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ENDORSED
FILED
San Francisco County Superior Court

MAY 11 2000

ALAN CARLSON, Clerk
BY: JUN P. PANELO
Deputy Clerk

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

12 ROBERT E. MORRIS, M.D.,)
13)
14 Petitioner,)
15 vs.)
16 JERRY L. HARPER, in his capacity as)
17 Acting Director, California Youth)
18 Authority,)
19 Respondent.)

Case No. **312092**

PETITION FOR WRIT OF MANDATE
(CODE OF CIVIL PROC. §1085)

I. PRELIMINARY STATEMENT

1. Petitioner seeks a writ of mandate requiring Respondent Jerry L. Harper, Acting Director of the California Department of the Youth Authority ("CYA"), to comply with State law by obtaining licenses for each health facility within CYA institutions providing inpatient health services, including mental health services, as described in California Health and Safety Code section 1250.

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2. Respondent Harper is charged under California Welfare and Institutions Code section 1712, with all powers, duties and functions pertaining to the care and treatment of wards in the CYA, including the duty to operate all CYA facilities in accordance with the law.

3. The California Legislature created the correctional treatment center licensing category in 1987, to ensure that inpatient medical services provided in California's correctional facilities met minimum health care standards. The Legislature also directed the Department of Health Services to develop regulations governing correctional treatment centers. Subsequently, in 1993, the Legislature extended the effective date of the correctional treatment center regulations and exempted CYA from the licensing requirements until January 1, 1996. Despite having been on notice for more than a decade of the need to upgrade its inpatient medical services to meet minimum health facility standards, CYA continues to operate correctional treatment centers without a license, in violation of California Health and Safety Code sections 1250, subdivision (j), and 1253.

4. CYA houses more than 7,500 wards in its eleven institutions, and is responsible for providing health and mental health services to those wards. Among the services provided are more than 600 specialized treatment beds that are generally full with a waiting list, including but not limited to Intensive Treatment Programs, Sex Offender Treatment Programs, and Special Counseling Programs. CYA also operates inpatient services in its Infectious Disease Centers and Infirmaries for wards with health and mental health conditions ranging from unresolved hepatitis B and C to severe mental disorders and suicidal behavior. However, none of these inpatient beds has been licensed

1 as required by Health and Safety Code sections 1250, subdivision (j), and 1253.

2 5. As a result, Youth Authority wards are subjected to a health care delivery system
3 that does not comply with the minimum licensing requirements prescribed by California
4 law.

5 II. PARTIES

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7 6. Petitioner Robert E. Morris, M.D. is a taxpayer and citizen of the State of
8 California. Dr. Morris, a Board Certified Physician in Pediatrics and Adolescent
9 Medicine, has worked as a clinician, academician, and researcher, and is nationally
10 recognized for his expertise on health issues of incarcerated youth. In his professional
11 capacity, Petitioner Morris has become aware of the medical and mental health problems
12 of youth incarcerated in the California Youth Authority.

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14 7. Respondent Jerry L. Harper is sued in his official capacity as the Acting Director
15 of the California Department of the Youth Authority. Pursuant to California Welfare and
16 Institutions Code section 1712, he is legally responsible for the operation of all CYA
17 facilities and possesses all powers, duties, and functions pertaining to the care and
18 treatment of wards provided by any provision of law. This includes the responsibility to
19 provide health and mental health treatment to wards in compliance with State law.

20 III. STATUTORY FRAMEWORK AND FACTUAL ALLEGATIONS

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22 8. In 1987, the California Legislature created the correctional treatment center
23 licensing category governing the provision of specified inpatient health and mental health
24 services in California's correctional facilities. (Health & Saf. Code, § 1250 *et seq.*, Stats.
25 1987, c. 1282, (S.B. 331), § 2.) In 1993, the Legislature extended the effective date of
26 the correctional treatment center licensing category and exempted California's
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1 correctional facilities, including CYA, from the licensing requirements until January 1,
2 1996. (Health & Saf. Code, § 120, subd. (l), Stats. 1993, c. 932 (S.B. 910), § 1.) In
3 1994, the California Department of Health Services issued regulations governing
4 correctional treatment centers. (C.C.R., Title 22, Chpt. 12, Art. 1, §§ 79501 through
5 79861, filed 6-10-94, operative 1-1-96 pursuant to Health & Saf. Code, § 1250 (Register
6 94-23).) CYA continues to operate unlicensed correctional treatment centers, in
7 violation of California Health and Safety Code sections 1250, subdivision (j), and 1253.

9. California Health and Safety Code section 1250 defines “correctional treatment
10 center” as a health facility operated by CYA, the Department of Corrections or local law
11 enforcement agencies, that “provides inpatient health services to that portion of the
12 inmate population who do not require a general acute care level of basic services.”
13 (Health & Saf. Code, §1250, subd. (j)(1).) “Health facility” is defined as, “any facility,
14 place, or building that is organized, maintained and operated for the diagnosis, care,
15 prevention and treatment of human illness, physical or mental, including convalescence
16 and rehabilitation and including care during and after pregnancy, or for any one or more
17 of these purposes, for one or more persons, to which the persons are admitted for a 24-
18 hour stay or longer. . .” (Health & Saf. Code, §1250.)

10. California Health and Safety Code section 1253 prohibits a governmental agency
21 from operating any health facility without obtaining the requisite license required by the
22 Health Facilities chapter of the Code. (Health & Saf. Code, § 1250 *et seq.*)

11. Since January 1, 1996, Respondent Harper, and his predecessors have operated
25 and continue to operate unlicensed correctional treatment centers in CYA institutions.
26 This is so despite clear directives from the Department of Health Services that CYA is
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operating inpatient services that come within the licensing requirements.

12. As a result, wards have been subjected to inpatient health and mental health treatment services that fail to meet the standards imposed by statute and regulation, and are not subject to the oversight intended by the licensing requirements.

III. CAUSE OF ACTION

13. Respondent's continued operation of unlicensed correctional treatment centers violates the provisions of California Health and Safety Code sections 1250, subdivision (j) and 1253, and the regulations promulgated thereunder as California Code of Regulations, Title 22, sections 79501 through 79861. As a result, taxpayers are subject to illegal and wasteful expenditures in the delivery of health care services to wards in CYA.

14. Respondent has a clear and mandatory duty to operate CYA's health facilities in accordance with the law.

PRAYER FOR RELIEF

Petitioner requests that this Court:

1. Issue a writ of mandate pursuant to California Code of Civil Procedure section 1085, commanding Respondent to act immediately to comply with the licensing requirements of California Health and Safety Code sections 1250, subdivision (j) and 1253, and the regulations promulgated thereunder as California Code of Regulations, Title 22, sections 79501 through 79861.

2. Award Petitioner's attorneys reasonable attorneys' fees and costs; and

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3. Grant such other and further relief as the Court finds just and proper.

Dated: May 8th, 2000 at San Francisco, California.

Respectfully submitted,

SUSAN L. BURRELL
MARIA F. RAMIU
SHANNAN L. WILBER
CAROLE B. SHAUFFER
YOUTH LAW CENTER

Attorneys for Petitioner

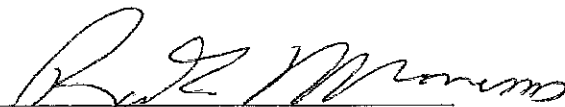
By: Susan L. Burrell
Susan L. Burrell

VERIFICATION

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I am the Petitioner in this action. I have read the above Petition for Writ of Mandate and know its contents. All facts alleged in the petition are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on MAY 9 2000 at Pasadena, California.


Robert E. Morris, M.D.