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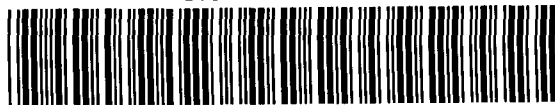
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U.S. v. District of Columbia



NH-DC-001-017

**FAX TO:** Mr. Richard Farano, Mr. David Deutsch

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**SENT BY:** Dr. Harriet A. Fields

**DATE:** December 10, 1995

**# of Pages:**  
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**Cover Page):** 8

**NOTES:**

**HARRIET A. FIELDS, Ed.D., R.N.**

#604

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December 10, 1995

**The Honorable Thomas F. Hogan  
U.S. District Court for the District of Columbia  
333 Constitution Avenue, NW, 4th Floor  
Washington, DC 20001**

**Re: Court Order The United States of America v. The District of Columbia, et al.,  
Civ. No. 95-948, TFH, D.C. Village Nursing Home (DCV);  
November 7, Order Modifying Stipulated Order of July 6, 1995**

Dear Judge Hogan:

I am writing the Court now, before the next Status Hearing in January, because of four areas of concern which must be addressed immediately. I am also in this letter to the Court, recommending further data gathering and remedies to rectify what I have now identified as patterns detrimental to residents well-being.

The four areas I will address are the following: (1) update on Mr. L.R. profiled in my December 6, 1995, letter to the Court; (2) the process of procuring purchase orders for vendor services, whereby there is now no stock of normal saline used as a treatment modality for decubitus ulcers; (3) chronic non-compliance of payment of vendors, whereby there is now no duoderm in house for treatment of decubitus ulcers and no payment to National Nurses profiled in the Court Monitor's December 6, 1995, letter to the Court; (4) residents' being denied their own funds from their Personal Needs Allowance (PNA).

Each of these four areas are indicative to me of a common thread of similar patterns. These patterns are what I believe to be a misuse of government funds, passivity and lack of advocacy on the part of staff for residents' needs and the acceptance of the bureaucratic inertia described in the Court Monitor's October Status Report under C. Payment of Vendors (p. 22), and needless and unconscionable delays in issuing purchase orders from the Procurement Office of the Department of Human Services, District of Columbia.

A description of these patterns in action is profiled in the Court Monitor's November Status

Report under III. Stipulated Court Order, July 6, 1995, B. Measures to Remedy Shortages, 1. Food and Drink (pp. 29-31.)

However, I want to assure the Court, there are some staff who are true advocates for residents rights. The two Associate Directors of Nursing (ADONs) are implementing proactive steps to improve the standard of practice and care and are also openly, constructively, and professionally implementing the Court Monitor's recommendations.

Each of the four areas listed above will be profiled. At the end of the profiles will be recommendations and remedies needed to rectify the patterns reflected in all the areas profiled.

(1) Update on Mr. L.R. profiled in December 6, 1995 letter to the Court.

On December 8, 1995, Mr. L.R. was out of bed and up in his wheelchair and resumed his usual place at the entrance to DCV, where there is day light, activity, and other human contact. Mr. L.R.'s situation reveals a pattern of passivity on the part of the staff and also a non payment of vendor problem.

The internal problem revealed by this resident scenario is the following. To be sure, the nursing staff did contact physical therapy when Mr. L.R.'s wheelchair first broke. However, a systems failure set in whereby no one rectified the problem until the Court Monitor was notified by the ombuds person and the President of the Residents' Council, immediately stepped in and called the physical therapy department and the wheelchair repair vendor, and alerted the Court. Daily rounds by nursing and administration would have uncovered this negligence.

The external problem revealed by this scenario is that a previous repair to Mr. L.R.'s wheelchair has gone unpaid since April, 27th of this year and the vendor was unwilling to service DCV again as a result of this neglect in payment.

Not maintaining resident equipment is a violation of federal regulations and the Court Orders.

(2) Process of Procuring Purchase Orders (P.O.) for Vendor Services

Last week at the time of writing of the Court Monitor's November 30 Status Report to the Court, this problem was reflected in a shortage of food supplies to the residents. This week this problem is reflected in an inadequate supply on hand of treatment modalities for decubitus ulcers, specifically, normal saline to cleanse the site and duoderm to apply to the wound. (Duoderm will be discussed under vendor non-payment.)

For about a week sterile water from treatment kits for other uses has been used to cleanse wounds. Sterile water is an appropriate substitute, however, normal saline is preferred. Normal saline is an item that should be routinely on hand in any nursing facility, and is also necessary for the sterile cleansing of other equipment, such as catheter and tracheostomy tubing.

While making rounds with the treatment nurse on Thursday evening, December 7, 1995, the Court Monitor discovered there was no normal saline in-house. On unit 4A, at Mr. C.F.'s bedside while dressing Mr. C.F.'s stage III decubitus ulcer on his left hip, the treatment nurse told me that they have been out of normal saline for about a week. This reminded me of a camping expedition, where ingenuity in substituting routine supplies saves the day. However, this is a human being with a gaping whole in his body. At times DCV is operating like an underdeveloped country, when in fact this is the nation's capital.

On October 10, 1995, DCV submitted a "request for purchase order" to the Procurement Office, Department of Human Services, District of Columbia. Among the items listed on the purchase order were normal saline and duoderm. The request for purchase order was marked "Urgent per Court Order." Once purchase orders are sent from the Procurement Office and received by DCV, they are sent by DCV to the vendor for delivery of supplies. If the vendor has been paid, supplies will be delivered.

DCV received the requested purchase order on December 6, 1995. Prior to receipt of the P.O., the staff person from DCV submitting the "request for purchase order" called Ms. Cheryl Perkins of the Procurement Office and stressed to her the urgent need for receipt of the P.O. for care of the residents and that priority should be given to DCV which is under a Court Order. Apparently, Ms. Perkins' response was that there are many District of Columbia agencies under Court Orders. I believe the analogy the DCV staff person used is a good one: "Ms. Perkins needs to know that DCV cannot be run like a stationery store, where you run out of pens or something: residents lives are at stake."

In a nursing facility it is not always possible to anticipate needed supplies months in advance. For example, the size of bandages needed will depend on whether a wound develops (which should not be happening), the site, and the anatomy of the resident.

According to staff and administration at DCV, receiving purchase orders in a timely fashion from the Procurement Office has been a chronic problem. (Recommendations to the Court are at the end of the profiles section.)

Lack of adequate supplies for resident treatment and care is a violation of federal regulations and the Court Orders.

**3) Chronic Non-Compliance of Payment of Vendors**

As of Saturday, December 9, 1995, DCV is out of supply of one treatment modality for decubitus ulcers, duoderm. Treatment nurses are using a substitute which they believe is not quite as effective. One treatment nurse does have a limited supply of duoderm only because, through her wisdom and experience, she secreted supplies anticipating this scenario. There is no duoderm, although I am informed emergency supplies are on the way, because District Healthcare, the vendor, has not been paid. District Healthcare is owed approximately \$42,000.

Update on National Nurses, Inc., profiled in December 6, 1995, letter to the Court: On Thursday evening, December 7, 1995, Mr. Ronald Messenheimer, President of National Nurses, Inc., left a message for the Court Monitor, that he had received "confirmation from the Chief Financial Officer's office (for the District of Columbia) that National will be payed in the next check run on Friday or Monday. I will continue services pending receipt of check on Friday or Monday."

On Friday afternoon, December 8, 1995, Ms. Barbara Mann of the Corporation Counsel's office for the District of Columbia, left a message for the Court Monitor concerning National Nurses Inc., that "we are not aware of any termination prior to the weekend or immediately thereafter, it is our understanding a check will be delivered to them not later than Thursday of next week. We are covered for the weekend at DCV." This information is in conflict with the information Mr. Messenheimer was told the day before from the Chief Financial Officer's office.

The Court Monitor will inform the Court on a regular basis. Within the past week, the Court Monitor has begun to notice shortages of staff, primarily of nurse aides. Contract nurse staffing vendors are supplying nurses. However, none of them have been paid. Most recently in a letter dated December 6, 1995, to Mr. Vernon Hawkins, Director, Department of Human Services for the District of Columbia, CUP HealthCare Services has indicated they will terminate services on Thursday, December 14, 1995. CUP HealthCare Services is owed \$93,102.86, ( \$11,935.77 of which is from December 1994.)

Nurse aides are District of Columbia government employees, are unionized, and are opting to take annual leave before DCV closes and they lose their benefits. Further monitoring is needed to determine why there are not nurse aide replacements and where there may be a potential source. Apparently, through the Personnel Department of the District of Columbia, there is difficulty securing staff for a limited term employ.

DCV receives one of the highest Medicaid reimbursement rates in the continental United States, approximately \$240 per resident per day. This amounts to approximately \$87,600

per resident per year. When the Court Monitor first arrived at DCV on August 28, 1995, there were 270 residents. That is a total reimbursement rate of approximately \$24,000,000 per year. Approximately half of this total is federal funds and approximately half is District funds. According to DCV administration, as mentioned in the Court Monitor's November Status Report to the Court, DCV is funded through fiscal Year 1996. Where are these funds?

The same vendor non-payment problems profiled in the affidavits of June 1995, which led to the Stipulated Court Order of July 6, 1995, are the same problems today. (Remedies needed to rectify this situation are at the end of the profiles section.)

(4) Residents Denied Personal Needs Allowance (PNA)

Residents are to receive their Personal Needs Allowance (PNA) on the first of each month. As of today, the residents have not received their December funds, nor can anyone tell them when they will receive their money. The residents have a Holiday shopping trip planned for Friday, December 15, 1995.

The Personal Needs Allowance is residents' money and in the District of Columbia amounts to \$70 per month. The source of the PNA is two-fold. One is for the "categorically needy." These are residents with no other source of income and who receive Supplemental Security Income (SSI). This amounts to a federal minimum share of \$35 per month and in the District of Columbia a matching share to equal the \$70 per month. (I believe the ratio in the District is federal contribution of \$40 and the District of Columbia contribution of \$30.) The second source of PNA is the "medically needy." That is residents with social security, disability, and or public or private pensions. From these sources of income, \$70 per month is withdrawn and to be put into the residents PNA. The remainder of these sources of income contribute to the residents Medicaid reimbursement rate.

In an interview with the teller at DCV on Friday, December 8, 1995, the teller told me that he has not received money in two and a half months, what he has been using to give to residents as their PNA is money remaining in the fiscal budget (I believe last year's.), and that he normally receives funds every week to two weeks. The teller also told the Court Monitor that the PNA is from the District of Columbia Treasury.

It is a violation of federal law and regulations to co-mingle resident funds with any other account. Resident funds in excess of \$50 are required by federal regulations to be in an "interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account." [42 CFR Part 483.10 © (1) through (7)].

Judge Hogan, I cannot tell you how sad and pitiful it is to see the residents hovering around

the window of the teller, across the hallway from the administration offices. There is a steady stream of residents throughout the day. The residents have not reached the justifiable anger stage yet, although some are close to it. In their eyes you can see that they are stunned, bewildered, and hurt. On Thursday, December 7 the staff was paid. The residents are acutely aware of this and the fact, that there is no money to pay them their own funds.

The residents have so little in life, it is their dignity that is being robbed from them as well as their money. Being deprived of their PNA adds to the stress of the impending loss of their homes, and the stress of institutionalization at the Holiday season.

### Recommendations and Immediate Remedies Needed

I believe all the above situations will continue unless the recommendations and remedies that follow are immediately put in place. As DCV continues to approach closing, I can foresee operations unraveling, as it has already begun to do so in the areas profiled above: nurse staffing, dressings for the treatment of decubitus ulcers, wheelchair repairs, and the residents' Personal Needs Allowance. I foresee the non-payment of vendors becoming out of control.

I believe the primary issue is the misuse of and lack of accountability for government funds earmarked for the operations of D.C. Village Nursing Home and for the direct care of the residents of D.C. Village Nursing Home - the most vulnerable and frail of the District of Columbia population. Non-payment of vendors is symptomatic of this larger issue and is manifested in the culture of tolerance for and acceptance of bureaucratic inertia. The behaviors surrounding this culture are manifested internally at DCV by the acceptance of and tolerance for lack of supplies for basic humane care, and externally among DCV government officials, by the tolerance and acceptance of needless delays in the procurement process.

Therefore, in order to prevent the further dissolution of residents' rights the following immediate remedies are needed: (These remedies are not to supplant my recommendations in my Status Reports to the Court, the remedies identified here specifically relate to the concerns identified in this letter.)

(1) An independent audit, under the Court's auspices, of the government funds earmarked for DCV. (For over a month now the Court Monitor has requested the Budget and Annual Costs Reports of DCV, most recently in the November Status Report.);

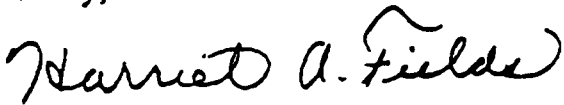
(2) Since there are dedicated federal and District matching funds earmarked solely for the operations and direct care of the residents at DCV, there is no need for requests for purchase orders to enter the bureaucratic maze of the D. C. Government process. And since DCV has a scheduled closing date of the end of March, 1995, all requests for necessary purchase orders will be filled within a two week turn around;

(3) An accounting of Resident Personal Funds;

(4) Establishment immediately of a separate account for residents' personal funds including the residents' Personal Needs Allowance.

Judge Hogan, I look forward to serving the Court in monitoring the implementation of these recommendations and immediate remedies needed for the best interests of the residents of D.C. Village Nursing Home.

Sincerely,



Harriet A. Fields, Ed.D., R.N.  
Court Monitor

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