



1                   **SPECIAL MASTER’S RESPONSE TO THE COURT’S QUESTIONS**  
2   **AND PROPOSED MASTER’S DUTIES**

3                   This report is written in response to the Court’s Minute Order of December  
4 28, 2005, requesting the special master to answer a set of questions regarding his  
5 role as special master and the Court’s Minute Order of December 16, 2005  
6 requesting a response to the proposed order amending special master duties and  
7 appointment for the special master.

8                   **(1) Key Objectives and Strategies**

9                   I was appointed in December 2004 with a set of specific duties and a clear  
10 mandate to “facilitate” the parties reaching agreement and resolving issues.  
11 Specifically the Court stated that the master’s role was to reduce and ideally avoid  
12 contentiousness, adversarial interactions and delay and enable both sides to  
13 cooperate to the maximum extent possible to achieve the purposes of the Judgment.  
14 Transcript of Hearing, December 15, 2004, page 5. The Court further emphasized  
15 that the special master’s role was to act as a facilitator (page 17 and 18) and the  
16 Court would decide any disputes that the master could not resolve.

17                   In agreeing to serve as special master it was clearly understood that the  
18 master’s role was to facilitate the parties working together to achieve the purposes  
19 of the Judgment and subsequent orders of the Court and to make recommendations  
20 regarding the strategies that would result in higher TBS utilization. It was clear to  
21 me that the Court expected TBS utilization to increase. The purpose of the May 11,  
22 2001 Judgment is to ensure that members of the certified class have access to  
23 Therapeutic Behavioral Services (TBS) within the class member’s Mental Health  
24 Plan (MHP). It also required the Defendant to take corrective action regarding  
25 MHPs that had “disproportionately low TBS utilization.” Subsequently, the Court  
26 found that TBS was underutilized leaving thousands of class members without  
27 access and that the Defendant had failed to demonstrate what constitutes an  
28 adequate TBS approval rate and had failed to take effective corrective actions

1 against MHPs with no or low utilization (Interim Judgment Clarifying Order filed  
2 January 29, 2004). In July 2004, a “Plan to Increase Utilization and Joint Stipulation  
3 In Support Thereof” was ordered. The plan contained a set of activities that the  
4 Defendants agreed to do to address the under utilization of TBS. Another objective  
5 that I had was to reduce the volume of information and issues that were being  
6 brought to the Court, since it was also clear that the Court’s time was very limited.

7       Initially the master made the assumption that the parties were working toward  
8 the same goal – increase TBS utilization- but were not in agreement over what the  
9 most effective strategies would be to achieve increased TBS utilization. It was also  
10 assumed that the parties were in agreement on implementing a version of qualitative  
11 individual child reviews that could be used to evaluate whether children were  
12 receiving appropriate services in the “focused review” process and that could be  
13 used as an organizational development and teaching tool. The master took as a  
14 working hypothesis that if the Defendants were working diligently to increase  
15 utilization and steps were being taken that would result in an ongoing trajectory of  
16 improved utilization and appropriate services to class members then it was likely  
17 that I would recommend that the Court’s jurisdiction be terminated in November  
18 2005. The special master informed the parties of this basic view early on in our  
19 initial discussions.

20       During the first visit to meet with the parties in Sacramento in January 2005, I  
21 was informed by the Defendants that their position was that TBS was not  
22 underutilized and class members were receiving other appropriate services in lieu of  
23 TBS and that clinician Judgment was determining who got TBS. The master was  
24 also informed that the Defendants were opposed to a TBS utilization benchmark  
25 because it would not be clinically appropriate to impose a quota on clinicians and a  
26 benchmark might constrain their clinical Judgment.

27       I accepted that the Defendant’s position might be correct and proceeded to  
28 address three issues. My first objective was to develop a more in-depth

1 understanding about how EPSDT and TBS services for children actually worked  
2 and were implemented in MHPs through visits to MHPs and interviews with staff  
3 and providers. It also included document and data review. I focused on the  
4 identification of class members, the planning of services for class members and the  
5 consistency and quality of services that were delivered to class members based on  
6 the planned services. My objective was to become familiar with availability, scope  
7 and accuracy of existing quantitative data regarding the delivery and outcomes of  
8 EPSDT, TBS and residential services and the organizational context and culture in  
9 which the services were delivered.

10 The second objective was to facilitate the parties working on resolving the list  
11 of issues that had been identified as disputed by the parties. The goal was to enable  
12 the parties to preferably, achieve agreement and resolution of the issue and if not  
13 then to clarify what the issue in dispute really is and the dimensions of the  
14 disagreement and the options the parties offered for resolution. The master is  
15 strongly committed to collaboration and team effort and clearly heard the Court's  
16 commitment to collaborative problem solving. I was very committed to working  
17 jointly and collaboratively with the parties to develop a team approach that  
18 thoughtfully and responsively proceeded to problem solve issues and barriers to  
19 achieving the purposes of the Judgment.

20 The third objective was to work with the parties to develop the focused  
21 review process and to participate in the implementation of the five agreed on  
22 focused reviews. It was also to assess whether the process and the results were  
23 likely to have a positive impact on TBS utilization.

24 The fourth objective was to develop sufficient understanding of the context  
25 and situation of DMH and the delivery of TBS to class members to make an  
26 informed recommendation regarding the need for a minimum utilization benchmark  
27 for Therapeutic Behavioral Services. It was also to assess whether the Defendants  
28 were in fact working diligently and in good faith to achieve the purposes of the

1 Judgment and conversely whether the Plaintiffs were being unreasonable in their  
2 demands and expectations or proposed solutions or working in good faith toward  
3 achieving the purposes of the Judgment.

4 **(2) What did the Special Master accomplish in the past year?**

5 As Special Master, I accomplished several objectives. I developed an  
6 understanding of the EPSDT and TBS programs and of how well the programs were  
7 implemented by a sample of MHPs representing low TBS utilization, higher TBS  
8 utilization, large MHP and small MHP. There was a very wide range of access,  
9 quality, consistency, interagency collaboration, and accountability across the  
10 counties. The results of interviews with providers and MHP staff have been reported  
11 in prior special master reports. The master also received a range of data reports and  
12 worked with the parties to define the range of quantitative measures that might be  
13 used to create management of TBS service delivery and results that can be tracked  
14 and evaluated for adequacy of utilization and quality.

15 The list of disputed issues was refined and narrowed and the parties did hold  
16 discussions about options to resolve the disputed issues. Very little agreement was  
17 reached on substantive matters and briefing papers outlining the parties' respective  
18 positions were developed. The special master made recommendations to the Court  
19 in the October 12, 2005 special master's report regarding four of the disputed issues.

20 The five focused reviews were a positive accomplishment. These reviews  
21 have shown that there are significant systemic barriers to class members accessing  
22 and receiving TBS on a timely basis. My final report to the Court presents the  
23 findings of my participation in the focused reviews. These findings and conclusions  
24 documented significant systemic problems at the MHP level. October 12, 2005  
25 report, pages 12-17, paragraph 18, 19, 20. I strongly recommend that the process be  
26 refined to create a more structured process. A structured process is necessary to  
27 make comparisons over time, to improve consistency of the review results and to  
28 clarify performance expectations operationally. The quality review makes explicit



1 Defendants argued that each party should develop a separate briefing paper. I agreed  
2 with Defendants although in retrospect, that was not the best strategy because it  
3 emphasized the differences between the parties and did not create sufficient forum  
4 to develop meaningful problem solving. That option was still clearly available to the  
5 parties, however, and the process did clarify the respective positions of the parties.  
6 Another example is the master's offer to provide a qualitative review protocol to use  
7 or to modify to use in the focused reviews to assess the appropriateness of services  
8 provided to children who were class members. The Defendants decided not to use  
9 the process even though the staff who were going to conduct the reviews indicated it  
10 would be helpful to have the structured framework and improve consistency. I  
11 deferred to the Defendants' decision on this point. However, over time it became  
12 clear that the Defendants were not in fact engaging in a meaningful and thoughtful  
13 collaborative process to determine strategies and actions that would significantly  
14 increase TBS utilization as ordered by the Court; essentially they took advantage of  
15 the deference I accorded them to protect the status quo.

16 The barrier is essentially that the Defendants were not willing to agree to  
17 significant activities that would likely lead to a change in the status quo. During the  
18 course of participating in the development of the focused reviews and in meeting  
19 with the parties to discuss the resolution of disputed issues, it became clear that the  
20 Defendants were only willing to do the five focused reviews as jointly agreed and  
21 ordered by the Court. Their position is TBS utilization is adequate and that the law  
22 suit should end in November 2005 because they have established TBS as a service,  
23 minimally completed five focused reviews, provided some data on a web site, and  
24 contracted for training and technical assistance through the California Institute for  
25 Mental health (CIMH). In July 2005 at a meeting of the parties in Los Angeles it  
26 was acknowledged that CIMH had actually provided little technical assistance or  
27 training on TBS since the jointly agreed on and ordered plan to increase TBS  
28 utilization. The Defendants were willing to make some procedural clarifications and

1 send out positive statements regarding TBS but it was very clear that these activities  
2 were not having a significant impact on access, delivery and utilization of TBS  
3 services

4 Another barrier is the absence of data and outcomes necessary to manage and  
5 assess quality and effectiveness of TBS and the context within which it is delivered  
6 which is EPSDT. Neither DMH nor the counties have consistent systems in place to  
7 identify class members, track the mental health services they receive and what  
8 outcomes or progress is achieved. Defendants also argue that the data measures set  
9 up in the Judgment are unreliable and so discount the evidence that TBS utilization  
10 is not increasing or declining.

11 In August 2005, TBS utilization had not changed significantly since the Court  
12 had determined it was under utilized. The master was not able to find evidence that  
13 class members were consistently being identified and receiving services appropriate  
14 to their needs in lieu of TBS. To the contrary there was considerable evidence that  
15 there was not systemic accountability that would create the management capacity  
16 and tools necessary to ensure that class members were achieving appropriate  
17 services including when appropriate TBS.

18 By late July 2005, based on my experience as an administrator of mental  
19 health systems, as a Court monitor of systemic mental health and child welfare  
20 reform and the experience of working with the parties including review of the  
21 disputed issues briefing papers, I concluded that the Defendants were not taking  
22 effective action to increase the utilization of TBS and were unwillingly to take any  
23 actions that would significantly increase the probability of TBS utilization  
24 increasing. The focused review process was a positive accomplishment but the  
25 volume of reviews as proposed by the Defendants will only address a small number  
26 of counties in the next 18 months and there is not yet any evidence that this process,  
27 as implemented by Defendants, will in fact increase TBS utilization or the  
28 appropriateness of services to TBS class members. At that point the special master



1 concluded that the Defendants' minimalist position regarding TBS utilization and  
2 resistance to developing and implementing strategies that would increase TBS  
3 utilization precluded his ability to facilitate meaningful compromise and resolution  
4 of the disputed issues that would result in the increased utilization of TBS and  
5 ensure the achievement of the purposes of the Judgment.

6 Beginning in August 2005, the special master told the Defendants in meetings  
7 of the parties and discussion of disputed issues including potential data measures of  
8 accountability that the Defendants had not increased utilization and that there  
9 needed to be additional actions taken to achieve the purposes of the Judgment. They  
10 were also told that it was highly unlikely that the Court would terminate jurisdiction  
11 in November.

#### 12 **Recommendations to Overcome Unresolved Barriers**

13 Based on the preceding experiences and facts, the duties of the special master  
14 as currently ordered are not adequate to achieve the purposes of the Judgment. The  
15 purposes of the Judgment require that the Defendant ensure that class members have  
16 access to TBS services within their MHP and MHPs are obligated under EPSDT to  
17 provide either TBS if needed consistently regardless of the county in which the  
18 child resides (*statewideness*) or other appropriate services depending on the needs of  
19 the child in a *timely* and *appropriate manner*. Given the Defendants' position that  
20 TBS utilization is adequate and there is not a problem to be fixed, the special master  
21 is in a weak position to effectuate collaborative working and problem resolution that  
22 will result in increased TBS utilization and achieve the purposes of the Judgment.

23 In order to achieve the purposes of the Judgment in the foreseeable future, a  
24 successor special master will require additional, necessary authority and should  
25 closely work with the Court to oversee a system change process. It will be more  
26 efficient if the special master has direct communication with the Court to ensure that  
27 clear and timely communication occurs necessary to achieve the purposes of the  
28 Judgment. In addition, the special master will likely need to be able to obtain

1 independent monitoring until the Defendants develop a robust and effective capacity  
2 to evaluate and monitor performance, detect and correct service delivery  
3 deficiencies and inadequate quality of performance and demonstrate effective  
4 outcomes for *Emily Q.* class members.

5         The *Emily Q.* lawsuit, the *Katie A.* lawsuit and the Mental Health Services  
6 Act have all documented the systemic weaknesses that exist in children's services  
7 and particularly children's mental health and EPSDT services. There are in fact  
8 serious performance problems. In addition, each of these reform initiatives seek to  
9 obtain services in the community that are accountable, have documented outcomes  
10 and involve the children and families in a meaningful process of planning and  
11 delivering services. There is a strong opportunity at this time to make significant  
12 systemic improvements if these efforts are developed through a participatory  
13 process at the local level and designed to reduce the barriers that limit access and  
14 timely delivery of services to *Emily Q.* class members, *Katie A.* class members and  
15 ensure that all EPSDT children are appropriately served. It will be necessary for the  
16 Court to ensure that there is sufficient independent oversight and performance  
17 benchmarks until such time as the Defendants demonstrate that they are committed  
18 to make the necessary improvements and to link the efforts across the reform  
19 initiatives so that the cost efficiencies are achieved and empirical data can  
20 demonstrate that progress is being made in eliminating the many barriers to services  
21 that have been identified.

22         At a minimum, MHPs need to be able to identify *Emily Q.* class members on  
23 a systemic and ongoing basis and have the capacity to show that class members have  
24 been diligently considered for both TBS and other service needs dependent on their  
25 particular needs and context. The most direct measure of these efforts will be  
26 through a random sample of class members who are reviewed to determine whether  
27 they have had appropriate access, diligent consideration of need and delivery of the  
28 most appropriate services based on the need, the preferences of the service

1 recipients and whether progress toward agreed on outcomes is being achieved.

2       There are no standardized instruments to assess service delivery  
3 fidelity/diligence. The approach that has proven most useful over the past fifteen  
4 years is the qualitative review process of a sample of children. Quantitative  
5 indicators such as timeliness measures, frequency counts are indirect indicators of  
6 quality and diligence and can be met without necessarily ensuring quality and  
7 effectiveness. For example, in child welfare the expectation is that caseworkers will  
8 see their children face to face at least once a month. The data may show that  
9 children are being seen but that may be a momentary “drive by” contact or a  
10 thoughtful interaction. The qualitative child review process is the most direct  
11 measure of diligence, quality and whether progress is being made. It shows in depth  
12 how systems work or don’t work for the individuals receiving services and the  
13 barriers that staff encounter in attempting to deliver appropriate services. This  
14 process is used widely across child serving systems in many states and by the  
15 federal government to assess the diligence, quality and near term results of services.  
16 This process would be useful to assess progress not only in *Emily Q.*, but also in  
17 *Katie A.* and the implementation of the Mental Health Services Act.

18       Contrary to the declaration of Ms. McCabe, which Defendants submitted  
19 regarding proposed amendments to the order of appointment, I am not trying to  
20 impose a proprietary protocol on the Defendants when I recommend the use of  
21 qualitative case reviews. I have stated that the focused review protocol needs to be  
22 more structured and have ratings. It is true that one of my areas of expertise is the  
23 development of qualitative review protocols and I have offered on multiple  
24 occasions to work with the Defendants to develop an appropriate protocol to be used  
25 in this context. It is also possible to develop a protocol specifically to evaluate the  
26 fidelity of TBS services *per se* but that would not answer whether a sample of class  
27 members were receiving appropriate services in lieu of TBS. I also dispute the  
28 allegations that I apply standards inconsistently; the submission referenced by the

1 Defendants took information grossly out of context and compared apples and  
2 oranges. If the Court desires, I can provide further information regarding these  
3 matters but at this time it is probably not worth the Court's time given that I am no  
4 longer available to serve as master.

5 **(4) Transition and Follow-up**

6 The special master apologizes to the Court for having to withdraw at this  
7 point in time. It is clear that to make progress toward achieving the purposes of the  
8 Judgment it is going to take considerable time of a special master and whoever  
9 serves will likely need additional assistance. My long standing working relationship  
10 and monitoring role with *R.C. v Walley* case pending in federal district court in  
11 Alabama before the Honorable Ira Dement will require my full time attention for the  
12 next three months. I did not think it was appropriate to request that the Court wait  
13 until I was available to continue the work of the special master. I will be glad to  
14 provide *pro bono* telephonic consultation over the next several months to the new  
15 special master if the Court determines a new special master is necessary and of  
16 course all the special master's reports are available. In April, my schedule should  
17 provide for some level of participation in the focused review process if the Court or  
18 the new special master determines that is appropriate.

19 **(5) Billing and Current Outstanding Invoice**

20 See attachment for final billing and invoicing information.

21  
22 Dated: January 6, 2005

Respectfully submitted,

23  
24   
25 Ivor D. Groves, PhD

26 Special Master  
27  
28

PROOF OF SERVICE

1 STATE OF FLORIDA            ) ss.  
2 COUNTY OF LEON            )

3 I am over the age of eighteen years and not a party to the within action. I am Special Master  
4 appointed by the United States District Court, Central District of California. My business address is  
5 2107 Delta Way, Tallahassee, Florida 32303.

6 On *January 6, 2006* I served the foregoing document(s) described as:

**Spcl Master's Response to the Court's Questions and Proposed Master's Duties**

7 on the interested party(ies) in this action by /placing the true copies thereof enclosed in sealed  
8 envelopes addressed as stated on the attached mailing list /placing the original **XX**/placing a true  
9 copy thereof, enclosed in sealed envelope(s) addressed as follows:

10 Mateo Muñoz  
11 Deputy Attorney General  
12 State of California Department of Justice  
13 Office of the Attorney General  
14 1300 I Street  
15 P.O. Box 944255  
16 Sacramento, CA 94244-2550

Nancy Shea  
Mental Health Advocacy Services  
3255 Wilshire Blvd. Suite 902  
Los Angeles, CA 90010

17 Melinda Bird  
18 Protection & Advocacy, Inc.  
19 3580 Wilshire Blvd., Suite 902  
20 Los Angeles, CA 90010

Bob Newman  
Western Center on Law and Poverty  
3701 Wilshire Blvd., Suite 208  
Los Angeles, CA 90010-2809

21 **XX** BY MAIL) I deposited such envelope(s) in the mail at Tallahassee, Florida. The envelope(s)  
22 was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of  
23 collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on  
24 that same date in the ordinary course of business. I am aware that on motion of party served, service  
25 is presumed invalid if postal cancellation date or postage meter date is more than one day after date of  
26 deposit for mailing in affidavit.

27 \_\_\_(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the addressee  
28 as addressed above.

\_\_\_ BY ELECTRONIC TRANSFER) I caused all of the pages of the above-entitled document to  
be sent to the recipient(s) /noted above, /on the attached service list, via electronic transfer (FAX) at  
the respective FAX number(s) /indicated above, /on the attached service list.

Executed on this *6th of January, 2006*, at Tallahassee, Florida. I declare under penalty of perjury  
under the laws of the State of Florida and the United States that the above is true and correct.

  
Ivor Groves, DECLARANT