The DOJ uses its own experts to provide qualified professional judgment. One might consider this a perversion of *Youngberg*: the *Youngberg* decision was supportive of the professional staff of the institution. How is it that the opinions of the DOJ’s hired experts are more presumptively valid than those of the staff of the hospital? Since the DOJ employs no standardized criteria in its evaluations, the process should result in a battle of the experts, but it almost never does because states generally fear challenging the resources of the federal government and welcome the leverage that the DOJ findings can exert on their legislatures to obtain greater funding for the hospital. The exceptions to this scenario have been few and far between.

Although the DOJ relies on experts to determine what actions are required by the states to meet constitutional standards, the expert’s report is not provided with the Findings Letter. The reason for not providing the expert’s report early in the process of the investigation is unclear and has not been challenged in court. With limited access to experts’ reports, states are left with a Findings Letter that may be devoid of pertinent material specific to the institution.

The Findings Letter and remedial plan issued by the DOJ, which it bases on extensive document review and one or more visits to a facility (with unfettered access to virtually every aspect of the facility), should result in a document distinct and individualized to the facility. In this study, we analyzed 15 Findings Letters produced by DOJ between 2003 and 2009, based on their evaluation of one or more state-run mental health facilities per Findings Letter, to investigate the degree of overlap among the letters. We hypothesized that the remedial measures contained in the letters were not individualized to the institution. We also hypothesized that the remedial measures were often cut and pasted from one Find-

**Table 1** Groups Analyzed

Date	Findings Letter Source
Group I	
12/8/2009	Georgia state psychiatric hospitals
8/24/2009	Ancora Psychiatric Hospital, Hammonon, NJ
1/30/2009	Kings County Hospital Center, Brooklyn, NY*
1/15/2009	Northwest Georgia Regional Hospital, Rome, GA*
5/30/2008	Georgia Regional Hospital, Atlanta, GA*
1/9/2008	Oregon State Hospital, Portland, OR*
8/6/2007	Connecticut Valley Hospital, Middletown, CT*
Group II	
5/30/2006	St. Elizabeth’s Hospital, Washington, DC
5/2/2006	Patton State Hospital, San Bernardino, CA
5/2/2006	Atascadero State Hospital, Atascadero, CA
7/5/2005	Vermont State Hospital, Waterbury, VT
6/27/2005	Napa State Hospital, Napa, CA
3/17/2004	North Carolina mental health facilities
2/19/2004	Metropolitan State Hospital, Norwalk, CA
5/13/2003	Metropolitan State Hospital, Norwalk, CA
Group III	
	All Findings Letters

\* Findings letters used to create the core set of TOIs.

ings Letter to another, with limited variation in the recommendation.

## Methods

### Selection of Findings Letters

Fifteen Findings Letters were analyzed. We included only letters dated from 2003 to 2009 and addressed to free-standing public psychiatric hospitals. The psychiatric hospitals were adult facilities, although many contained adolescent units at the time the letters were written. All 15 letters were obtained from the DOJ web site.<sup>16</sup> Before data analysis, the University of Massachusetts School of Medicine Institutional Review Board approved the project for exemption status.

### Defining the Study Groups

Three study groups were analyzed in this project (Table 1). Group I included Findings Letters written between 2007 and 2009. Group II included Finding Letters written between 2003 and 2006. Groups I and II were devised to represent a relatively recent and older set of Findings Letters, respectively. All 15 Findings Letters, dated from 2003 to 2009, were combined to form Group III.

### Defining Text of Interest

To investigate the degree to which the text within the Recommended Remedial Section of Findings Letters overlapped over the seven-year time span, a

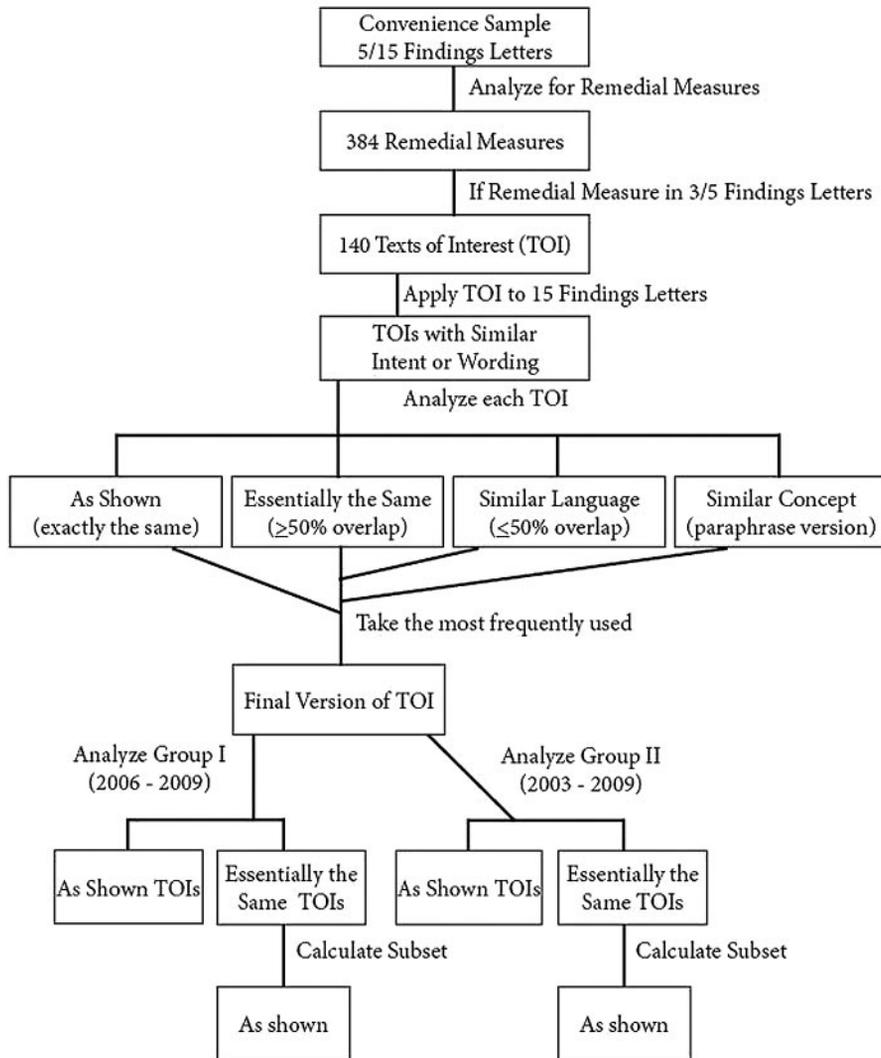


Figure 1. Method of analysis of DOJ Findings Letters sent to state hospitals from 2003 through 2009.

core set of texts of interest (TOIs) was developed for comparison against all 15 Findings Letters. The TOIs were derived from the Recommended Remedial Measures section of a convenience sample of five Findings Letters dated from August 6, 2007, to January 30, 2009 (Kings County Hospital Center, NY; Northwest Georgia Regional Hospital, GA; Georgia Regional Hospital Atlanta; Oregon State Hospital; and Connecticut Valley Hospital). Each Recommended Remedial Measure section was read by the second author, and individual measures were grouped according to their classification in the Findings Letter (e.g., Protection from Harm, Mental Health Care, and Treatment Planning). There were 101 remedial measures in the Kings County Hospital, 76 in the Northwest Georgia Regional Hospital,

75 in the Georgia Regional Hospital Atlanta, 76 in the Oregon State Hospital, and 56 in the Connecticut Valley Hospital Findings Letter, a total of 384 remedial measures.

A remedial measure was labeled a TOI if it was identifiable in at least three of the five Findings Letters. One hundred forty TOIs were identified. This core set of TOIs was used in the analysis of all 15 Findings Letters (Fig. 1).

**Investigating the Degree of Overlap**

A two-step process was devised to determine the degree of overlap among the Findings Letters. In the first step, the Recommended Remedial Section from each of the 15 letters was read by the second author. The core set of TOIs was then compared with the

**Department of Justice Findings Letters in Psychiatric Hospital CRIPA Cases**

**Table 2** TOI Identified in 10 or More of 15 Findings Letters from 2003 to 2009

Identified Leading Text of Interest (TOI)	As Shown	Essentially the Same	Duplicates Within Essentially the Same Group	Similar Language	Similar Concept
____ shall ensure that their patients receive accurate, complete, and timely assessments and diagnoses, consistent with generally accepted professional standards, and that these assessments and diagnoses drive treatment interventions. More particularly, the ____ shall:	4	9	1 set of 3 1 set of 2		
Review and revise, as appropriate, psychiatric assessments of all patients, providing clinically justified current diagnoses for each patient, and removing all diagnoses that cannot be clinically justified. Modify treatment and medication regimens, as appropriate, considering factors such as the patient’s response to treatment, significant developments in the patient’s condition, and changing patient needs.	4	6	1 set of 3	1	
The ____ shall develop and implement an integrated treatment planning process consistent with generally accepted professional standards. More particularly, the ____ shall:	4	8	1 set of 4 1 set of 2	1	
Develop and implement policies and procedures regarding the development of individualized treatment plans consistent with generally accepted professional standards of care.	4	7	1 set of 3 1 set of 2		
Provide adequate and appropriate psychiatric and other mental health services, including adequate psychological services and behavioral management, in accordance with generally accepted professional standards.	3	3	1 set of 3	4 2 duplicates	3 2 duplicates
Ensure that all psychotropic medications are: 1. prescribed in therapeutic amounts; 2. tailored to each patient’s individual symptoms; 3. monitored for efficacy against clearly-identified target variables and time frames; 4. modified based on clinical rationales; and 5. properly documented.	5	4	1 set of 3	1	1
Within the limitations of the court-imposed confinement and public safety, the State should pursue actively the appropriate discharge of patients and ensure that they are provided services in the most integrated, appropriate setting that is consistent with patients’ needs. More particularly, ____ should:	4	8	1 set of 3 1 set of 2		2
Provide its patients with a safe and humane environment and protect them from harm. At a minimum, ____ should ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, ____ should:	7	5	2 sets of 2		
Ensure that restraints: a. are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted; b. are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff; c. are not used as part of a behavioral intervention; d. are terminated as soon as the person is no longer an imminent danger to himself or others; and e. are used in a reliably documented manner.	4	3			3 (2 were duplicates)
	3	6	2 sets of 2	1	3 (2 were duplicates)

Recommended Remedial Section by both a word search via Microsoft Word 2007 and direct visualization. If a TOI was found to have intent or wording

similar to that of an individual remedial measure in the Findings Letter, one of four identifiers (As Shown, Essentially the Same, Similar Language, and

Table 2 Continued

Identified Leading Text of Interest (TOI)	As Shown	Essentially the Same	Duplicates Within Essentially the Same Group	Similar Language	Similar Concept
____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the ____ receiving the individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the ____ shall:	3	5	1 set of 2		2 (2 were duplicates)
Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the ____ shall: <ul style="list-style-type: none"> <li>a. actively collect data with regard to infections and communicable diseases</li> <li>b. analyze these data for trends;</li> <li>c. initiate inquiries regarding problematic trends;</li> <li>d. initiate necessary corrective action;</li> <li>e. monitor to ensure that appropriate remedies are achieved;</li> <li>f. integrate this information into the quality assurance review of the ____; and</li> <li>g. ensure that nursing staff implement the infection control program.</li> </ul>	3	4	2 sets of 2	1	2

TOI, text of interest; the number indicates the number of findings letters in which the TOI was identified; as shown, the text was written exactly the same as the identified TOI; essentially the same,  $\geq 50\%$  overlap; similar language,  $< 50\%$  overlap; similar concept, paraphrased TOI; the duplicates are TOIs that were written exactly the same within a specific category (e.g., one set of two: within the specified category, two TOIs were written exactly the same in two separate findings letters; one set of three: within the specified category, three TOIs were written exactly the same in three separate findings letters).

Similar Concept) was assigned to indicate the degree of overlap between the remedial measure and TOI. An As Shown identifier indicated that the remedial measure in question was exactly the same as the comparable TOI; “shall” and “should” could not be used interchangeably. The identifier Essentially the Same denoted a 50-percent or more (but not identical) overlap of exact language between the remedial measure and comparable TOI. The identifier Similar Language indicated that there was less than a 50-percent overlap of exact language between the TOI and remedial measure in question; the degree of overlap was thought to be more than a paraphrased version of the comparable TOI. A similar concept was used to identify remedial measures that were a paraphrased version of a comparable TOI (Fig. 1). To assess consistency in ratings, the first author read random remedial measures, and a comparison of identifiers was made against the primary assigned identifier. There were no instances in which the primary assigned ratings required adjustment.

Roman numerals were assigned to identifiers when remedial measures from multiple Findings Letters were found to have the same degree of overlap with a comparable TOI. For example, Essentially the Same I and Essentially the Same II indicate that there were two different versions of individual remedial measures from two separate Findings Letters and that each overlapped with the TOI by at least 50 percent.

If an identical version of the TOI was found in separate Findings Letters and had the same degree of overlap (e.g.,  $> 50\%$ ), then Essentially the Same I was assigned to both remedial measures.

In the second step of the analysis, the most frequently identified version of the TOI replaced the original TOI from the core set and was used in the final analysis to determine the degree of overlap among the Findings Letters for the study groups. For example, if two Findings Letters contained the core TOI As Shown, but three Findings Letters contained identical versions of Essentially the Same, the Essentially the Same version was identified as the TOI against which the Findings Letters in the study group were compared in the final analysis (Fig. 1). Thus, the set of TOIs for each group became a representative sample of remedial measures identified in each study group. Only TOIs that were identified in at least four of the Findings Letters for Groups I and II were included in the final analysis of each study group.

**Analysis of Group I**

For each TOI in Group I, we calculated the number of Findings Letters that contained versions of the TOIs rated As Shown or Essentially the Same. Within the group of TOIs rated Essentially the Same, the number of Findings Letters that contained

**Table 3** Mental Health Assessment, Diagnoses, and Treatment Planning

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)
_____ shall ensure that their patients receive accurate, complete, and timely assessments and diagnoses, consistent with generally accepted professional standards, and that these assessments and diagnoses drive treatment interventions. More particularly, _____ shall:	As shown, page 40, C.1.	n/a	As shown, page 43, B.1.	As shown, page 55, B.1.	As shown, page 51, B.1.
Review and revise, as appropriate, psychiatric assessments of all patients, providing clinically justified current diagnoses for each patient, and removing all diagnoses that cannot be clinically justified. Modify treatment and medication regimens, as appropriate, considering factors such as the patient's response to treatment, significant developments in the patient's condition, and changing patient needs.	As shown, page 41, C.1.g.	n/a	As shown, page 44, B.1.g.	As shown, page 56, B.1.g.	As shown, page 52, B.1.g.
The _____ shall develop and implement an integrated treatment planning process consistent with generally accepted professional standards. More particularly, the _____ shall:	As shown, page 41, C.2.	Similar Language, page 37, E.3.	As shown, page 45, B.2.	As shown, page 56, B.2.	As shown, pages 52 & 53, B.2.
Develop and implement policies and procedures regarding the development of individualized treatment plans consistent with generally accepted professional standards of care.	Essentially the same I, page 41, C.2.a.	n/a	As shown, page 45, B.2.a.	As shown, page 56, B.2.a.	As shown, page 53, B.2.a.
_____ shall ensure that their patients receive accurate, complete, and timely assessments and diagnoses, consistent with generally accepted professional standards, and that these assessments and diagnoses drive treatment interventions. More particularly, _____ shall:	Essentially the same I, page 36, B.1.	Essentially the same I, page 48, B.2.a.	Essentially the same I, page 51, C.2.a.	Essentially the same II, page 12, IX.B.	Essentially the same II, page 9, VIII.B.
Review and revise, as appropriate, psychiatric assessments of all patients, providing clinically justified current diagnoses for each patient, and removing all diagnoses that cannot be clinically justified. Modify treatment and medication regimens, as appropriate, considering factors such as the patient's response to treatment, significant developments in the patient's condition, and changing patient needs.	Essentially the same I, page 37, B.1.g.	Essentially the same I, page 49, B.2.a.vi.	Essentially the same II, page 52, C.2.a.vi.	n/a	n/a
The _____ shall develop and implement an integrated treatment planning process consistent with generally accepted professional standards. More particularly, the _____ shall:	Essentially the same I, page 38, B.2.	Essentially the same I, page 47, B.1.	Essentially the same I, page 49, C.1.	Essentially the same II, page 12, IX.A.	Essentially the same II, page 9, VIII.A.

Table 3 Continued

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)
Develop and implement policies and procedures regarding the development of individualized treatment plans consistent with generally accepted professional standards of care.	As shown, page 38, B.2.a.	Essentially the same III, page 47, B.1.a.			
_____ shall ensure that their patients receive accurate, complete, and timely assessments and diagnoses, consistent with generally accepted professional standards, and that these assessments and diagnoses drive treatment interventions. More particularly, _____ shall:	Essentially the same III, page 27, B.2.a.	Essentially the same IV, page 20, A.1.b.	n/a	n/a	Essentially the same V, page 45, B.
Review and revise, as appropriate, psychiatric assessments of all patients, providing clinically justified current diagnoses for each patient, and removing all diagnoses that cannot be clinically justified. Modify treatment and medication regimens, as appropriate, considering factors such as the patient's response to treatment, significant developments in the patient's condition, and changing patient needs.	Essentially the same I, page 28, B.2.a.6.	Essentially the same III, page 22, B.3.b.	n/a	Similar Language I, page 41, A.4.	Essentially the same IV, page 45, B.1.b.
The _____ shall develop and implement an integrated treatment planning process consistent with generally accepted professional standards. More particularly, the _____ shall:	Essentially the same I, page 26, B.1.	Essentially the same III, page 19, A.1.a.	n/a	n/a	Essentially the same IV, page 44, A.
Develop and implement policies and procedures regarding the development of individualized treatment plans consistent with generally accepted professional standards of care.	Essentially the same II, page 26, B.1.A.	Essentially the same II, page 20, A.1.a.1.	n/a	Essentially the same II, page 41, A.5.	Essentially the same I, page 44, A.1.

duplicate versions of Essentially the Same was also calculated.

### **Analysis of Combined Group**

We also investigated the degree of overlap from 2003 to 2009, by combining Groups I and II. A direct comparison was not performed for Groups I and II, as the sets of TOIs for each study group varied. Thus, the two groups were combined for comparison across the seven-year period. The TOI was included in the analysis of the Combined Group if it was found in at least 10 of the 15 Findings Letters. The TOI included in the resultant Group III were divided into four categories, which were similar to categories within the Recommended Remedial Measures section within the Findings Letters: Mental Health Assessments, Diagnosis, and Treatment Planning; Mental Health Care Services; Protection from Harm; and Medical and Nursing. The number of Findings letters that overlapped with the TOI As Shown, Essentially the Same, Similar Language, and Similar Concept was calculated for each category. We also calculated the number of duplicate versions of the TOIs in the Findings Letters.

A fifth category, Nursing, was also created, as this area was thought to be a fundamental deficiency in most of the hospitals. This category consisted of any TOI from Group I and Group II that was related to nursing care. The TOI was included in this analysis, even if it was not found in at least 10 of the 15 Findings Letters, the standard used for inclusion in the other four categories.

## **Results**

### **Identified TOI**

In Group I, we identified 65 TOIs with texts that overlapped in at least four of the seven Findings Letters written from 2007 to 2009. Thus, 46 percent of the core set of TOIs was found in various degrees of duplication in Group I. In Group II, we identified 13 TOIs that overlapped in at least four of the eight Findings Letters written from 2003 to 2006. When Groups I and II were combined, there were 12 TOIs identified in at least 10 of the 15 Findings Letters.

### **Analysis of Group I**

#### *TOIs Identified as As Shown*

Seven Findings Letters were written between 2007 and 2009. Although no TOI was written exactly the

same in all seven Finding Letters, we found three TOIs with text that was As Shown in six of the seven Findings Letters. In addition, 7 TOIs were As Shown in five of seven of the Findings Letters, 22 were As Shown in four of the seven letters, and 26 were As Shown in three of the seven letters.

#### *TOIs Identified as Essentially the Same*

Regarding TOIs that were found to be written Essentially the Same in multiple Findings Letters, there were nine such TOIs in three of the seven Findings Letters. Six of the nine TOIs contained duplicate versions of the Essentially the Same text in two of the three Findings Letters. We also found 26 Essentially the Same TOIs in two of the seven Findings Letters. Within that group, of the 26 TOIs, 19 appeared in duplicate versions in both Findings Letters.

### **Analysis of Group II**

#### *TOIs Identified as As Shown*

Eight Findings Letters were written from 2003 to 2006. No TOIs were exactly the same in all of the letters. Of the 13 TOIs, 3 were exactly the same in at least two of the letters, and 1 was exactly the same in four.

#### *TOIs Identified as Essentially the Same*

Regarding TOIs that were deemed Essentially the Same in multiple Findings Letters, there were five TOIs that were Essentially the Same in at least four of the eight Findings Letters. Two TOIs were Essentially the Same in six letters. One of the TOIs found to overlap across six of the eight Findings Letters appeared in an identical version in three of the letters.

### **Analysis of Group III**

Twelve TOIs were identified as being consistently reported in at least 10 of the 15 Findings Letters written between 2003 and 2009 (Table 2). Of the 12 TOIs, 3 were identified in 10 of the 15 Findings Letters, 3 were identified in 11 letters, and 4 were identified in 13 letters. In addition, 4 TOIs were represented in at least 10 Findings Letters by all degrees of overlap, from exactly the same to paraphrased versions. Of the four TOIs, two were found to overlap across 13 of the 15 letters.

Eleven of the 12 TOIs contained at least one set of duplicate versions written Essentially the Same in at least two Findings Letters. We identified three TOIs that contained two sets of duplicate versions of Essentially the Same. We also found one TOI that con-

**Table 4** Mental Health Care Services

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)
Provide adequate and appropriate psychiatric and other mental health services, including adequate psychological services and behavioral management, in accordance with generally accepted professional standards.	As shown, page 42, C.2.f.	Similar Concept I, page 36, E.1.	Essentially the same I, page 46, B.2.f.	As shown, page 57, B.2.f.	As shown, page 54, B.2.f.
Ensure that all psychotropic medications are: 1. prescribed in therapeutic amounts; 2. tailored to each patient's individual symptoms; 3. monitored for efficacy against clearly-identified target variables and time frames; 4. modified based on clinical rationales; and 5. properly documented.	Essentially the same I, page 44, C.2.o.	n/a	As shown, page 48, B.3.c.	Essentially the same I, page 59, B.2.o.	Essentially the same I, page 55, B.2.o.
Within the limitations of the court-imposed confinement and public safety, the State should pursue actively the appropriate discharge of patients and ensure that they are provided services in the most integrated, appropriate setting that is consistent with patients' needs. More particularly, _____ should:	n/a	Similar Concept I, page 32, A.1.	Essentially the same, page 55, F.	Essentially the same II, page 65, F.	Essentially the same II, page 61, F.
Provide adequate and appropriate psychiatric and other mental health services, including adequate psychological services and behavioral management, in accordance with generally accepted professional standards.	Essentially the same I, page 38, B.2.g.	n/a	Similar Concept II, page 59, C.2.d.	Similar Language I, page 12, IX. C. & D.	Similar Language I, page 10, VII. C. & D.
Ensure that all psychotropic medications are: 1. prescribed in therapeutic amounts; 2. tailored to each patient's individual symptoms; 3. monitored for efficacy against clearly-identified target variables and time frames; 4. modified based on clinical rationales; and 5. properly documented.	As shown, page 40, B.3.d.	As shown, page 51, B.2.c.iv.	As shown, page 56, C.2.c.iv.	n/a	n/a
Within the limitations of the court-imposed confinement and public safety, the State should pursue actively the appropriate discharge of patients and ensure that they are provided services in the most integrated, appropriate setting that is consistent with patients' needs. More particularly, _____ should:	Essentially the same III, page 45, E.	As shown, page 55, C.	As shown, page 63, G.	Essentially the same IV, page 13, IX.J.	Essentially the same IV, page 11, VIII.J.
Provide adequate and appropriate psychiatric and other mental health services, including adequate psychological services and behavioral management, in accordance with generally accepted professional standards.	Similar Concept II, page 33, B.2.d.	Similar Language II, page 21, B.3.	Essentially the same I, page 26, A.1.a.	n/a	Similar Language III, page 49, D.1, & page 51, D.2.
Ensure that all psychotropic medications are: 1. prescribed in therapeutic amounts; 2. tailored to each patient's individual symptoms; 3. monitored for efficacy against clearly-identified target variables and time frames; 4. modified based on clinical rationales; and 5. properly documented.	As shown, page 30, B.2.c.4.	n/a	Similar Concept I, page 28, A.3.a.	Similar Language I, page 42, A. 11.	Essentially the same II, page 49, D.1.c.
Within the limitations of the court-imposed confinement and public safety, the State should pursue actively the appropriate discharge of patients and ensure that they are provided services in the most integrated, appropriate setting that is consistent with patients' needs.	As shown, page 34, C.	Essentially the same IV, page 22, D.1.	Similar Concept II, page 31, F.1.	Essentially the same V, page 49, I.	As shown, page 48, C.

Table 5 Protection from Harm

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)
<p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances —i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol> <p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol>	<p>Essentially the same I, page 37, B. n/a</p>	<p>n/a n/a</p>	<p>As shown, page 41, A. Essentially the same I, page 50, C.2.</p>	<p>Essentially the same II, page 53, A. Essentially the same II, page 60, C.</p>	<p>Essentially the same II, page 49, A. n/a</p>
<p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol> <p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol>	<p>Essentially the same I, page 45, D.4.</p>	<p>Similar Concept, page 36, D.1.</p>	<p>As shown, page 50, C.3.</p>	<p>As shown, page 60, C.2.</p>	<p>As shown, pages 56 &amp; 57, C.2.</p>
<p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol> <p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol>	<p>As shown, page 34, A. As shown, page 42, C.</p>	<p>As shown, page 45, A.3. As shown, page 43, A.2.</p>	<p>As shown, page 44, A.1. As shown, page 47, B.</p>	<p>Essentially the same III, page 13, IX.K. Similar Concept I, page 12, IX.E.</p>	<p>Essentially the same III, page 11, VIII.K. Similar Concept I, page 10, VIII.E.</p>
<p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol> <p>_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:</p> <p>Ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances—i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person’s freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:</p> <p>Ensure that restraints:</p> <ol style="list-style-type: none"> <li>are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;</li> <li>are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;</li> <li>are not used as part of a behavioral intervention;</li> <li>are terminated as soon as the person is no longer an imminent danger to himself or others; and</li> <li>are used in a reliably documented manner.</li> </ol>	<p>Essentially the same I, page 42, C.4.</p>	<p>Essentially the same II, page 44, A.2.a.</p>	<p>Essentially the same III, page 47, B.1.</p>	<p>n/a</p>	<p>n/a</p>

Table 5 Continued

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)
_____ should provide its patients with a safe and humane environment and protect them from harm. At a minimum, _____ should:	As shown, page 23, A.1.	n/a	n/a	As shown, page 51, K.	As shown, page 61, G.
_____ should ensure that seclusion and restraints are used in accordance with generally accepted professional standards. Absent exigent circumstances— i.e., when a patient poses an imminent risk of injury to himself or a third-party—any device or procedure that restricts, limits or directs a person's freedom of movement (including, but not limited to, chemical restraints, mechanical restraints, physical/manual restraints, or timeout procedures) should be used only after other less restrictive alternatives have been assessed and exhausted. More particularly, _____ should:	As shown, page 24, A.2.	Similar Concept II, page 20, A.2.a.	Essentially the same III, page 29, B.	n/a	n/a
Ensure that restraints:	Essentially the same II, page 24, A.2.a.	Similar Language I, page 20, A.2.b.	Similar Concept I, page 30, B.2.	Similar Concept II, page 46, C.18.	Essentially the same IV, page 59, F.1.
a. are used only when persons pose an immediate threat to themselves or others and after a hierarchy of less restrictive measures has been exhausted;					
b. are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;					
c. are not used as part of a behavioral intervention;					
d. are terminated as soon as the person is no longer an imminent danger to himself or others; and					
e. are used in a reliably documented manner.					

tained an Essentially the Same version duplicated in four of the letters.

*Mental Health Assessments, Diagnosis, and Treatment Planning*

Four TOIs were identified as pertaining to mental health assessments, diagnosis, and treatment planning (Table 3). We found that all four TOIs overlapped As Shown in 4 of the 15 Findings Letters. Two of the TOIs were written Essentially the Same in more than half of the 15 Findings Letters.

*Mental Health Care Services*

Three TOIs were identified as related to mental health care services (Table 4). Each TOI was identified as As Shown in at least three of the Findings Letters. In addition, one TOI was Essentially the Same in more than half of the Findings Letters in the Combined Group.

*Protection From Harm*

We identified three TOIs that related to protection from harm (Table 5). One TOI was found to overlap As Shown in 7 of the 15 Findings Letters.

*Medical and Nursing Care*

Two TOIs were found to be related to medical and nursing care (Table 6). Each appeared As Shown in three Findings Letters and Essentially the Same in at least four letters.

*Nursing*

We found eight TOIs pertaining specifically to nursing care in at least 6 of the 15 Findings Letters (Table 7). Of the eight TOIs, four were identified as As Shown in 3 of the 15 Findings Letters, two were As Shown in 4 letters, and two were As Shown in 5 letters. Two TOIs contained duplicates that were classified as Essentially the Same.

**Conclusions**

The analysis performed in this study indicates that text contained in the remedial sections of the DOJ Findings Letters written from 2003 through 2009 were duplicate versions to various degrees, from exact copies of text to paraphrased versions. The percentage of the core set of TOIs identified in the most recent Findings Letters sent from 2007 through 2009 (Group I) was 46 percent. Therefore, nearly half of the recommended remedial measures were identified as overlapping across 7 of the 15 Findings Letters (Group I). In addition, 84 percent of the

TOIs were identified as exact duplications in at least three of the seven Findings Letters in Group I. Fifty-three percent of the TOIs were identified as overlapping by at least 50 percent of the comparative remedial measures in at least two of the seven Findings Letters.

Fewer TOIs were identified as overlapping with the core set of TOIs in the earlier Findings Letters sent from 2003 through 2006 (Group II). Of the 13 TOIs identified, 4 appeared in duplicate versions in at least two of the eight letters.

In Group III, the combined group of all Findings Letters, revealed that 12 TOIs were found in various degrees of overlap across the seven-year period in at least 10 of the 15 letters. The Nursing category contained the largest number of TOIs identified across the groups. Specifically, 8 of the 12 TOIs were exactly the same in at least 3 of the 12 letters.

Overall, our results show that the recommended remedial measures within Findings Letters have limited specificity to the institution addressed. The remedial actions themselves are the core of a consent decree. The lack of specificity results in remedial plans and consent decrees that are of limited utility to states undergoing investigations. One can analyze consent decrees as we did the Findings Letters with a well-founded expectation that the results will be similar.

**Discussion**

How do we explain such extensive duplication from letter to letter? There are several possibilities. One is that, by the time the DOJ decides to write a Findings Letter to a state in an investigation, it has whittled down the targeted state hospitals to a core group with fundamentally the same problems. If this were true, DOJ would have investigated several state hospitals that did not receive such letters; but this is not the case. As described, a Findings Letter has been issued after the evaluation in every DOJ investigation of a state hospital.

Another possibility is that every state hospital that does not meet constitutional standards and is investigated fails to do so in the same way and needs much the same remedy as other hospitals. This would mean that every state that DOJ has investigated, no matter what its intent and allocation of resources, operates hospitals in a substandard manner that is identical with hospital operations in all other states that are investigated. For example, Vermont, with a state

**Table 6** Medical and Nursing Care

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)
_____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the _____ receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the _____ shall: Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the _____ shall: a. actively collect data with regard to infections and communicable diseases; b. analyzed these data for trends; c. initiate inquiries regarding problematic trends; d. initiate necessary corrective action; e. monitor to ensure that appropriate remedies are achieved; f. integrate this information into the quality assurance review of the _____; and g. ensure that nursing staff implement the infection control program.	As shown, page 46, E.	n/a	Essentially the same I, page 52, D.	As shown, page 62, D.	As shown, page 58, D.
_____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the _____ receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the _____ shall: Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the _____ shall: a. actively collect data with regard to infections and communicable diseases; b. analyzed these data for trends; c. initiate inquiries regarding problematic trends; d. initiate necessary corrective action; e. monitor to ensure that appropriate remedies are achieved; f. integrate this information into the quality assurance review of the _____; and g. ensure that nursing staff implement the infection control program.	As shown, page 48, E.11.	n/a	Similar Concept I, page 53, D.8.	As shown, page 63, D.11.	As shown, page 60, D.11.
_____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the _____ receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the _____ shall: Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the _____ shall: a. actively collect data with regard to infections and communicable diseases; b. analyzed these data for trends; c. initiate inquiries regarding problematic trends; d. initiate necessary corrective action; e. monitor to ensure that appropriate remedies are achieved; f. integrate this information into the quality assurance review of the _____; and g. ensure that nursing staff implement the infection control program.	Essentially the same II, page 44, D.	n/a	Essentially the same III, page 60, D.	Similar Concept I, page 13, IX.H.	Similar Concept I, page 10, VIII.H.
_____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the _____ receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the _____ shall: Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the _____ shall: a. actively collect data with regard to infections and communicable diseases; b. analyzed these data for trends; c. initiate inquiries regarding problematic trends; d. initiate necessary corrective action; e. monitor to ensure that appropriate remedies are achieved; f. integrate this information into the quality assurance review of the _____; and g. ensure that nursing staff implement the infection control program.	Essentially the same I, page 45, D.9.	n/a	Essentially the same I, page 62, D.9.	n/a	n/a
_____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the _____ receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the _____ shall: Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the _____ shall: a. actively collect data with regard to infections and communicable diseases; b. analyzed these data for trends; c. initiate inquiries regarding problematic trends; d. initiate necessary corrective action; e. monitor to ensure that appropriate remedies are achieved; f. integrate this information into the quality assurance review of the _____; and g. ensure that nursing staff implement the infection control program.	n/a	Essentially the same IV, page 21, B.2.	n/a	n/a	Essentially the same IV, page 52, D.3.
_____ shall provide medical and nursing services to its patients consistent with generally accepted professional standards. Such services should result in patients of the _____ receiving individualized services, supports, and therapeutic interventions, consistent with their treatment plans. More particularly, the _____ shall: Establish an effective infection control program to prevent the spread of infections or communicable diseases. More specifically, the _____ shall: a. actively collect data with regard to infections and communicable diseases; b. analyzed these data for trends; c. initiate inquiries regarding problematic trends; d. initiate necessary corrective action; e. monitor to ensure that appropriate remedies are achieved; f. integrate this information into the quality assurance review of the _____; and g. ensure that nursing staff implement the infection control program.	n/a	Similar concept II, page 22, B.5.	Similar language I, page 31, D.1.	Essentially the same II, page 48, F.2.	Essentially the same II, page 55, D.6.b.

Department of Justice Findings Letters in Psychiatric Hospital CRIPA Cases

Table 7 Nursing\*

Identified Text of Interest	State Psychiatric Hospitals, Georgia (12/08/09)	Ancora Psychiatric Hospital, Winslow, NJ (8/24/09)	Kings County Hospital, NY (1/30/09)	NW Georgia Regional Hospital-Rome (1/5/09)	George Regional Hospital-Atlanta (5/30/08)	Oregon State Hospital (1/9/08)
Ensure that, before nursing staff work directly with patients, they have completed successfully competency-based training regarding mental health diagnoses, related symptoms, psychotropic medications, identification of side effects of psychotropic medications, monitoring of symptoms and target variables, and documenting and reporting of the patient's status.	As shown, page 47, E.4.	n/a	Essentially the same I, page 53, D.4.	As shown, page 62, D.4.	As shown, page 59, D.4.	Essentially the same I, page 44, D.2.
Ensure that nursing staff accurately and routinely monitor, document, and report patients' symptoms and target variables in a manner that enables treatment teams to assess the patient's status and to modify, as appropriate, the treatment plan.	As shown, page 47, E.5.	Similar Concept, page 35, C.7.	Essentially the same I, page 53, D.5.	As shown, pages 62 & 63, D.5.	As shown, page 59, D.5.	Essentially the same I, page 44, D.3.
Ensure that nursing staff actively participate in the treatment team process and provide feedback on patients' responses, or lack thereof, to medication and behavioral interventions.	As shown, page 47, E.6.	n/a	As shown, page 53, D.6.	As shown, page 63, D.6.	As shown, page 59, D.6.	As shown, page 44, D.4.
Ensure that each patient's treatment plan identifies: a. the diagnoses, treatments, and interventions that nursing and other staff are to implement; b. the related symptoms and target variables to be monitored by nursing and other unit staff; and c. the frequency by which staff need to monitor such symptoms	As shown, page 48, E.10.	n/a	As shown, page 53, D.7.	As shown, page 63, D.10.	As shown, page 59, D.10.	As shown, page 45, D.8.
Ensure sufficient nursing staff to provide nursing care and services in accordance with generally accepted professional standards.	As shown, page 47, E.3.	n/a	n/a	As shown, page 62, D.3.	As shown, page 58, D.3.	As shown, page 44, D.1.
Ensure that nursing staff are appropriately supervised to ensure that they administer, monitor, and record the administration of medications and any errors according to generally accepted professional standards.	As shown, page 47, E.7.	Similar Concept, page 35, C.3.	n/a	As shown, page 63, D.7.	As shown, page 59, D.7.	Similar Concept, page 44, D.5.
Ensure that, prior to assuming their duties and on a regular basis thereafter, all staff responsible for the administration of medication have completed successfully competency-based training on the completion of the Medication Administration Record.	As shown, page 47, E.8.	n/a	n/a	As shown, page 63, D.8.	As shown, page 59, D.8.	As shown, page 44, D.6.
Ensure that all failures to properly sign the Medication Administration Record and/or the Narcotics Log are treated as medication errors, and that appropriate follow-up occurs to prevent reoccurrence of such errors.	As shown, page 47, E.9.	n/a	n/a	As shown, page 63, D.9.	As shown, page 59, D.9.	Essentially the same, page 44, D.7.

\* Text of interest in the Nursing Section was observed in only 6 of the 15 Findings Letters.

hospital with a capacity of under 60 patients, and California, with a very different culture from Vermont's and state hospitals with capacities exceeding 1,000, are repeatedly (there must be a pattern of unconstitutional treatment) misstepping in identical ways. This could be the case, but it is quite unlikely.

A third possibility is that the expert process is flawed and fails to identify individualized deficiencies, because it uses generic or set observations, which then lead to generic or set Findings Letters. In essence, same experts, same findings, same language.

Another possibility is that the DOJ attorneys reduce more individualized findings by the experts to the same pat observations, perhaps because they do not have any professional expertise with which to understand mental health treatment in public hospitals or because it is just easier to use phrases on which they have settled, or because they feel emboldened and do not sense any obligation to do more to achieve the results they seek.

A final possibility is that DOJ is trying to be a careful manager of its part of the federal budget to get the most results with the least use of resources. An investigation is a requirement. After that, the goal of DOJ appears to be to provide the state with a document that brings this state to the table to sign a consent decree. Enforce the changes and the state hospital will get more state funding and will improve. Not a bad formula.

But not the best formula. By this mechanism, states are allocating the resource of time to areas that may not be their major problems and may be distracted from areas that are. There is an alternative that would substantially benefit the states, but would give DOJ less control, and therein appears to be the rub. DOJ could do an investigation and then supply the experts' evaluations. The state could respond, based on its self-assessment and the experts' opinions with a Plan of Continuous Improvement (PCI) that the state has generated. The PCI includes a specific descriptor of each matter to be improved, designates a responsible person, sets a deadline for completion, establishes a monitoring mechanism for compliance, tracks changes, records completion dates, accounts for any item behind its schedule, is reviewed no less than monthly by the hospital executive team, is available in real time to every hospital employee, and has the explicit approval of the director of the state mental health authority and the governor or his represen-

tative at a level above the director. DOJ could review the plan and suggest modifications. An agreement would then be written between DOJ and the state. There are no monitors external to the hospital, as the PCI is self-monitored (i.e., by the hospital). There is no action in any federal court. DOJ is, of course, able to bring the matter into federal court for litigation at any time.

Although the Findings Letters suggest that the expert's reports are available to the state on request, it does not appear that access to the report comes without strings attached. The Kings County Findings Letter from 2009 states that the expert's report is available under separate cover, contingent on a cooperative relationship between the DOJ and the state. The 2009 letter to Northwest Georgia Regional Hospital also implies that the consultant's specific recommendation would be provided "once we are confident that you intend to use the reports to address the deficiencies outlined . . ." It seems unjust to require the state to agree to use the recommendations to address deficiencies before knowledge of specific recommendations, as they are not provided in or with the Findings Letter.

To call the current process of DOJ investigations of state hospitals a misuse of authority may be a bit harsh, but it does appear that it is being somewhat disingenuous with the states. There is no doubt that DOJ is entirely sincere in its efforts to improve state hospital patients' care and treatment through the requirement that the hospitals meet constitutional standards. There is no doubt that states are invested in improving state hospitals, with at least one motivation being that improved care and treatment will produce shorter lengths of stay and longer community tenure. It does appear that state mental health authorities leverage DOJ involvement to increase funding to targeted state hospitals. But, currently, DOJ and the states enter into cumbersome, expensive rituals that divert time, energy, and money from the legitimate goals of both. If DOJ would lessen its focus on authoritative oversight and allow the states to be partners in shared decision-making concerning remedies, including but not limited to the use of expert reports, the results both DOJ and the states desire might well be achieved more quickly, with more state resources directed at good clinical outcomes and less at the process.

## Department of Justice Findings Letters in Psychiatric Hospital CRIPA Cases

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