

IN THE CIRCUIT COURT FOR THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

IN THE INTEREST OF:

XXXXXXXXXXXXXXXXXXXXXXXXXX

CASE NO: DP 00-XXXXXX
DIV: 07

_____ /

**MOTION TO REQUIRE EPSDT SCREENING/TREATMENT
AND ADEQUATE RECORDKEEPING OF CHILD'S RECORDS**

COMES NOW the Legal Aid Society of the Orange County Bar Association, Inc., by and through the undersigned attorney, and respectfully requests that this Court order the DEPARTMENT OF CHILDREN AND FAMILIES to conduct the Early Periodic Screening and Diagnosis Testing (a/k/a Well Child Check-Up) as required by state and federal statutes and regulations, as more fully set forth in the accompanying memorandum of law, setting forth as grounds therefore the following:

1. The child XXXXXXXXXXXXXXXXXXXX first came to the attention of the Department in 1994. Reports in 1994, 1995, and 1999 were all closed with indicators, and voluntary services were offered. The child came under DCF supervision in 2000 after XXXXX attempted to kill himself by walking into traffic, and was Baker Acted. His father has been arrested at least fourteen times, including for cocaine use, domestic violence, child neglect and DUI. His mother has been arrested 41 times between 1985 and 1999. She has a cocaine addiction

and uses most of XXXXX's SSI check for her own benefit. Both the mother, XXXXX, and the father, XXXXXXXX, consented to dependency.

2. XXXXX was initially placed with his adult sister, XXXXXXX. However, he was removed from her home and placed at University Behavioral Center after he admitted sexually victimizing his brother and his cousin, XXXXXXXX's youngest son. There are indicators that XXXXX suffered from sexual abuse or sexual trauma as a younger child before being taken into DCF custody.
3. XXXXX has severe medical and behavioral problems, and an IQ of approximately 69. He has a congenital heart disease, and has had open heart surgery. He will require additional surgery in the future. At one point, he was receiving services from Children's Medical Services because of his heart condition. However, Barbara Markham of CMS informed me that these services were discontinued because of XXXXXXX's uncooperative behavior. On July 17, 2002, at a permanency staffing, the Staffing Committee Action Form reflects that, among other things, the child was to be referred to CMS for a medical evaluation. The form is attached hereto as "**Exhibit A**". Per conversation between the undersigned Health Advocate and Barbara Markham, Director of CMS, on or about

December 10, 2002, XXXXXXXX had not been referred to CMS.

4. XXXXX also has extreme emotional problems manifesting as serious behavioral issues. He is a resident at University Behavioral Center. We have been able to obtain some limited medical records for XXXX, including medical records from his cardiologist. We have had two pediatricians who volunteer their time with Legal Aid review XXXX's records. Copies of the reports of these two physicians are attached hereto as "**Composite Exhibit B**". The doctors expressed concern that XXXXX may be overmedicated, that some of the medications he is taking for behavioral issues may be contraindicated for his heart condition, that he might have thyroid problems or hepatitis B, that he is not receiving appropriate treatment for his behavioral problems, and that the "take-down" form of behavioral control used at UBC may put undue strain on his heart.
5. As part of a trial settlement in the case of M.E. v. Bush, No. 90-1008-C.V.-MOORE (S.D. Fla.), the Department has agreed to provide Comprehensive Behavioral Health Assessments to all children in DCF custody. Despite an order issued by this Court on December 1, 2002 to perform this assessment, there is no evidence that XXXX has received this service.

6. XXXXX is low functioning, with an IQ of approximately 69, and also has been diagnosed with ADHD. XXXX should be qualified for special education, and should be receiving special education services even in his residential treatment center. These records, as well as the health records, should be attached to or summarized in the case plan as required by federal law.¹ 42 U.S.C. §675; United States Department of Health and Human services Child Welfare Policy Manual, pp. 160-161, (which is attached to the memorandum accompanying this motion. The entire manual can be accessed at <http://www.acf.hhs.gov/programs/cb/laws/cwpm/index.jsp>).
7. There is or may be some overlap between the educational and medical records. There may be school psychological or behavioral evaluations that would help the doctors, and the medical records can reveal a child's special needs or conditions that may impact his or her school performance. In addition, as in this case, when the right hand does not know what the left is doing, dangerous conditions, such as the prescription of contraindicated medications, may threaten the child's very life. Certainly, as the entity standing *in loco parentis* to these children, the Department has an obligation to identify, and be

¹ A reasonable compendium of educational records would include the following regular and special education records: IEP's and IEP conference notes for the current and previous year, any psychoeducational testing, FCAT scores, disciplinary records for the current and previous years, any group testing results, any individualized assessments, any behavioral assessments and plans, grade and progress reports for the current and previous years.

fully aware of the child's educational and medical needs, and to be completely engaged in assuring that these needs are appropriately addressed.

8. Rick Smith is the Guardian ad Litem in this matter, and Sue Semmel is the Attorney ad Litem. The undersigned, Heather Morcroft, was appointed as Health Advocate in this case on November 14, 2002. She is the Health Care Attorney for the Legal Aid Society's Guardian ad Litem department, and her position entails a review of the laws and regulations applicable to DCF in regards to the medical needs of children in their care, cooperation with DCF wherever possible to increase the availability and quality of the medical services, and legal action where cooperation does not resolve the issues.
9. Children in state custody have a right to treatment under state and federal Medicaid law. Medicaid is a cooperative federal-state medical assistance program designed to provide necessary medical services to those who cannot afford them. See 42 U.S.C. §§ 1396 et seq. and 42 C.F.R. §§ 430 et seq. Although states are not required to participate in the program, if they do, they must comply with federal Medicaid law. Wilder v. Virginia Hospital Assoc., 496 U.S. 498, 502 (1990). Florida has chosen to participate in the Medicaid program. §§ 409.902, Fla. Stat.(2002).

10. As a requirement of participation in the Medicaid program, states must provide "early and periodic, screening, diagnostic, and treatment" (EPSDT) services for Medicaid recipients under age twenty-one. 42 U.S.C. §§ 1396a(a)(10)(A)(i) & 42 U.S.C. §§ 1396d(a)(4)(B). EPSDT services include comprehensive preventive and primary medical, dental, vision, and hearing screening, as well as necessary diagnostic and treatment services "to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." 42 U.S.C. §§ 1396d(r)(5). See also, §§ 409.905(2), Fla.. Stat. mandating payment for "early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions." Screenings must be provided according to a "periodicity schedule" and at other intervals when medically necessary 42 U.S.C. § 1396d(r)(1).
11. During the course of the investigation, the undersigned contacted XXXX's caseworker, Jamie Butler, in an attempt to obtain all of his medical records and make arrangements to locate and review his Child Resource Record, also known as the "Blue Book." The Blue Book is a specific document which

DCF is required to keep on each child pursuant to state and federal law, recording, among other things, the child's educational records and all of the child's EPSDT screening results and a "Medical Passport." The Medical Passport is "a written health history of a child in shelter status of foster care which is used to document health care. The medical passport is to be kept with the child's caregiver (in the child's resource record) and updated at each health care provider visit." F.A.C. 65C 12.001(18). The Child Resource Record, including the medical passport is to be standardized, and is to follow the child to each placement and accompany the child to each health care encounter. F.A.C. 65C 12.001(3).

12. The undersigned has been unable to review the Blue Book, however, it is clear that it cannot contain all the medical records required, or alternatively that it is not being taken to all of XXXX's medical appointments, as it is apparent from the cardiologists' records that he is unaware of all of Alex's prescribed medications.
13. Failure to keep the Blue Books as required by law, and to take a properly completed Blue Book to all doctor's appointments, results in lack of consistency in medical care and "inhibits the early, ongoing and periodic screening, diagnosis and treatment services of children in foster care." See "**Exhibit C**" attached

hereto, Florida Statewide Advocacy Council Orange Item Report, at p.3.

14. 42 C.F.R. § 441.59, a copy of which is attached hereto as “**Exhibit D**” requires that an EPSDT screening be provided upon demand unless the Department can show that the screenings have already been provided pursuant to the periodicity schedule or the unique needs of the child. On December 3, 2002, the undersigned sent such a demand to Jamie Butler, XXXX’s DCF caseworker. A copy of the letter is attached hereto as “**Exhibit E.**”
15. The undersigned has received no response whatsoever from Mr. Butler, or anyone in the Department regarding these demands.

WHEREFORE the undersigned prays this Court schedule a hearing on this matter, and order the Department of Children and Families to:

- A. Immediately provide XXXX with a comprehensive EPSDT screening, and provide copies of the results to the Court, the undersigned and other interested parties;
- B. Comply with all recommendations made in the EPSDT screening results;
- C. Staff XXXXX with CMS for evaluation and services within ten days;

- D. Provide XXXXX with a Comprehensive Behavioral Health Assessment within ten days;
- E. Obtain a second opinion evaluation and medication review from a psychiatrist within thirty days;
- F. Order the Department forthwith to assure that XXXX's Child Resource Record is complete, complies with state and federal mandates, and accompanies XXXX to all health care encounters;
- G. Order the Department to keep copies of all XXXX's health and education records in the Blue Book, the DCF file, and attached to the case plans filed with the Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was mailed by U.S. Mail this ____ day of _____, 2003 to:

LEGAL AID SOCIETY OF THE
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By: _____
Heather Morcroft, Esq.
Florida Bar No.
Health Advocate for
XXXXXXXXXXXXXXXXXXXX

