

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.B., by and through her next friend
Cassie Cordell Trueblood, *et al.*

Plaintiffs,

v.

Washington State Department of
Social and Health Services, *et al.*,

Defendants.

No. 14-cv-01178-MJP

**PLAINTIFFS' MOTION TO
EXTEND THE TEMPORARY
RESTRAINING ORDER**

This Motion to Extend the Temporary Restraining Order ("TRO") is brought by Plaintiffs pursuant to Federal Rule of Civil Procedure 65.

Background

On March 18, 2016, Plaintiffs filed its motion for a TRO due to the physical safety risks at the Yakima County Restoration Center ("YCRC") that put class members in immediate risk of harm. Dkt. 193. On March 28, 2016, this Court scheduled a hearing on April 8, 2016, to hear oral argument on the TRO motion. Dkt. 211. In addition to argument, the Court also ordered the Parties to "present evidence to the Court about the physical state of the Yakima facility, as it exists at the time of the hearing focusing on (1) physical aspects of the facility that present significant safety

1 hazards to class members, and (2) any changes to the physical facilities that have been made since
2 the Court's March 9, 2016 site visit." *Id.*

3 At the hearing on April 8, 2016, Plaintiffs asked the Dr. Mauch, the Court Monitor, and her
4 expert, Dr. Pinals, to discuss their safety concerns with YCRC. *See* Cooper Decl. at Ex. A. Dr.
5 Pinals testified that the open stairway and the seclusion and restraint room at YCRC present
6 significant potential risks to class members. *Id.* at 46. Dr. Pinals went on to state that she was
7 concerned with the lack of clear policies regarding the use of seclusion and restraint. *Id.* at 47. Dr.
8 Mauch joined Dr. Pinals' concerns regarding the lack of a seclusion and restraint policy stating:

9 And given the lack of a clear policy and given the fact that seclusion and restraint is
10 probably the most risky intervention one might take in a psychiatric hospital or
11 residential treatment environment, it seems particularly important that this be sorted out,
12 that there be a clear policy, a safe policy, and one that complies with CMS certification
standards such as apply in the hospital, or Joint Commission on accreditation of
healthcare organization policies such as typically applies in other programs that
Comprehensive runs, such as their evaluation and treatment facility.

13 *Id.* at 55.

14 On April 12, 2016, this Court granted Plaintiffs Motion for a TRO in part. Dkt. 216.
15 Defendants were ordered to take two remedial steps to address the risk to class members. First,
16 Defendants were ordered to "seal off the staircase" and close the second floor of the facility "unless
17 and until the jumping, falling, and hanging risks posed by the staircase have been remediated." *Id.*
18 at 6. Second, Defendants were prohibited from using the seclusion and restraint room until they
19 remediated the ligature risks and adopted a clear policy on the use of seclusion and restraint and
20 "secure approval of that policy from the Court Monitor" followed by training of the staff. *Id.* The
21 Court stated the TRO "would remain in effect until April 22, 2016, or until proof of compliance has
22 been submitted to the Court and the Court Monitor and is found acceptable by the Court, whichever
23 is earlier." *Id.* at 7.

Extending the TRO for Good Cause

Plaintiffs are now requesting an extension because Defendants have failed to comply with both requirements of the TRO and the risks to class members persist. Federal Rule of Civil Procedure 65(b)(2) states that a TRO may not exceed 14 days *unless* there is good cause to grant an extension and the reasons for the extension are entered into the record. Here, good cause is warranted for two reasons.

First, Defendants have failed to produce proof of compliance regarding the jumping, falling, and hanging risks posed to class members due to the open stairwell. Instead, on April 20, 2016, Defendants' counsel concedes, "The possible options regarding the stairwell are still under review." Cooper Decl. at Ex. B. Thus, the TRO should be extended so that Defendants continue to seal off the second floor, temporarily mitigating the risk to class members.

Second, Defendants have failed to obtain the Court Monitor's approval of the facility's seclusion and restraint policy. On April 22, 2016, the Court Monitor and expert, Dr. Pinals, issued a report regarding their ongoing concerns with the policy. Cooper Decl at C. Noting that the revised policy does not require any physician supervision, Dr. Pinals concluded that "the nature of the program and the level of clinical needs we saw during our recent visit necessitate greater medical oversight[.]" Cooper Decl. Exh. C at 17. Dr. Pinals also reported that "a record review identified that documentation of the prior restraint episode was significantly lacking," and that documentation and staff training need improvement. *Id.* The revised seclusion and restraint policy has not "secure[d] approval of that policy from the Court Monitor" as required by this Court's Temporary Restraining Order.

For all the foregoing reasons, Plaintiffs request that the Court extend its Temporary Restraining Order until Defendants have remediated the jumping, falling, and hanging risks

1 associated with the stairwell and have the Court Monitor's approval regarding the seclusion and
2 restraint policy.

3 DATED this 22nd day of April, 2016.

4 Respectfully submitted,

5 /s/Emily Cooper

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- Nicholas A Williamson (NicholasW1@atg.wa.gov)
- Sarah Jane Coats (sarahc@atg.wa.gov)
- Amber Lea Leaders (amberl1@atg.wa.gov)

DATED: April 22, 2016, at Seattle, Washington.

/s/Christopher Carney
Christopher Carney