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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EMILY Q. et al.,)	CASE NO. CV 98-4181 AHM (AJWx)
Plaintiffs,)	SUPPLEMENT TO SPECIAL
v.)	MASTER'S RESPONSE TO THE
DIANA BONTÁ,)	COURT'S QUESTIONS AND
Defendant.)	PROPOSED MASTER'S DUTIES
)	Honorable A. Howard Matz
)	Ctroom: 14

This supplemental report is written to provide further discussion to the Court regarding my considerations regarding the special master's role in the resolution of the *Emily Q.* lawsuit. Upon rereading my submission of January 6, 2006, I determined that a clear discussion of the challenges that must be addressed to resolve the matters of *Emily Q.* successfully and bring the lawsuit to close were also needed. To provide a further context, this supplemental report outlines my considerations in beginning the role of special master as well as suggestions for a course of action leading to meeting the purposes of the Judgment.

1 My approach to system change as a manager and court monitor is to develop
2 understanding of the facts and context in a particular situation before imposing or
3 recommending specific actions, strategies, or a critical path of development. To
4 this end, during the first six months of my role, I often deferred to the Defendant's
5 prerogatives and preferences, and was careful not to be too intrusive while I
6 oriented myself to the issues, available data, and perceived barriers.

7 California is a very large state, and I was acutely conscious that any major
8 system change effort was going to take time and significant resources. As I stated
9 in my response to the court, my initial approach was to define success as the
10 Defendant making progress and taking diligent action to increase TBS utilization.

11 I also recognized and confirmed that Therapeutic Behavioral Services (TBS)
12 occurs in the context of a larger system of Medicaid EPSDT services that Mental
13 Health Plans (MHPs) provide to Medicaid eligible children. This means that lack of
14 access to TBS, delays in receiving TBS or other services, and lack of consistency
15 and quality in service delivery may be a result of several variables. These include a
16 break down in the TBS process or capacity per se, a break down in access to
17 mental health EPSDT services, or a lack of consistency and quality control across
18 the whole MHP system. In the focused reviews, we found breakdowns at all levels.
19 Access and service delivery at the MHP level are also affected by the
20 communication and working relationships between the MHP and Child Welfare,
21 Juvenile Justice, Family Court and providers of services. Improving access and
22 appropriate utilization of TBS services may require improvements in specific TBS
23 processes and services at the MHP level, or the barriers may reside in broader
24 EPSDT performance and interagency coordination issues. Refinement may require
25 improvement and intervention at each of these levels. Proof of refinement or
26 improvement must be documented through verifiable quantitative and qualitative
27 data.

1 Changing the consistency of performance and service utilization in a child
2 serving system requires setting clear practice performance expectations, leadership
3 that promotes change and adherence to performance expectations, necessary
4 resources and capacities, measurement of progress using quantitative and
5 qualitative indicators, and feedback loops to implementers as to whether they are
6 making progress toward the defined expectations. It has been my experience that
7 these conditions and capacities must exist if true systemic improvement is to be
8 made. When these conditions exist and are well executed, more children receive
9 appropriate quality services on a consistent basis resulting in more positive
10 outcomes. This is true whether the reform is driven by management or a lawsuit.
11 To make significant systemic change, leadership must work diligently to create the
12 conditions that promote change. The forward motion that creates change must
13 come from leadership champions within the organization, or be imposed externally
14 until the internal capacity and motivation exists.

15 The challenges presented by *Emily Q.* at the present time are several. First,
16 an operational definition of “achieving the purposes of the Judgment” must be
17 agreed upon or imposed. If the current status quo is acceptable and the Court finds
18 that that the data presented in the September 30, 2005, letter from Mr. Munoz to
19 the special master is sufficient evidence of increased utilization, and these data
20 satisfy the court that the purposes of the Judgment have been met, then the lawsuit
21 should end. (See discussion of these issues in the October 12, 2005 Special
22 Master’s Report and specifically page 10).

23 If current reported utilization rates are not satisfactory to the Court, then
24 options that can be used as exit criteria to determine when the Court’s jurisdiction
25 should be terminated must be considered. It is essential that an operational definition
26 of “successfully achieving the purposes of the Judgment and subsequent orders” be
27 established so that the Defendant can be held accountable for the lack of, or
28 achievement of, progress and ultimately for meeting the criteria for success.

1 Creating exit criteria would also allow for explication and development of the
2 critical path to success that would guide a strategic plan.

3 It would be essential that the Court establish a short timeframe for the parties
4 to negotiate exit criteria with the oversight and facilitation of the successor master.
5 If it is unlikely that agreement on exit criteria would not be achieved in a timely
6 manner, the master should be charged and given the capacity to bring together an
7 external panel of expertise to develop the exit criteria. Another option would be for
8 the master and a small of experts to develop initial criteria, and allow the parties to
9 work together to negotiate refinements.

10 One approach to defining exit criteria might be as follows. First, the
11 Defendant would demonstrate a trend of increasing utilization of TBS based on a
12 definition of acceptable rate of growth, including demonstration of improved
13 utilization in counties that have utilization below a defined rate. Second, training and
14 technical assistance of sufficient scope, intensity and content as documented by
15 numbers of participants and numbers of sessions, and verified by local
16 stakeholders' assessment of value and satisfaction would be delivered. Third, at
17 least one Focused Review a month would be conducted in an MHP with lower
18 utilization rates. These reviews would serve as a training opportunities as well as
19 documentation of whether practice and outcomes were improving. Together, these
20 three strategies would define the exit criterion of "the defendant working diligently
21 to make improvements in the access and consistent delivery of the TBS services."
22 These strategies would be used to work with counties on an ongoing basis to
23 achieve improved access, quality, and consistency with defined benchmarks and
24 accountability.

25 Another approach to exit criteria is the one that I used in the *R.C.* case in
26 Alabama and in the *Felix* case in Hawaii. The approach is also being used in the
27 child welfare case in Utah where Paul Vincent is the court monitor, and in the
28 *Dixon* case in the District of Columbia where the court monitor is Dennis Jones.

1 The strategy in this scenario would be the creation of quantitative indicators by
2 county that clearly show that class members are being identified, receiving
3 services, and whether they are moving into more restrictive or less restrictive
4 settings. Stratified random samples of children who are class members would be
5 reviewed with a qualitative review process (Focused Reviews) that document the
6 diligence of practice and the progress being made for the sample of children. A
7 standard would be set that at least, for example, 85% of the sample must be judged
8 to have overall acceptable performance of practice functions to be determined
9 compliant. Quantitative indicators would show timely delivery of services and
10 trends toward more services being received in the community. Local stakeholder
11 interviews and focus group discussions would indicate that progress is being made.
12 Using this strategy, it is both time consuming and costly to raise all counties to an
13 acceptable level of performance. For this reason, I did not recommend this specific
14 approach to exit criteria for California. However, it is the most direct measure of
15 practice and would show whether class members are receiving TBS or other
16 appropriate services in lieu of TBS.

17 If I were Director of the DMH attempting to implement systemic reform
18 through the Mental Health Services Act, *Katie A.* and *Emily Q.*, I would use this
19 approach as both a measurement and system development tool. Leadership could
20 promote implementation at the MHP level as a component of the quality assurance
21 system. At the state level, it would serve as a tool of measurement and
22 accountability. Both Indiana and Missouri have chosen (without a lawsuit) to
23 implement this type of approach for both children and adults served by the mental
24 health program statewide as a key accountability and system development process.
25 It would be possible for the Defendants to agree to this process for system reform
26 purposes, with the understanding that a practice performance standard would not
27 be used as criteria for compliance in the lawsuit, but that developing and

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1 implementing the process would be a component of the exit criteria that might also
2 include components of other options.

3 A third option for exit criteria is a TBS utilization benchmark set for the state
4 overall and for counties individually to meet, or show through substantial data, how
5 class members' service needs are being met in lieu of TBS. This option requires
6 development of much improved data collection, analysis, and synthesis at the MHP
7 level, as well as improvements in quality assurance activities by the MHP. These
8 were key deficiencies of many MHPs identified by the External Quality Review
9 Report (EQRO report) Referred to in my October 12, 2005 report.

10 There are pros and cons and variations to each of these three options for
11 creating and implementing exit criteria for *Emily Q.* Regardless of which is chosen,
12 it is absolutely essential that clear criteria and performance expectations be set that
13 define how and when the purposes of the Judgment are to be fulfilled. The master
14 was working toward meeting with the parties to facilitate the development of exit
15 criteria, and the Defendants expressed some interest. However, the positions taken
16 by the Defendants and the discussions that occurred up until that time did not make
17 me optimistic that meaningful criteria would be agreed to. Assuming the Court's
18 jurisdiction continues, then the primary concern should be that the Defendants must
19 "*perform*" to remedy the issues that mandate that the Court maintain jurisdiction.
20 By definition, if they cannot perform, then the Court will have to use external
21 interventions of increasing intensity and cost to achieve the purposes of the
22 Judgment in a reasonable timeframe.


23 For meaningful negotiations related to exit criteria and accountability for
24 performance to take place the right people must be at the table, and they must be
25 motivated to achieve agreement that will likely result in success. It was clear in my
26 interactions with the parties that I was facilitating discussion mostly with lawyers,
27 and that I was not having discussion and interaction with program leadership who
28 had the authority to make decisions. Because of my initial approach of showing

1 consideration and respect for the current administration while I got up to speed, I
2 did not make this an issue until I requested my meeting with Dr. Mayberg in
3 September 2005. However, I found the lack of interaction with decision makers to
4 be a barrier and an indicator of the low priority and minimalist response Defendants
5 had for resolving the issues of *Emily Q*. I would strongly recommend that the next
6 master, or the Court, require periodic meetings between the special master and the
7 Defendant's management team. At least a Deputy level member of the DMH
8 management team should be required to participate in all negotiations with the
9 parties and on problem solving until such time as a clear critical path of activities
10 leading to the achievement of the purposes of the Judgment have been set and
11 progress demonstrated.

12 The Court has determined that the purposes of the Judgment are not met and
13 that thousands of children still do not have appropriate access to TBS. My work
14 during the past year convinced me that this is the case, and that a stronger effort,
15 either on the part of the Court or through powers given to the special master, will
16 be required to move the state in a positive and productive direction for these
17 children.

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20 Dated: January 9, 2006

Respectfully Submitted

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23 Ivor D. Groves PhD
24 Special Master
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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 employed by the
4 Special Master appointed by the United States District Court, Central District of California. My
5 business address is 2107 Delta Way, Tallahassee, Florida 32303.

6 On *January 9, 2006* I served the foregoing document(s) described as:

**Supplement to Special 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

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

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

17
18 XX BY MAIL) I deposited such envelope(s) in the mail at Tallahassee, Florida. The envelope(s)
19 was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of
20 collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service
21 on that same date in the ordinary course of business. I am aware that on motion of party served,
22 service is presumed invalid if postal cancellation date or postage meter date is more than one day
23 after date of deposit for mailing in affidavit.

24 _____(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the
25 addressee as addressed above.

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

Executed on this *9th 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.



Jan Black, DECLARANT