

1 SUSAN L. BURRELL, Bar No. 74204
2 SHANNAN WILBER, Bar No. 121280
3 MARIA F. RAMIU, Bar No. 146497
4 CAROLE B. SHAUFFER, Bar No. 10026
5 YOUTH LAW CENTER
6 417 Montgomery Street, Suite 900
7 San Francisco, CA 94104
8 (415) 543-3379

9 Attorneys for Petitioner

ENDORSED
FILED
San Francisco County Superior Court
DEC 26 2000
GORDON PARK-LI, Clerk
BY: CRISTINA E. BAUTISTA
Deputy Clerk

10 CALIFORNIA SUPERIOR COURT, UNLIMITED JURISDICTION
11 CITY AND COUNTY OF SAN FRANCISCO
12 WRITS AND RECEIVERS, ROOM 302

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

Case No. 312092

STATEMENT OF DECISION

20 Petitioner's Petition for Writ of Mandate came on for hearing on November 15, 2000 in
21 Department 302, before the Honorable Ronald E. Quidachay. Susan L. Burrell appeared as
22 attorney for Petitioner, and Matthew D. Mandelbaum appeared as attorney for Respondent. After
23 considering the moving, opposing and reply papers, admissible evidence and exhibits, and the
24 arguments made during the hearing, the Court took the matter under submission. On November
25 28, 2000, the Court issued an order granting the Petition, on the following factual and legal basis:
26

27 1. In 1987, the California Legislature created the correctional treatment center ("CTC")
28 program to insure that the Department of the Youth Authority provide competent and safe

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

inpatient health services to the inmate population who do not require a general acute level of basic services. (Cal. Health & Saf. Code §1250(j)(l).)

2. As part of this program, the Legislature required that CTCs obtain licenses by January 1, 1994, and prohibited the operation of a CTC without a license. (Cal. Health & Saf. Code § 1253.) The Legislature extended the effective date for the licensing requirements to January 1, 1996.

3. Respondent admits that Youth Authority currently provides inpatient health services, including medical and/or mental health services, to some wards at each of its eleven facilities who do not require a general acute care level of basic services, but are in need of professionally supervised health care beyond that normally provided in the community. (Cal. Health & Saf. Code § 1250(j).)

4. Notwithstanding the statutory requirements and a generous compliance period, Respondent has yet to procure a license for any of its eleven facilities.

5. Since Respondent has chosen to operate the CTCs, he has a clear, present, and ministerial duty to obtain a license for each CTC.

6. Respondent argues that the writ should not issue because it is "willing" to comply the prescribed licensing requirements (*See, e.g., State Board of Education v. Honig, (1993) 13 Cal.App.4th 720*) under California Health and Safety Code sections 1250 and 1253, and the regulations promulgated thereunder.

7. The evidence discloses that for the last several years Respondent has worked toward licensing merely three of its eleven facilities, even though inpatient health services are being provided to at least some wards at all eleven facilities.

8. The record is silent regarding any effort to license the eight remaining facilities. In other words, almost five years after the mandatory compliance deadline, Respondent has yet to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

license even one facility and is in the process of licensing only three of the eleven facilities.

9. Given these circumstances, the Court is not convinced that Respondent is willing to perform without coercion.

10. The court rejects each of the other arguments set forth in Respondent's responsive pleadings as reasons to deny the issuance of a writ in this case, including arguments that a writ is improper because Youth Authority must involve third parties in pursuing licensing; that the act to be compelled is not ministerial; that the issuance of a writ would be nugatory and unavailing; and that there is no evidence that Respondent has refused to perform the act to be compelled.

11. Petitioner has a beneficial interest in the Respondent's performance of his statutory duty; and Petitioner has no plain, speedy, adequate remedy at law.

12. Accordingly, the Court grants the writ and orders Respondent to:

- a. Comply with California Health and Safety Code sections 1250 and 1253, and the regulations promulgated thereunder, as to the Heman G. Stark Youth Correctional Facility, the Ventura Youth Correctional Facility, and the Northern California Youth Correctional Center and Clinic by December 28, 2001.
- b. Comply with California Health and Safety Code sections 1250 and 1253, and the regulations promulgated thereunder, as to the eight remaining facilities by December 27, 2002.
- c. Develop a written plan to implement the above statutory guidelines by February 2, 2001, or alternatively, develop a written plan for servicing the inpatient inmate population if licensing will not be pursued.
- d. Submit the plan to Petitioner by February 9, 2001.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

e. Meet and confer with counsel for the Petitioner regarding the terms of the implementation plan by March 9, 2001.

Dated: DEC 14 2000

RONALD EVANS QUIDACHAY
Ronald Evans Quidachay
Judge of the Superior Court