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LUCAS COUNTY

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COMMON PLEAS COURT
HERNIM GUILTER
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**IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO**

**LORI CRISS, DIRECTOR,
OHIO DEPARTMENT OF
MENTAL HEALTH AND ADDICTION
SERVICES
30 E. Broad Street
36th Floor
Columbus, Ohio 43215,**

Plaintiff,

v.

**CLARA MAE'S GROUP HOME, LLC
c/o CLARA M. BRANK, Statutory Agent
3532 Turret Green Drive
Toledo, Ohio 43607**

Defendant.

Case No.

Judge:

G-4801-CI-0202003607-000

**Judge
IAN B. ENGLISH**

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Pursuant to Civ.R. 65(A) and R.C. 5119.34(N)(1), Plaintiff Lori Criss, Director of the Ohio Department of Mental Health and Addiction Services ("Director"), respectfully moves this Court to issue a temporary restraining order restraining Defendant, Clara Mae's Group Home, LLC, from operating the residential facilities Clara Mae's Adult Family Home I ("Clara Mae I") and Clara Mae's Adult Family Home II ("Clara Mae II"). Additionally, pursuant to Civ.R. 65(B), the Director respectfully moves the Court to schedule a hearing on the Director's request for a

indoors in a chair and that Ms. Brank called 911 immediately, while R.C.'s case manager and father both reported that R.C. was outside on the porch.

R.C. should not have been at Defendant's facility in the first place. Earlier this year, Department employees discovered numerous health and safety violations during three separate inspections of Defendant's two facilities. In August, Plaintiff, Department Director Lori Criss ("Director"), formally began administrative proceedings to revoke the licenses for both facilities, and a revocation hearing is scheduled for December 10 and 11, 2020. Ohio law prohibits a residential mental health facility from admitting new residents while revocation proceedings are pending. Whether R.C. was admitted in October or November, the admission date was *after* the Department began revocation proceedings in August.

Given Defendant's unlawful, dilatory, and deceitful behavior concerning R.C.'s death, it is no longer safe to wait for the administrative revocation process to play out. Even in a best-case scenario, it will likely be a matter of months before the Director can revoke Defendant's residential facility licenses. Meanwhile, there are at least four residents with mental illness currently living at Defendant's two Toledo facilities. For the health and safety of these remaining residents, Defendant must be stopped from operating now. The Department and the County Board can then help the residents swiftly move to safe facilities elsewhere in Lucas County. The Director is entitled to a temporary restraining order and preliminary injunction protecting these residents, and any other unsuspecting individuals, from Defendant.

II. FACTUAL BACKGROUND

Defendant owns two group homes—Clara Mae's Adult Family Home I ("Clara Mae I") and Clara Mae's Adult Family Home II ("Clara Mae II"). Verified Complaint, ¶ 9. The two homes are located next door to one another in Toledo. Verified Complaint, ¶ 10. Ms. Brank operates both

homes, and both homes are licensed by the Department as residential facilities that provide housing and certain personal services to individuals with mental illness. Verified Complaint, ¶¶ 6, 9. In January, Department employees conducted an unannounced inspection survey of both Clara Mae I and Clara Mae II in response to a complaint. Verified Complaint, ¶ 11. During the survey, the Department employees observed multiple violations of health and safety and regulations at both homes, including unlocked medications, filthy conditions, inadequate food, and inadequate supervision. Verified Complaint, Exs. A, B. Department employees conducted additional inspection surveys in June and July and found additional violations at both homes. Verified Complaint, ¶¶ 12-13. On August 11, 2020, the Director issued a notice of intent to revoke the residential facility license of Clara Mae I, based on the violations observed during the Department's inspections. Verified Complaint, Ex. A. The Director issued a similar notice for Clara Mae II on the same day. Verified Complaint, Ex. B. In accordance with its rights under R.C. Chapter 119, Defendant timely requested an administrative hearing to contest the proposed revocations. The hearing is scheduled for December 10 and 11, 2020. Verified Complaint, ¶¶ 15-16, Ex. C.

R.C. previously lived at Clara Mae II, but left in January 2020, before the Department started revocation proceedings. Verified Complaint, ¶ 19. Under Ohio law, Defendant is barred from admitting residents to Clara Mae I or Clara Mae II during the pendency of the administrative revocation proceedings. Ohio Adm.Code 5122-30-05(D)(5). Nonetheless, Defendant admitted R.C. back to Clara Mae II in either October or November 2020, well after revocation proceedings began in August. Verified Complaint, ¶¶ 19-20. On November 12, 2020, R.C. collapsed and died at Clara Mae II. Verified Complaint, ¶ 21. R.C. was 50 years old. Verified Complaint, ¶ 22.

Defendant was required by law to file an incident report with both the Department and the County Board within 24 hours of R.C.'s death. Ohio Adm.Code 5122-30-16(H) and 5122-30-16 Appendix A. To date, Defendant has not submitted a report. Verified Complaint, ¶ 29. As a result, the Department could not start the immediate review and investigation of R.C.'s death that the report would have triggered. Verified Complaint, ¶ 29. Defendant did not inform the County Board or the Department of R.C.'s death at all until eight days later. Verified Complaint, ¶¶ 23, 20. Ms. Brank called and notified a County Board employee on November 20, 2020. Verified Complaint, ¶ 23. The County Board then informed the Department. Verified Complaint, ¶ 23. A Department employee contacted Ms. Brank on the morning of November 20, 2020, and Ms. Brank told the Department that R.C. was admitted to Clara Mae II on November 7, 2020. Verified Complaint, ¶¶ 23-24. Ms. Brank further stated that R.C. collapsed in a chair inside the home and that Ms. Brank immediately called 911. Verified Complaint, ¶ 25. After speaking to Ms. Brank, the Department employee contacted R.C.'s case manager, Linda Rixey of Zepf Center in Toledo. Ms. Rixey reported that R.C. was outside smoking when R.C. collapsed. Verified Complaint, ¶ 25. The Department employee then spoke with a County Board employee, who stated that R.C.'s father was present at the scene and also reported that R.C. died outside. Verified Complaint, ¶ 25.

Four residents with mental illness currently live at Clara Mae I and Clara Mae II. Verified Complaint, ¶ 31.

III. LAW AND ARGUMENT

To ensure the health and safety of the four remaining residents, the Director is entitled to a temporary restraining order and a preliminary injunction immediately enjoining Defendant from continuing to operate Clara Mae I and Clara Mae II and authorizing the Department and the County Board to help the residents move to other licensed facilities in Lucas County. The four residents

of Clara Mae I and Clara Mae II are faced with such a present danger. Defendant is already facing revocation due to dozens of health and safety violations found at its facilities. Defendant has disregarded the limitations imposed on operating its facilities during the pending revocation proceedings by admitting a resident in violation of the law. Following the sudden death of that resident, Defendant has shirked her reporting obligations and given misleading information to the Department. In these circumstances, the safety of the remaining residents cannot be ensured without injunctive relief. The Director is entitled to such relief by statute. Additionally, even if the Director was not statutorily entitled to such relief, she would be entitled to such relief under the traditional principles of equity considered under Civ.R. 65, as the Director has no other adequate remedy at law and the relief she requests will serve the residents and the public without harming any third parties. Accordingly, the Court should grant the Director's motion for a temporary restraining order and preliminary injunction.

A. The Director is Statutorily Entitled to Preliminary Injunctive Relief Pursuant to R.C. 5119.34, Due to the Present Danger to the Health and Safety of Residents.

“Under established Ohio law, ‘when a statute grants a specific injunctive remedy to an individual or to the state, the party requesting the injunction need not aver and show, as under ordinary rules in equity, that great or irreparable injury is about to be done for which he has no adequate remedy at law.’” *Ohio Dept. of Jobs & Family Servs. v. Ohio Wilderness Boys Camp*, 2015-Ohio-2331, 37 N.E.3d 771, ¶ 10 (7th Dist.2015) quoting *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56, 378 N.E.2d 145 (1978). In particular, “injunctions which authorize a governmental agent to sue to enjoin activities deemed harmful by the General Assembly are not designed primarily to do justice to the *parties* but to prevent harm to the general public.” (Emphasis sic.) *Ackerman* at 57. Accordingly, the Director need only show that the statutory requirements for the injunction are satisfied. *Id.* (recognizing that “statutory actions

granting governmental agents the right to sue for injunctive relief have a purpose different from equitable actions” and “should issue if the statutory requirements are fulfilled”). *See also State ex rel. Pizza v. Rezcallah*, 84 Ohio St.3d 116, 123, 702 N.E.2d 81 (1998) (“*Ackerman* clearly states that ‘statutory injunctions should issue if the statutory requirements or fulfilled.’”).

The General Assembly has specifically authorized the Director to seek injunctive relief to enjoin the operation of residential facilities that endanger the life and safety of their residents.

Specifically, R.C. 5119.34(N)(1) provides:

The director of mental health and addiction services may petition the court of common pleas of the county in which a residential facility is located for an order enjoining any person from operating a residential facility without a license or from operating a licensed facility when, in the director’s judgment, there is a present danger to the health or safety of any of the occupants of the facility. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a facility without a license or there is a present danger to the health or safety of any residents of the facility.

In light of the apparent dangers to the health and safety of the remaining residents at Clara Mae I and Clara Mae II, the Director satisfies the requirements for a statutory injunction prohibiting Defendant from continuing to operate those facilities. R.C. 5119.34(N)(1). Defendant is already facing revocation of its facility licenses through the administrative process. Nonetheless, Defendant unlawfully admitted R.C. to Clara Mae II. When R.C. died at Clara Mae II just a short time later, Defendant unlawfully failed to report R.C.’s death to the Department. When, over a week later, the Department finally learned of R.C.’s death, Defendant misled the Department about the circumstances. Four residents with mental illness currently remain in Defendant’s care. Given Defendant’s willingness to illegally admit a resident while under revocation proceedings then delay the investigation of and obscure the circumstances surrounding that resident’s sudden death, the Director can show that there is a present danger to the remaining residents of Clara Mae I and Clara Mae II. Accordingly, the Director is entitled to an injunction protecting those residents.

B. The Director is Entitled to Preliminary Injunctive Relief Under Civ.R. 65.

Because the Director is statutorily entitled to an injunction pursuant to R.C. 5519.34(N), the Director need not satisfy the elements for injunctive relief pursuant to Civ.R. 65. *Ohio Wilderness Boys Camp* at ¶ 10; *Ackerman* at 56. However, even if the Court applies a Civ.R. 65 analysis, the Director is still entitled to a preliminary injunction. When deciding whether to issue a preliminary injunction under Civ.R. 65, Ohio courts consider four factors: (1) whether there is a substantial likelihood that plaintiff will prevail on the merits; (2) whether plaintiff will suffer irreparable injury if relief is not granted; (3) whether the requested relief will harm third parties; and (4) whether the requested relief will serve the public interest. *Thomson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-782, 2010-Ohio-416, ¶ 23; *Island Express Boat Lines, Ltd. v. Put-In-Bay Boat Line Co.*, 6th Dist. Erie No. 2007-Ohio-1041, ¶ 92. No single factor is dispositive, but rather, courts balance the four factors “with the flexibility inherent to the laws of equity.” *Toledo Police Patrolman’s Assn. Local 10 v. City of Toledo*, 127 Ohio App.3d 450, 469, 713 N.E.2d 78 (6th Dist.1998). See also *Cleveland v. Cleveland Elec. Illuminating Co.*, 115 Ohio App.3d 1, 14, 684 N.E.2d 343 (8th Dist.1996). In this case, all four factors favor issuing a preliminary injunction.

1. The Director is Substantially Likely to Prevail on the Merits.

The Director is substantially likely to prevail on the merits of this case because there is clear evidence showing present risk to the health and safety of the residents of Clara Mae I and Clara Mae II. The Director is entitled to an injunction upon such a showing. R.C. 5119.34(N)(1). The notices of intent to revoke Clara Mae I and Clara Mae II’s licenses clearly initiated revocation proceedings under R.C. Chapter 119 on August 11, 2020. Ohio law explicitly prohibited Defendant from admitting residents after that date. Ohio Adm.Code 5122-30-05(D)(5). Ms. Brank directly

admitted to the Department that she admitted R.C. after that date. When R.C. died at Clara Mae II a short time after admission, Ms. Brank violated Ohio law by failing to file an incident report. She also misled Department employees when the Department finally did learn about R.C.'s death over a week later. Had Defendant reported R.C.'s death as required, the Department would have immediately reviewed the report and the circumstances surrounding R.C.'s death to assess the cause of the death, whether Defendant was at all culpable in the death, and the risk to any other resident. Defendant's failure to report hampered the speed and, potentially, the efficacy of that investigation.

The documented fact that Defendant, while already facing revocation proceedings for health and safety violations, obscured the circumstances surrounding the death of a resident who never should have been at the facility in the first place is reason for serious concern about the health and safety of the remaining residents. Accordingly, the Director is entitled to an injunction and is substantially likely to prevail on the merits of her claim.

2. The Director Will Suffer Irreparable Injury if Relief is Not Granted.

The Director's interests will be irreparably harmed if the Court does not grant a preliminary injunction. In the context of a preliminary injunction, "irreparable harm" is harm "for which there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete." *Keefer v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 03AAP-391, 2003-Ohio-6445, ¶ 17, citing *Cleveland v. Cleveland Electric Illuminating Co.*, 115 Ohio App.3d 1, 12, 684 N.E.2d 343 (8th Dist.1996). The exact nature of the irreparable harm is case specific. *Cleveland Electric Illuminating* at 13.

In this case, the irreparable harm to the Director is the continued hampering of the Director's ability to protect the safety of Clara Mae I and Clara Mae II's residents. Protecting the

residents of licensed mental health facilities is one of the Director's paramount legal duties. R.C. 5119.10(B)(5), 5519.34. The Director carries out this duty by establishing and enforcing health and safety standards for residential facilities. R.C. 5119.34(L); Ohio Adm.Code Chapter 5122-30. Ordinarily, the Director can vindicate her interest in protecting the residents of residential mental health facilities by revoking a facility's license through the administrative process established by R.C. Chapter 119. *See* R.C. 5119.34(L)(2). This case is not ordinary, and the Director's administrative remedy is not adequate. The Director already attempted this administrative remedy when, in August, she issued notices of intent to revoke Defendant's residential facility licenses. Subsequent events have proven that this revocation process will not protect those facilities' residents.

The administrative revocation process necessarily takes time. The respondent licensee has the right to request a hearing. R.C. 119.06. Defendant exercised this right, and the hearing is currently scheduled for December 10 and 11 and will be held before an appointed hearing examiner. Even after the hearing is concluded, the hearing examiner must have time to review the testimony and evidence and write a report and recommendation setting forth the examiner's findings of fact and conclusions of law. R.C. 119.09. After the hearing examiner issues her report and recommendation, the Department must serve the Defendant a copy of the report and recommendation by certified mail and give the Defendant ten days to file any objections to the report and recommendation. R.C. 119.09 Only then can the Director issue a final order. R.C. 119.09. Therefore, even if the Director ultimately revokes Defendant's licenses through the administrative process, it will likely be a matter of months before such revocation occurs.

The risks of a facility continuing to operate during the pendency of administrative revocation proceedings are usually somewhat mitigated by Ohio Adm.Code 5122-30-05(D), which

prohibits a facility from admitting residents during the pendency of proceedings. However, Defendant blatantly ignored this prohibition by admitting R.C., who died shortly thereafter under circumstances that remain unclear due to Defendant's obfuscation and inexplicable delay in reporting. Therefore, it is clear that the Director's ordinary administrative remedies are not adequate to protect the residents of Defendant's facilities. Injunctive relief is necessary.

3. The Injunctive Relief Will Benefit Third Parties and Serve the Public Interest.

Granting the Director's request for a temporary restraining order and preliminary injunctive relief will not harm third parties. To the contrary, it will benefit the third parties most directly affected by the injunction—the current residents of Clara Mae I and Clara Mae II. These residents are all individuals with mental illnesses who require at least some assistance to safely and healthfully live their daily lives. Currently, they rely on Defendant for that assistance. This reliance puts them at risk. In light of the fact that Defendant is facing administrative sanctions for health and safety violations, violated the law by admitting a resident while that administrative action is pending, and has failed to be honest and forthright about that resident's recent and sudden death strongly suggests that the remaining residents are not safe at Defendant's facilities.

If the Court grants the Director's request for an injunction, the Department and the County Board can work together help the remaining residents move to other facilities within Lucas County where they will be safe and cared for. Relatedly, an injunction will protect unknown third parties by preventing Defendant from admitting any additional unsuspecting residents, since Defendant evidently cannot be trusted to follow the law prohibiting such admissions before her administrative case is resolved. Accordingly, the requested injunctive relief will benefit third parties.

The injunction will also serve the public interest. The public has a general interest in making sure that individuals with a mental illness are safely housed and cared for in their

communities. The General Assembly recognized this public interest when it gave the Director the authority to bring an injunctive action against a licensed facility if the Director determined the health and safety of the residents to be at risk. *See Ackerman*, 55 Ohio St.2d at 57 (finding that a statute authorizing the Director of Health to bring injunctive actions against unlicensed nursing homes reflected the General Assembly's determination that stopping unlicensed nursing homes was in the public interest). The benefit to both third parties and to the general public weighs heavily in favor of granting injunctive relief.

C. The Director is Entitled to an *Ex Parte* Determination of the Motion for Temporary Restraining Order.

Given the significant risks to the health and safety Clara Mae I and Clara Mae II's residents, the Director is entitled to a temporary restraining order *ex parte*. Civ.R. 65(A)(1) provides, in relevant part:

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

The threat of irreparable injury is amply demonstrated by the fact that Defendant is operating a facility that is already facing revocation for health and safety violations, illegally admitted a resident during the pendency of revocation proceedings, and, after that resident died, hampered what would have been an immediate investigation by failing to report the death for over a week and then giving misleading statements to the Department. The Director's counsel has reached out to Defendant's counsel by telephone and email to inform him of this motion. (Attachment B.) Accordingly, no further delay is warranted.

IV. CONCLUSION

The Director tried to use her administrative revocation authority to protect the health and safety of Clara Mae I and Clara Mae II's residents from Defendant, but it is now clear that this authority is not enough. Defendant has already demonstrated its disregard for the administrative process by unlawfully admitting R.C. to Clara Mae II in the midst of revocation proceedings. Tragically, R.C. died not long after. Since then, Defendant has not been honest or forthcoming with the Department about the circumstances surrounding R.C.'s death. Given Defendant's disregard for the law governing the revocation process, the uncertainty surrounding R.C.'s death and Defendant's contribution to that uncertainty, the remaining residents of Defendant's facilities cannot be left to wait for the administrative process to play out. Their health and safety demand the immediate relief that only this Court can provide. Therefore, the Director respectfully requests this Court issue a temporary restraining order and preliminary injunction prohibiting Defendant from continuing to operate Clara Mae I and Clara Mae II and permitting the Department and the County Board to help the residents of those facilities move to other licensed facilities where they can be healthy, safe, and secure.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

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2. The Department shall immediately coordinate with the County Board to relocate all residents of Clara Mae I to another licensed residential mental health facility.
3. Defendant shall immediately cease operating the residential facility known as Clara Mae Adult Family Home II ("Clara Mae II"). Provided, however, that Defendant shall NOT evict or otherwise remove any residents of Clara Mae II and shall continue to provide contracted personal services to all residents of Clara Mae II until such time as the Department and the County Board relocate the residents to another licensed facility.
4. The Department shall immediately coordinate with the County Board to relocate all residents of Clara Mae II to another licensed residential mental health facility.

IT IS SO ORDERED.

JAMES BATES
Judge

(3) Prior to filing the motion, Plaintiff's counsel emailed Defendant's counsel a copy of the motion and a copy of the Verified Complaint.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

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