contempt

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TENNESSEE, et al.,

Defendants.

No. 92-2062 M1/A

ORDER ON CONTEMPT PETITION

This matter came on for a hearing on Friday, July 29, 1994, on plaintiff's Motion for a Contempt Order or for an Order to Show Cause, filed June 29, 1994. Following the hearing the Court reserved ruling pending a final determination on the remedy to be imposed in this case. A Remedial Order having been entered by consent of the parties on September 6, 1994, the court now issues this order on the contempt petition.

A preliminary injunction was entered in this case on November 22, 1993, in conjunction with the Court's oral ruling that conditions at Arlington Development Center were inconsistent with the mandate contained in Youngberg v. Romeo, 102 S.Ct. 2452 (1982). See Supplemental Findings of Fact and Addendum, docketed February 18, 1994. In its Order of November 22nd, this Court specifically found that:

> [In] the medical care area, and in the area of direct care supervision of residents, conditions at Arlington Development Center pose an immediate danger of irreparable harm, including an immediate risk of death to residents of Arlington Development Center. Medical care within the institution, particularly for patients with seizure disorders, is so deviant from any recognized principles of medical care that any patient suffering prolonged seizures (status epilepticus) may be in immediate peril of his/her life. The testimony is virtually uncontradicted that no standard of care recognizes the administration of intramuscular valium for status epilepticus and that the only appropriate treatment for status epilepticus involving use of valium is IV valium. Similarly, the failure of direct care staff to directly supervise individuals with known behavior disorders, including eating disorders, has resulted in deaths which were entirely preventable.

Preliminary Injunction, 1 n.1.

In order to provide immediate relief concerning these conditions, this Court issued a Preliminary Injunction:

> 1. Defendants shall immediately act to properly supervise residents with known severe behavioral disorders, including eating disorders which may result in life threatening conditions. Arlington Development Center shall protect those individuals from harm and shall assign additional staff, specially trained, to supervise the care of those residents with the most severe self injurious or life threatening behavior disorders.
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> 2. Arlington Development Center shall conduct immediate in-service training of all physicians and nursing personnel regarding the proper diagnosis and treatment of seizure disorders and shall staff all facilities on a 24-hour basis with health care providers (either physicians or nurses) who have been so trained.

Id. at 3-4.

Plaintiff asserts that defendants took few meaningful actions to comply with the Court's injunction. More

specifically, plaintiff contends: (1) that defendants have failed to properly supervise and protect individuals at Arlington Developmental Center who have known severe behavior disorders, and have failed to train medical personnel to properly diagnose and treat seizure disorders; (2) that medical staff continue to allow residents to suffer status epilepticus for an hour and more, prescribing only intramuscular medication and fail to transport residents to the hospital; (3) that defendants continue to interfere with the United States' access to staff and to information about ADC by refusing to produce records and by permitting staff to falsify documents and be untruthful in interviews; and (4) that defendants refuse to take any actions to remedy the conditions at ADC until this Court issues a final order.

In response to the Contempt motion filed by defendants, the Court issued orders requiring Dr. Cox, the Director of Psychology; Dr. McLemore, a physician and formerly Medical Director; Dr. Mohyuddin, a physician at ADC; and Dr. Herring, a physician at ADC, to appear and show cause why they should not be held in contempt of Court for violation of the Contempt Order.

The evidence submitted at the contempt hearing, including numerous documents and the credible testimony of Dr. Hyman, overwhelmingly demonstrated that defendants failed to properly

treat residents with seizure disorders. Based on the record before the Court, the medical staff allowed residents to suffer status epilepticus for an hour, or more, and treated them with intramuscular medication.[1] This response to seizure management is contrary to minimum accepted standards of practice and in direct violation of the Contempt Order previously issued by this Court. Further, the record clearly reflects that defendants have failed to train all physicians and nursed in the proper diagnosis and treatment of seizure disorders and have failed to ensure that all facilities are staffed with such properly trained professionals.

Moreover, the evidence before the Court, including the credible testimony of Dr. Christian, shows that defendants have

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[1] For example, the record indicates that on February 22, 1994, resident Leandro P. had three prolonged seizures: one for 20 minutes, one for at least an hour and 35 minutes, and the third one lasted for at least one hour. Resident Leandro P. was found by a Developmental Technician ("DT") in his second seizure, foaming at the mouth with labored breathing and a temperature of 103.4 degrees Fahrenheit. According to the physician notes, Dr. McLemore, the attending physician, did not take any action until 45 minutes after the seizure was first noticed by the DT. By this time the resident was in status epilepticus. Dr. McLemore did not examine the patient, but gave an order for IM Ativan over the phone. The medication was not given for another 25 minutes following the phone medication order. No effort was made to administer IV medication or transfer the resident to the hospital, even though minimum accepted standard practice would have dictated such a response. (The nursing note indicates that the visible seizure signs stopped 25 minutes after the IM medication was given, which was one hour and 35 minutes after the seizure was noticed.) As soon as the seizure appeared to be over, Dr. McLemore took the resident to ADC's clinic for an EEG. Once there, the resident began seizing again. Dr. McLemore's note at 4:30 p.m. states that Leandro P. was in status epilepticus and should be sent to the hospital. He, however, did not leave for the hospital until 5:30 pm. At this point in the record, Dr. Herring, another physician, inserted a note indicating that IV medication had been given at 5:20 p.m.

failed to properly supervise and protect resident from harm.[2] Further still, the data collection at the facility is unreliable. The data collection, necessary for accurate diagnosis and treatment, under represents the rate and severity of behaviors, (see Christian, at 9(D), 9(E)), or has been falsified.

Plaintiff has met its burden of proof, by clear and convincing evidence, that defendants have violated this Court's Preliminary Injunction. Accordingly, this Court finds that defendants' conduct amounts to CONTEMPT OF COURT.

In plaintiff's petition for contempt, plaintiff requests that the Court, inter alia, require defendants to commence immediate training of medical staff on seizure management, retain an outside qualified consultant to train the staff on the needs of residents with severe behavior disorders, appoint Dr. Linda O'Neall as a monitor, reimburse plaintiff for the costs of the contempt petition, and permit the United States to have access to ADC. In the Court's opinion most of these remedies have been

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[2] For example, resident Leroy P. has pica behavior (eats inedible objects). He has had so many surgeries for bowel obstructions due to his pica, that another obstruction could be life threatening. On March 13, 1994, the resident had one-to-one staffing assigned to him when he ingested multiple paper towels and laundry string which resulted in his hospitalization on March 14, 1994. In the month of February 1994, the Consumer Risk Management Report indicates that he had nineteen pica incidents. This information came from staff observing his emesis, and not from them observing his eating the objects. Had adequately trained staff been appropriately monitoring Leroy P.,it would not have been possible for him to ingest this much material unobserved.

sufficiently addressed by the consent Remedial Order entered by the Court on September 6, 1994. This comprehensive order covers such concerns as abuse, psychology and habilitation services, use of restraints, psychiatric and mental health services, medical care and services, physical and nutritional management, nursing care, physical and occupational therapy services, educational services pursuant to the IDEA, record keeping, resident property, admissions and placements, as well as duties and privileges of the Monitor. See Remedial Order, entered Sept. 6, 1994.

Since, at this time, the Remedial Order adequately addresses the concerns raised in the contempt petition, the Court will not impose any sanctions in addition to those outlined by the Court at the Contempt hearing.[3] However, plaintiff's request for costs associated with the filing of the petition is GRANTED. Plaintiff shall submit, within thirty (30) days of the entry of this Order, an itemized list of costs associated with the contempt petition and a proposed order granting the request. Defendant shall have fifteen (15) days to comment on the itemized costs.

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[3] Following the hearing the Court instructed defendants to provide copies of Court Orders to all ADC professional staff, have them read the orders and sign a form indicating that the Court's instructions will be complied with. These Orders were to be provided to the professional staff by August 5, 1994. Further, defendants were Ordered to post a notice to all ADC employees that copies of said Orders are available to them and that they are to read them.

SO ORDERED this 31 day of March 1995.

JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE