



MR-TN-003-011

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

CLERK OF COURT  
WESTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) -  
 )  
v. )  
 )  
STATE OF TENNESSEE, et al., )  
 )  
Defendants. )

No. 92-2062-M1/A

ORDER

This Court entered an Emergency Order, effective June 30, 1995, which directed Defendants to take various actions to improve the medical care being provided residents of the Arlington Developmental Center ("ADC"). The Emergency Order was entered after the Court Monitor and the Monitor's Expert Developmental Medicine Physician, Dr. Renee Wachtel, reported that a state of medical emergency existed at ADC, and a hearing by telephone conference call was held with the parties, the Monitor and Dr. Wachtel.

A hearing on the Emergency Order was held on July 10, 1995, wherein the Court heard evidence regarding compliance with the Emergency Order and the current state of medical care at ADC. Dr. Wachtel also testified regarding her concerns with Defendants' efforts at compliance. Based upon the evidence presented, this Court ruled that Defendants had failed to comply

with the Emergency Order and that the requirements of the Emergency Order were still necessary. Accordingly, this Order is hereby entered in the form of a preliminary injunction, incorporating the requirements of the Emergency Order with appropriate modifications and additions. The Emergency Order was made effective June 30, 1995, and the deadlines for Defendants' compliance with those provisions are retained in this Order and toll from the effective date of the Emergency Order. A hearing has been set for August 9, 1995, to determine further the status of Defendants' compliance with this Order and the continuing need for a preliminary injunction.

1. Within 48 hours, Defendants shall retain a Developmental Medicine Physician<sup>(1)</sup> to be full-time at Arlington Developmental

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<sup>(1)</sup> The deadline for retention of a full-time Developmental Medicine Physician was established during the June 30, 1995 telephone hearing and is contained in the Order docketed July 3, 1995. Also see Remedial Order (docketed September 2, 1994), Section VI.A. (Developmental Medicine Physician to be retained by March 2, 1995). A full-time Developmental Medicine Physician was to be retained by July 5, 1995. At the hearing on July 10, 1995 it became clear that the State had been unable to comply with paragraph 1 by retaining a single individual Developmental Medicine Physician but sought to substantially comply with paragraph 1. by using a large group of Developmental Physicians. The medical conditions at ADC require that these services, to be meaningful and substantially in compliance, be delivered by at most a small number of Developmental physicians who can provide complete hands-on clinical care and who are in close communication with each other in order to provide consistent, reliable, coordinated physician services. The objective and intent of paragraph 1 is to provide the medical leadership, supervision and expertise necessary to improve the quality of medical services to patients at ADC. Merely filling out a schedule with non-practicing physicians who happen to be certified Developmental Physicians will not constitute substantial compliance with paragraph 1. The defendants are to make every effort to obtain a qualified full-time Developmental Medicine Physician as soon as possible and in accordance with this Order.

Center. This physician shall be approved by the Court Monitor's Developmental Medicine Physician Consultant.

2. The duties of the Developmental Medicine Physician shall include, but not be limited to, the following:

a. With the Developmental R.N., thoroughly evaluate, develop a comprehensive treatment plan, and clinically oversee the care of all critically ill or critically-at-risk individuals (physically or mentally) identified by the Medical Director;

b. With the Medical Director, oversee the provision of all medical care at the facility, including monitoring of care delivered by on-call physicians, nurse practitioners and consultants and training all physicians in the medical care of developmentally disabled individuals;

c. Participate in the Nutritional Management Program for Nutritionally-at-Risk individuals, including assessment of individuals, attending Nutritional Management meetings as appropriate and monitoring the effectiveness of treatment plans;

d. Work closely with the psychiatrist and Chief of Psychology for individuals with severe behavior/psychiatric disorders who are at significant risk of harm;

e. With the Medical Director, establish written agreements with hospitals and emergency medical service providers regarding acutely ill individuals;

f. With the Medical Director, monitor the care provided in acute care hospitals and assure adequate communication regarding Arlington residents' medical needs and treatment;

g. With the Medical Director, assure that no Do Not Resuscitate ("DNR") orders are issued inappropriately, and that DNR orders and treatment decisions are not based upon an individual's degree of retardation.

3. In addition to the Developmental Medicine Physician, and the Medical Director, Defendants shall have on duty within two weeks four primary care physicians. These physicians must be approved by the Court Monitor's Developmental Medicine Physician Consultant.

4. Defendants shall immediately retain the services of additional physicians for night coverage.

5. Within one week, Defendants shall retain the services of a full-time psychiatrist.<sup>[2]</sup>

6. Defendants shall retain two Developmental Nurses approved by the Court Monitor's Nurse Consultant. The duties of Developmental Nurses shall include, but not be limited to the following:

a. With the Developmental Medicine Physician, thoroughly assess, treat, and monitor individuals identified as critically ill (physically or mentally), who have been identified by the Developmental Medicine Physician, Medical Director, Remedial Order Facilitator or Assistant Superintendents;

b. Evaluate and monitor on request by the Developmental Medicine Physician, individuals experiencing acute events and assist the IDT in determining appropriate treatments and precautions;

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<sup>[2]</sup> At the July 10, 1995 hearing, defendants indicated that a full-time psychiatrist has been retained and will begin work at ADC on Monday, August 14, 1995. It should be noted that the one week deadline for retention of a full-time psychiatrist was established as a reasonable date as a result of the hearing of June 30, 1995 and, therefore, was included in the Order docketed July 3, 1995. Also see Remedial Order, Section II.E.(deadline to retain psychiatrist/October 2, 1994).

c. Examine nursing assignments and reassign available nurses, as needed, to achieve desired citizen outcomes, with every nurse on staff except the Nurse Educator and the Infection Control Nurse, responsible for some direct citizen care during their assigned shifts;

d. Attend Nutritional Management Team meetings and evaluate selected individuals;

e. Assist individuals to eat with one accompanying nurse, at three mealtimes per week, in a total of three different homes on grounds;

f. Assist the Nurse Educator in developing and implementing training in developmental nursing competencies in addition to medication administration, and spot-monitoring of safe, appropriate medication administration to individuals with developmental disabilities.

7. Defendants shall contract with two Developmental Nurse Consultants within two weeks.

8. Defendants shall hire to the capacity of one hundred thirty-six (136) nurses by August 8, 1995. The Court notes that, pursuant to Defendants' Plan of Correction dated April 20, 1995,

Defendants were to have already complied with this directive by July 1, 1995. That has not been done. To carry out this recruitment effort, the Central Office will temporarily assign Pat Womack to Arlington. Nurses, not developmental technicians, must monitor the progress of residents whose conditions are critical.

9. Defendants shall negotiate written agreements with hospitals within sixty days.

10. Defendants shall negotiate written agreements with emergency medical service providers within sixty days.

11. The Commissioner will identify and empower a single individual acceptable to the Court Monitor to be accountable for the accomplishment of each of these emergency motions. These individuals will report in writing on their progress every week to the Court Monitor and the United States. These progress reports will be sent to the Monitor and the United States via telefax by 2:00 P.M. Central Standard Time the Friday of each week.

12. Until Defendants have retained a Developmental Medicine Physician in compliance with the Remedial Order and the Court Monitor's Developmental Physician advises the Court that these

emergency measures have stabilized physician services at Arlington, a state of medical emergency with heightened scrutiny by the Court will continue and additional remedies may be imposed.

13. Defendants shall provide to the Court, the Monitor and the United States by close of business July 14, 1995, the following documents<sup>[3]</sup>:

a. Defendants' Comprehensive Plan for Interim coverage of the Duties of a Full-Time Development Medicine Physician;

b. Defendants' Recruitment Plan for the Immediate Retention of a full-Time Developmental Medicine Physician; and

c. Defendants' Plan of Coverage for Psychiatric Services.

14. The Defendants shall provide to the Monitor and the United States the following information on a monthly basis:

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<sup>[3]</sup> Receipt of these three plans does not constitute adoption or approval of the plans by the Court. Any plan submitted must comply fully with all orders in effect in this case. See paragraph 16. infra.



a. Reports of resident deaths, including death certificates, autopsy reports, hospital admittance and discharge reports, and investigative reports (this requirement is subject to the provisions of Section VII (L) of the Remedial Order);

b. Documents relating to resident care by emergency medical services and local hospitals, including hospital admittance and discharge reports, and any documents provided to or created by ADC which document the diagnoses, care or recommendations provided by emergency medical services and local hospitals; and

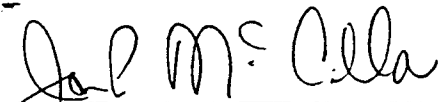
c. A list of all Code Blue emergencies, including the name, age and living unit of the resident involved, the cause of the emergency, the treatment provided, and the result of that treatment.

15. The Defendants shall, within 48 hours, report any deaths of ADC residents to the Monitor and the United States by telefax. ADC's Medical Director and Superintendent are responsible for ensuring such notification takes place.

16. Nothing in this Order obviates or negates the requirements of existing orders. All the requirements of this

Order shall be construed as additional requirements to those already contained in existing orders.

WHEREFORE IT IS HEREBY ORDERED this 21 day of July, 1995.



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JON PHIPPS McCALLA  
UNITED STATES DISTRICT JUDGE