UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JACQUELINE JONES,

Plaintiff,

vs. CASE NO. 3:09-CV-1170-J-34JRK

THOMAS ARNOLD, in his official Capacity as the Secretary of Florida Agency for Health Care Administration

DR. ANNA VIAMONTE ROSS, in her official capacity as Secretary, Florida Department of Health

Defendants.
_____/

DEFENDANTS' RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO MICHELE HADDAD'S MOTION FOR PRELIMINARY INJUNCTION

The Defendants, THOMAS ARNOLD, in his official capacity as the Secretary of the Florida Agency for Health Care Administration, and DR. ANNA VIAMONTE ROSS, in her official capacity as Secretary, Florida Department of Health, by undersigned counsel, submit this response and memorandum of law in opposition to Michele Haddad's Motion for Preliminary Injunction. As grounds therefore, Defendants state as follows:

BACKGROUND

On December 2, 2009, Plaintiff in the above-captioned matter filed a lawsuit alleging violations of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 (ADA) and § 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) (Rehab Act). In her Complaint, the Plaintiff Jacqueline Jones alleges that she is a Medicaid-eligible adult

suffering from quadriplegic paralysis who is at imminent risk of institutionalization due to Defendant's failure to provide personal care assistance in her home through the Medicaid program. The Plaintiff expresses a desire to remain in the community and alleges that she could do so with the appropriate services.

On December 15, 2009, Plaintiff amended her Complaint to allege class action violations. The putative class consists of "Florida disabled residents with a spinal cord injury who are Medicaid recipients; reside in the community; desire to continue to reside in the community instead of a nursing facility; could reside in the community with appropriate Medicaid-funded services; and are at risk, as determined by the recipient's treating physician or other treating health professional, of being forced to enter a nursing home because Defendants do not provide adequate community-based services." Amended Complaint, ¶ 34. On January 6, 2009, Plaintiff filed her Motion for Class Certification, which the Defendants oppose and which has not been ruled on as of the filing of this Response.

On December 29, 2009, Defendants filed their Motion to Dismiss Amended Complaint based upon the mootness of Plaintiff's case and the Plaintiff's failure to state a claim upon which relief can be granted. In the Motion to Dismiss, Defendants pointed out that the Plaintiff was already in the process of being enrolled in the Traumatic Brain Injury / Spinal Cord Injury Medicaid Waiver Program (TBI / SCI Waiver Program) and that the case was therefore moot.[1] In addition, Defendants explained that the ADA does not require the provision of personal care services, the requested class action relief would result in a fundamental alteration of the Florida Medicaid program in violation of the ADA, and the

[1] Plaintiff Jones began receiving in-home services in the TBI/SCI Waiver Program on February 2, 2010.

claims in the Amended Complaint are barred by issue or claim preclusion (or collateral estoppel). As of the filing of this Response, the Court has not ruled on Defendants' Motion to Dismiss Amended Complaint.

On January 27, 2010, Plaintiff filed a Motion for Leave to Amend First Amended Class Action Complaint. The proposed Second Amended Complaint, which was attached to the motion, would add three new named plaintiffs to this case: Dwayne Davidson, Nigel De La Torre and Luis Cruz. The Court has not ruled on this motion, which the Defendants oppose.

On April 12, 2010, the Plaintiff filed an untimely Motion for Leave to File Third Amended Class Action Complaint, which would add Michele Haddad as an additional named plaintiff in this matter. The Defendants oppose this Motion and filed on the same date a Motion to Stay Proceedings in light of the pending motions in this case. In addition, on April 15, 2010, Plaintiff filed a motion styled Plaintiff Michele Haddad's Motion for Preliminary Injunction, Expedited Hearing and Memorandum of Law in Support. Defendants oppose this Motion for Preliminary Injunction because Ms. Haddad is **not a plaintiff** in this matter and because Ms. Haddad cannot demonstrate that she meets the requirements for injunctive relief.

As further support, Defendants direct this Court to the following Memorandum of Law, which is attached hereto and is incorporated herein by reference.

MEMORANDUM OF LAW

I. Ms. Haddad is Not a Plaintiff in This Matter

Ms. Haddad is not a plaintiff in this matter. While there is significant jurisprudence regarding the circumstances under which an injunction will affect non-parties, there is scant law on whether a non-party may seek an injunction. What law there is, however, militates against issuing an injunction in favor of a non-party. In Piambino v. Bailey, 757 F. 2d 1112, 1137 fn. 62 (11th Cir. 1985), the following is found:

> As a nonparty, what (the nonparty) was actually seeking was an injunction ... directing Lead Counsel to restore their attorney's fee and reimbursed expenses to ..the court and (as to a settlement) directing the parties to take no steps toward its execution….the district court, having denied (the nonparty's intervention), had to deny his application for injunctive relief.

In Travelers Insurance Co. v. St. Judge Hospital of Kenner, La, Inc., 1990 WL 136742 (E. D. La. 1990), the court found that Travelers was not the real party in interest and was therefore not entitled to seek a preliminary injunction. The court further noted that in two instances in which a non-party sought injunctive relief, "an injunction could not issue."

It thus appears that the question of whether a non-party can seek an injunction is so self-evident, there is no need for expansive jurisprudence on this point.

Moreover, Ms. Haddad is not likely to become a plaintiff in this case. The Court should deny the Motion for Leave to File Third Amended Class Action Complaint because it was not timely filed. On February 1, 2010, the parties jointly filed a Case Management Report in which the parties agreed that the deadline for Motions to Add Parties or Amend Pleadings should be March 29, 2010. On February 5, 2010, this Court issued a Case Management and Scheduling Order setting March 29, 2010, as the deadline for Motions to

Add Parties or Amend Pleadings. By filing the Motion for Leave to File Third Amended Class Action Complaint two full weeks after this deadline, the Plaintiff is in direct violation of this Court's Order. As such, the Plaintiff's Motion for Leave to File Third Amended Class Action Complaint is "distinctly disfavored." Case Management and Scheduling Order, ¶ 5. Moreover, as Defendants demonstrated in their Response and Memorandum of Law in Opposition to Plaintiff's Motion for Leave to Amend First Amended Class Action Complaint, Plaintiff's case is moot and the amendment of the complaint would be futile as this third attempt to amend does not fix the deficiencies demonstrated in Defendants' Motion to Dismiss.

II. Ms. Haddad Cannot Meet the Requirements for a Preliminary Injunction

In order to obtain the requested preliminary injunctive relief, Ms. Haddad would have to demonstrate that (1) she has a substantial likelihood of prevailing on the merits; (2) she will suffer irreparable harm unless the injunction issues; (3) the threatened injury to Ms. Haddad outweighs whatever damage the proposed injunction may cause the Defendants; and (4) the injunction, if issued, would not be adverse to the public interest. Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 1354 (11th Cir. Ga. 2005). Ms. Haddad has the burden of persuasion in all of the four requirements for preliminary injunctive relief, which burden, due to the "'extraordinary and drastic'" nature of the remedy, Ms. Haddad must "clearly carry." United States v. Lambert, 695 F.2d 536, 540 (11th Cir. Fla. 1983) (citing Texas v. Seatrain International, S.A., 518 F.2d 175, 179 (5th Cir. 1975)); See also Canal Authority of Florida v. Callaway, 489 F.2d 567, 573 (5th Cir. Fla. 1974).

As demonstrated below, Ms. Haddad, even if she were a proper plaintiff in this matter, could not and cannot clearly carry the burden of persuasion on the four requirements for preliminary injunctions. As such, Ms. Haddad's Motion for Preliminary Injunction should be denied.

III. Ms. Haddad Cannot Demonstrate Substantial Likelihood of Prevailing on the Merits

Ms. Haddad cannot show that she has a substantial likelihood of prevailing on the merits in this case. The entire premise of the proposed Third Amended Complaint is undermined by the fact that the regulations promulgated pursuant to Title II of the ADA specifically provide that public entities do not have to provide services of the nature which Ms. Haddad is demanding. Neither are states required to provide the demanded services under the Federal Medicaid Act. To the extent that states choose to provide such services pursuant to a Medicaid home and community-based services waiver program (HCBS), federal Medicaid law permits states to cap enrollment in such programs and to discriminate on the basis of geography and disability. The accommodations that Ms. Haddad is requesting would require Florida to fundamentally alter its Medicaid program, which the ADA does not require. Finally, Ms. Haddad's interpretation of federal regulations under the ADA would both alter the federal Medicaid statute and create a private right of action, which no regulation can do.

A. The ADA and Rehab Act Do Not Require a Public Entity to Provide Personal Care Services

The specific services the Ms. Haddad is demanding in the proposed Third Amended Complaint and Motion for Preliminary Injunction include assistance transferring from her bed to her wheelchair and from her wheelchair back to her bed, assistance dressing, grooming, toileting, and other activities of daily life. Proposed Third Amended Complaint, ¶ 44-45. Plaintiff and Ms. Haddad contend that both the ADA and Rehab Act require the provision of personal care services. This is not the case.

Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Title II also prescribes remedies available for a violation of the above provision and authorizes the Attorney General to promulgate implementing regulations. 42 U.S.C. §§ 12133, 12134.

Several regulatory provisions promulgated pursuant to Title II of the ADA are of particular relevance in this case. First, there is the "integration mandate" of 28 C.F.R. § 35.130(d), upon which Plaintiff heavily relies, which states that "[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." Second, 28 C.F.R. § 35.130(b)(7), states that "[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would

fundamentally alter the nature of the service, program, or activity." Finally, and most importantly, 28 C.F.R. § 35.135 states that the ADA regulations do "not require a public entity to provide to individuals with disabilities…**services of a personal nature including assistance in eating, toileting, or dressing**" (emphasis added).

The Plaintiff and Ms. Haddad want the Courts to enforce one regulatory provision while ignoring another that specifically excludes the requested services from the scope of the first. Florida is required to administer its services "in the most integrated setting appropriate," but this cannot be read to require the Florida Medicaid program to provide "services of a personal nature," which is precisely the kind of services Ms. Haddad is requesting here. The ADA does not require the provision of these services. This is all the more true when it is considered that the provision of personal care services to Ms. Haddad would require more than "reasonable modifications" to policies, practices, or procedures, but would in fact require Florida to "fundamentally alter" its Medicaid program.

B. The Requested Relief Would Constitute a Fundamental Alteration of Florida's Medicaid Program

The State of Florida has no obligation to provide the Plaintiff with personal care assistance either through its HCBS Traumatic Brain Injury/Spinal Cord Injury Waiver Program (TBI/SCI Waiver) or by adding personal care assistance services to its Medicaid State Plan.

Medicaid is a joint federal-state venture created by federal statute, Title XIX of the Social Security Act of 1965, as amended. 42 U.S.C. § 1396 *et seq*. In order to participate in Medicaid, a state must submit a plan to the federal government outlining its program to

fund medical services for the poor and needy in accordance with the federal Medicaid Act. If the federal government approves the plan, it "then subsidizes a certain portion of the financial obligations which the state has agreed to bear." Harris v. James, 127 F.3d 993, 996 (11th Cir. 1997) (citing Silver v. Baggiano, 804 F.2d 1211 (11th Cir. 1986)). Currently, with the addition of stimulus funds pursuant to the American Recovery and Reinvestment Act of 2009, the federal government provides approximately 68% of the money in Florida's Medicaid program. When the stimulus period ends at the end of 2010, the federal contribution will likely return to approximately 55%.

The federal Medicaid Act defines "medical assistance" to mean payment for all or part of the services listed in 42 U.S.C. § 1396d(a)(1) through (28). 42 U.S.C. § 1396d(a). Only seven of the twenty-eight services listed are mandatory, meaning that a state must include such in its state plan in order to participate in Medicaid. 42 U.S.C. § 1396a(a)(10)(A). Mandatory services for adults over the age of 21 include inpatient hospital services, outpatient hospital services, laboratory and x-ray services, **nursing facility services**, nurse-midwife services, and certified nurse practitioner services. See 42 U.S.C. § 1396a(a)(10)(A) (requiring state plans to provide at least the services listed in § 1396d(a)(1) through (5), (17) and (21)). Thus, Florida is required by federal law to make nursing facility services available and, if these services are medically necessary for Plaintiff or Ms. Haddad, they are entitled to them as a matter of federal law. See e.g., Goldberg v. Kelly, 397 U.S. 254 (1970).

Florida may include any of the twenty-one services listed in 42 U.S.C. § 1396d(a), including personal care services. However, it is essential to note that Florida is not required

to provide such services to comply with the Medicaid Act, and, to the extent that Florida opts not to provide any of these twenty-one other services, Florida's Medicaid recipients to do not have an entitlement to those services.

In addition to the Medicaid services offered under a state's Medicaid State Plan, a state may also enter into an agreement with the federal government to offer services under a waiver program, such as the HCBS waivers. See 42 U.S.C. § 1396n(c). Under waiver programs such as the TCI/SCI Waiver, the federal government agrees to "waive" certain requirements of the Medicaid Act without jeopardizing federal financial participation. 42 U.S.C. § 1396n(c)(3). Most importantly for the purposes of this case, the Medicaid Act permits waiver of the comparability requirement of 42 U.S.C. § 1396a(a)(10)(B). Id. This provision requires state plans to offer the services in 42 U.S.C. § 1396d(a) to all Medicaid recipients in the same amount, duration and scope. 42 U.S.C. § 1396a(a)(10)(B). By providing for a waiver of the comparability requirement, the Medicaid Act permits states to discriminate on the basis of disability.

The Medicaid Act also permits waiver of Medicaid requirements with respect to limiting the number of persons receiving waiver services and eliminating the statewideness requirement. While a state must provide services under its State Plan to everyone who meets the state's Medicaid eligibility requirements, the waiver law specifically allows states to "cap" the number of persons receiving waiver services. 42 U.S.C. § 1396n(c)(9)-(10). Waiver of statewideness means that states can limit the provision of HCBS services to certain parts of the state as opposed to persons living throughout the state. 42 U.S.C. § 1396n(c)(3).

It is important to note that while the federal Medicaid Act permits states to create HCBS waiver programs, it does not require states to do so. As the Medicaid Act states, "a State plan approved under this subchapter ***may*** include as „medical assistance' under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by" the federal government. 42 U.S.C. § 1396n(c)(1) (emphasis added). Neither does the Medicaid Act require the federal government to approve states' HCBS waiver programs. The Secretary of the Department of Health and Human Services "***may*** by waiver" allow states to create HCBS programs. Id. (emphasis added).

It is not disputed that the Florida Medicaid program does not provide in-home personal care assistance for adults like Plaintiff. While Florida does provide in-home personal care assistance through its TCI/SCI Waiver, Florida has opted to place a cap on the number of persons enrolled in this program. The TCI/SCI Waiver program had no available opening at the time Plaintiff applied and she was thus placed on a waiting list. In the Amended Complaint and Motion for Preliminary Injunction, Plaintiff and Ms. Haddad do not allege that Florida has violated the Medicaid Act by failing to provide them with in-home personal care assistance. However, in both the Amended Complaint and Motion for Preliminary Injunction they are requesting the Court to order Defendant to provide them with such services. Such an order would effectively nullify one or more provisions of the Medicaid Act, thus forcing modifications that would "fundamentally alter" the Medicaid Program in violation of ADA regulations. 28 C.F.R. § 35.130(b)(7).

In granting Ms. Haddad's Motion for Preliminary Injunction, the Court would invalidate the Medicaid Act's explicit statement that the only mandatory services are those

found at 42 U.S.C. § 1396d(a)(1) through (5), (17), and (21) by converting personal care assistance from an optional service to a mandatory service. 42 U.S.C. § 1396a(a)(10)(A). This would require Florida to undertake a massive program expansion to ensure the provision of personal care assistant services to Medicaid recipients, fundamentally altering the program in the process.

In the alternative, an injunction order would invalidate the provision in 42 U.S.C. § 1396n(c)(1) declaring that HCBS waiver programs are optional for states and that states can cap enrollment in such programs. The HCBS waiver programs do not have adequate numbers of qualified community providers to sustain the significant increase in capacity that would come from invalidating enrollment caps. Requiring Defendant to transfer large numbers of persons onto such waiver programs would constitute a fundamental alteration to the programs.

The case law Plaintiff cites in the Motion for Preliminary Injunction regarding reasonable modifications is instructive here. In Alexander v. Choate, 469 U.S. 287 (U.S. 1985), the U.S. Supreme Court made clear that while state Medicaid programs may not discriminate against the disabled, neither are such programs bound to provide specialized services to the disabled that are not available to other Medicaid recipients, "as long as care and services are provided in „the best interests of the recipients.'" Alexander v. Choate, 469 U.S. 287, 303 (U.S. 1985) (Citing 42 U. S. C. § 1396a(a)(19)). The Rehab Act, the Court held, does not require states to alter the "definition of the benefit being offered simply to meet the reality that the handicapped have greater medical needs." Id., at 304. Here,

Plaintiff is essentially asking the Court to order Defendant to redefine the benefits offered under the Florida Medicaid program to meet the heightened needs of the disabled.

In summary, no state is required to offer personal care assistance services as part of its Medicaid State Plan, and Florida has not opted to do so. Every state is required to provide nursing facility services as part of its Medicaid State Plan, and Florida provides such services to eligible Medicaid recipients. Florida offers personal care assistance services within nursing facilities to Medicaid recipients who require them, both disabled and non-disabled. No state is required to create HCBS waiver programs. Florida has created and received federal approval for several HCBS waivers, including the TBI/SCI Waiver. Florida offers personal care assistance services as part of several HCBS waivers, including the TBI/SCI Waiver. Florida has capped the enrollment in the TBI/SCI Waiver program to 375, which is permitted under the Medicaid Act and has been approved by the federal government. The issuance of the preliminary injunctive relief would fundamentally alter Florida's Medicaid program by requiring Defendant to either offer personal care assistance services as part of its Medicaid State Plan or uncap or increase enrollment in the TBI/SCI Waiver. It should be noted that Florida is not able to take either of these measures without approval from the federal government.

IV. Ms. Haddad Will Not Incur Any Irreparable Harm

In order to qualify for a preliminary injunction, Ms. Haddad would have to show that she will suffer irreparable harm. Mony Secs. Corp. v. Vasquez, 238 F. Supp. 2d 1304 (M.D. Fla. 2002). An injury is irreparable only if it cannot be undone by monetary

remedies. Cate v. Oldham, 707 F.2d 1176 (11th Cir. Fla. 1983). Plaintiff fails to show that any harm she would incur by entering a nursing facility would be irreparable.

The case law cited by Plaintiff is inapplicable to the present situation. She cites McMillan v. McCrimon, 807 F. Supp. 475 (C.D. Ill. 1992), for the principle that the loss of Medicaid benefits constitutes irreparable harm. In McMillan, the district court found that the plaintiffs in that case would not receive the services and care they required in a nursing facility. McMillan, at 479. In the instant case, Plaintiff does not contend that she would not receive the medical services she needs if she were institutionalized in a nursing facility. Rather, she claims that the fact that such a facility is the *only* place she can receive the services she needs constitutes a failure of the Defendant to provide services in the most integrated setting pursuant to ADA regulations. McMillan does not stand for the principle that receipt of services in a less integrated setting constitutes irreparable harm.

Plaintiff likewise cites Edmonds v. Levine, 417 F. Supp. 2d 1323 (S.D. Fla. 2006), to show that the denial of medical benefits, and the resulting loss of services, constitutes irreparable harm. In the Edmonds case, the state had discontinued coverage of the prescription drugs that the plaintiffs were already receiving. Edmonds, at 1326. The Court held that the this denial of medical services constituted irreparable harm. Id., at 1342. This is not the situation in the instant case. Ms. Haddad is not being denied medical services. To the extent that she needs personal care assistance, she would receive such services in a nursing facility.

Plaintiff also cites Mitson v. Coler, 670 F. Supp. 1568 (S.D. Fla. 1987), which held that a preliminary injunction was appropriate where plaintiffs risked losing their medical

services, in this case nursing facility services. The irreparable harm in Mitson, being forced out of a nursing facility, is the exact opposite of the irreparable harm that Plaintiff is alleging: being forced to enter a nursing facility. Unlike the plaintiffs in Mitson, Ms. Haddad does not risk losing any services she is currently receiving. Her complaint is that she cannot receive the services in the setting of her choice.

Even if Ms. Haddad did enter a nursing home, this harm would not be "irreparable" as Ms. Haddad would be eligible after 60 days for the nursing home transition program, which is funded and which would allow Ms. Haddad to be transferred to the TBI/SCI Waiver. See April 29, 2010, Affidavit of Kristen Russell.

V. The Balance of Hardships Weighs in Favor of the Defendants

The Court must balance the harms in determining whether a preliminary injunction should issue. Plaintiff contends that the threatened harm to Ms. Haddad outweighs any harm to Defendant. Contrary to Plaintiff's assertions, she is not asking the Defendants to simply spend less of their Medicaid funds and permit her to continue to reside in her home. To the extent that the Plaintiff is asking the Court to make personal care assistance services mandatory for Florida or to "uncap" the TCI/SCI Waiver, the state would be forced to assemble a massive personal care assistance provider network.

The case law cited by Plaintiff in this Motion is inapposite. She cites Edmonds as finding that the "harm to plaintiffs of being deprived of essential medical services outweighs any harm to state." In fact, the defendants in Edmonds never claimed that they would incur any hardship. Since the plaintiffs did claim they would incur hardship, the Court concluded

that the balance of hardships weighed in their favor. Edmonds, at 1342. Here, the Defendants would incur significant harm if a preliminary injunction is issued.

Plaintiff also cites Illinois Hospital Asso. v. Illinois Dep't of Public Aid, 576 F. Supp. 360 (N.D. Ill. 1983), for the principle that a state cannot characterize its duties to comply with the requirements of an under an elective program such as Medicaid as constituting a hardship. Id. However, this does not describe the Defendants in the instant case. Defendants are not claiming that any of the duties imposed by the Medicaid program constitute a hardship. Rather, Defendants contend that the *additional* burdens that the Court would be imposing by granting the requested injunctive relief, burdens that go beyond the requirements of the Medicaid program, would constitute a hardship. Furthermore, Illinois Hospital Asso. is not an example of a court weighing burdens in favor of plaintiffs, as the defendant in that case did not claim any hardship.

VI. The Public Interest Will Be Harmed if Ms. Haddad is Granted a Preliminary Injunction

Plaintiff / Ms. Haddad has the burden of showing that the preliminary injunctive relief they seek would serve the public interest. Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1226 (11th Cir. Fla. 2005). Plaintiff claims that the public interest will be served by an order granting a preliminary injunction in Ms. Haddad's favor. However, the only person such a preliminary injunction would serve would be Ms. Haddad. To the extent that the preliminary injunction required the State of Florida to add personal care services to its Medicaid State Plan or "uncap" enrollment in its TBI/SCI Waiver, Florida would be required to divert funds from other sources, potentially injuring other Medicaid recipients.

To the extent that the preliminary injunction required Defendants to "jump" Ms. Haddad to the head of the TBI/SCI Waiver waiting list, the state would be required to deny or delay benefits to recipients who had been higher on the waiting list. Such a result would be catastrophic, not to mention inequitable and contrary to the public interest. Plaintiff fails to address this problem in her Motion.

CONCLUSION

For the reasons stated above, this Court should deny the Motion for Preliminary Injunction.

Respectfully submitted this 30th day of April, 2010.

AGENCY FOR HEALTH CARE ADMINISTRATION

BY: /s/ Andrew T. Sheeran
Andrew T. Sheeran
Fla. Bar No. 0030599
Assistant General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Building MS#3
Tallahassee, Florida 32308
(850) 922-5873; (850) 921-0158 *Fax*
E-mail: Andrew.Sheeran@ahca.myflorida.com

BY: /s/ William M. Blocker II
William M. Blocker II
Fla. Bar No. 295700
Assistant General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Building MS#3
Tallahassee, Florida 32308
(850) 922-5873; (850) 921-0158 *Fax*
E-mail: blocker@ahca.myflorida.com

DEPARTMENT OF HEALTH

BY: /s/ George Waas
George Waas
Special Counsel
Fla. Bar No. 129967
Office of the Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3662; (850) 488-4872 *Fax*
E-mail: george.waas@myfloridalegal.com

BY: /s/ Enoch Jonathan Whitney
Enoch Jonathan Whitney
Fla. Bar No. 13063
Office of the Attorney General
400 S Monroe St # PL-01
Tallahassee, Florida 32399-6536
(850) 414-3672; (850) 488-4872 *Fax*
Email: Jon.Whitney@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by the Notice of Electronic Filing, and was electronically filed with the Clerk of the Court via the CM/ECF system, which generates a notice of the filing to the following: Stephen F. Gold, 1709 Benjamin Franklin Parkway, Second Floor, Philadelphia, PA 19103, and Jay M. Howanitz, SPOHRER & DODD, P.L., 701 West Adams Street, Suite 2, Jacksonville, Florida 32204 this 30th day of April, 2010.

/s/ Andrew T. Sheeran

ANDREW T. SHEERAN
ATTORNEY