

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
DANIEL MCNAMARA, et al )

vs )

MICHAEL DUKAKIS, et al )  
\_\_\_\_\_

C. A. No. 90-12611-Z

**BRIEF AMICI CURIAE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

I. INTEREST OF THE AMICI

1. The American Orthopsychiatric Association, Inc. (ORTHO), founded in 1924, is a non-profit, membership mental health Association dedicated to informing public policy, professional practice and the sharing of knowledge relating to mental health and human development from a multidisciplinary and interprofessional perspective. The current membership of some 10,000 professionals includes psychiatrists, psychologists, social workers, educators, nurses, lawyers and others. There are 772 members in Massachusetts. The Association provides a range of educational programs for mental health professionals, including its annual meeting, regional meetings, a quarterly scientific journal and a quarterly journal of reviews and commentary on mental health.

2. The Massachusetts Chapter of the National Association of Social Workers (NASW) is the largest organization of professional social workers in the world, with over 140,000 members in 55 chapters throughout the United States and abroad. There are 7,700 members in Massachusetts. Founded in 1955 from a merger of seven predecessor social work organizations, NASW's primary functions include professional development, establishing professional standards of social work practice, advancing sound social and health policies and membership services.
  
3. Massachusetts School of Professional Psychology (MSPP), founded in 1974, is a graduate school which trains psychologists and awards the Doctor of Psychology (Psy.D.) degree to psychologists who complete the program. All MSPP students are trained in clinical placements for each of their four years of study. Many receive their supervised training as clinical trainees and interns in Department of Mental Health (DMH) facilities or DMH-funded facilities. MSPP has a faculty of 32 psychologists and dozens of adjunct faculty from a range of mental health disciplines. It has approximately 140 full-time students. It graduates over half of the new clinical psychologists in Massachusetts, about 30 per year. MSPP is accredited by the American Psychological Association and the New England Association of Schools and Colleges and is committed to upholding those organizations' standards of training.

4. Henry Grunebaum, M.D., William James, M.D., Roberta Apfel, M.D., Bennett Simon, M.D., Bessell van der Kolk, M.D., et al, act in their own right and on behalf of The Committee of Concerned Psychiatrists. The Committee is comprised of psychiatrists who care for and/or train others to care for putative class members currently receiving inpatient or outpatient services in state mental health facilities and other class members who need and are entitled to such services. As physicians governed by the Principles of Medical Ethics of the American Medical Association, Committee members are dedicated to providing medical services with compassion and respect for human dignity, to respect the law and to seeking to influence or change the law when the best interests of patients are at stake, and participating in activities contributing to an improved community.
  
5. Jodie Kliman, PhD., Deborah Belle, Ph.D., David Trimble, Ph.D., Mary Harvey, Ph.D., Pedro Garrido, Ph.D., et al, act in their own right and on behalf of The Committee of Concerned Psychologists. The Committee is comprised of psychologists who care for and/or train others to care for putative class members currently receiving inpatient or outpatient services in state mental health facilities and other class members who need and are entitled to such services. As psychologists governed by the Ethical Standards of Psychologists of the American Psychological Association, Committee members respect the dignity and worth of individuals and strive for the preservation and protection of fundamental human rights. In pursuit of these ideals, psychologists seek to define and maintain high standards of professional conduct and equally high standards of moral and legal

conduct. As practitioners of their profession, they are concerned with the development of legal and quasi-legal regulations that best serve the public interest and they work toward changing existing regulations that are not beneficial to the public interest.

6. Carol Hartman, R.N., June Horowitz, R.N., Calista Roy, R.N., Karen Aroian, R.N., Karen Gardner, R.N., et al, act in their own right and on behalf of The Committee of Concerned Nurses. The Committee is comprised of Registered Nurses who care for or train others to care for putative class members currently receiving inpatient or outpatient services in state mental health facilities and other class members who need and are entitled to such services. As Registered Nurses governed by the Ethical Standards of Psychiatric and Mental Health Nursing Practice of the American Nurses Association, Committee members respect the dignity and worth of individuals and strive for the preservation and protection of fundamental human rights. In pursuit of these ideals, nurses seek to define and maintain high standards of professional conduct and equally high standards of moral and legal conduct. As practitioners of their profession, they are concerned with the development of legal and quasi-legal regulations that best serve the public interest, and they work toward changing existing regulations that are not beneficial to the public interest.

II. PROFESSIONAL STANDARDS OF CARE PROVIDE A GUIDE FOR THIS COURT IN FASHIONING A REMEDY IN THIS CASE

As noted in the earlier section of this brief, the Amici organizations are comprised of mental health professionals whose work includes serving the population of persons who are Plaintiffs in this action. These various

mental health professionals--psychiatrists, psychologists, social workers, psychiatric nurses, and student trainees--practice according to standards of conduct written and promulgated by their separate professional organizations.

These standards not only dictate how the various professionals should conduct themselves in their work, but they provide a guide for this Court to determine standards of minimally adequate treatment to which the Plaintiffs are Constitutionally entitled. Youngberg v. Romeo, 457 U.S. 307 (1982).

Courts have traditionally looked to professional standards for guidance in such cases. In Wyatt v. Stickney, 344 F. Supp. 387 (M.D. Ala. 1972) affd. in part 503 F. 2d 1305 (5th Cir. 1974), for example, the Court relied on professional recommendations to establish a minimum set of standards for adequate treatment of the mentally ill residents of mental hospitals in Alabama. These standards included: (1) the use of individualized treatment plans, (2) adequate and qualified staffing, and (3) a humane psychological and physical environment.

Plaintiffs' Memorandum in Support of their Motion for Preliminary Injunction states that there are six protected liberty interests for persons within the care and custody of the Department of Mental Health. They are: (1) safety and freedom from harm, (2) physical freedom, (3) freedom from bodily restraint and other restrictions on movement, (4) freedom from deterioration, (5) treatment, and (6) state-created rights. See Plaintiffs' Memorandum at pages 10-18. This brief incorporates those interests without reiterating them.

This Court has also used professional standards for evaluating the terms of consent decrees concerning institutionalized persons. Ricci v. Okin, 537 F. Supp. 817 (D. Mass. 1982) and to limit proposed cuts in

staffing to those which do not threaten the maintenance of professional standards of conduct and care. Id.

By taking Plaintiffs into their care and custody, the Defendants have assumed a duty to provide more than confinement and custodial care. O'Connor v. Donaldson, 422 U.S. 563 (1975). Rather, Defendants must provide minimally adequate care. Doe v. Gaughan, 808 F. 2d 871 (1st Cir. 1986).

The Defendants have assumed a great burden by committing themselves to providing care and treatment for the Plaintiffs. First, they have agreed to care for the Plaintiffs in a manner consistent with Constitutional requirements. Society for Goodwill to Children v. Cuomo, 737 F. 2d 1239 (2nd Cir. 1984). "Persons who have been involuntarily committed are entitled to more considerate treatment in conditions of confinement than criminals whose conditions of confinement are designed to punish." Youngberg v. Romeo, 457 U.S. 307, 321 (1982).

The United States Supreme Court has held that mentally disabled individuals in the custody of a state agency enjoy constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. (Citations omitted). In determining whether the State has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type-- often, unfortunately, overcrowded and understaffed--to continue to function. (Emphasis supplied) Id. at 324-325.

Several courts have considered the issue of professional standards of treatment in a state mental health system after Romeo. One of the most recent was Thomas S. by Brooks v. Flaherty, 699 F. Supp. 1178, 1200

(W.D.N.C. 1988). There, the United States District Court held that: "The plaintiffs are entitled to treatment recommended by qualified professionals whose judgment is unsullied by consideration of the fact that the state does not provide appropriate treatment or funding for appropriate treatment." The Court continued by affirming that professionals are within their rights as clinicians in continuing to make qualified treatment decisions based on their own expertise, notwithstanding fiscal cuts by the North Carolina Department of Human Resources. See also Clark v. Cohen, 613 F. Supp. 684 (E.D. Pa. 1985) aff'd 794 F. 2d 79 (3rd Cir. 1986). Therefore, having previously accepted the responsibility of providing Constitutionally adequate care to such vulnerable people, the Defendants cannot, in the name of budgetary constraints, eliminate services to the point that the care provided falls significantly below Constitutional requirements.

In making its decision, this Court is asked to determine what constitutes Constitutionally adequate care. In doing so, the Court must necessarily look to the standards established by the Amici organizations which guide the professional behavior of mental health professionals. An examination of such standards will reveal the need for granting the injunction sought by the Plaintiffs.

### III. STATUTES, REGULATIONS AND COMMON PROFESSIONAL STANDARDS OF THE AMICI AND THEIR IMPACT ON MENTAL HEALTH SERVICES

#### A. STATUTES AND REGULATIONS

Massachusetts General Laws (MGL), Chapter 123, Sections 2 and 4, state as follows:

##### Sec. 2, Regulations

The department shall, in accordance with section two of chapter

thirty A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for the reception, examination, treatment, restraint, transfer and discharge of mentally ill persons in department facilities. Said regulations shall be adaptable to changing conditions and to advances in methods of care and treatment of the mentally ill. Said regulations (1) shall include, but not necessarily be limited to, provisions for inpatient care, both during the day and at night, halfway house services, family care, aftercare and home treatment, (2) shall define the categories of mental illness for the purpose of this chapter, and (3) may provide for different procedures for specific types of patients or for particular facilities. (Emphasis supplied)

Sec. 4. Periodic review; notice

Each person within the care of the department and each person at the Bridgewater State Hospital under the provisions of this chapter relative to the mentally ill shall be the subject of a periodic review under the supervision of the superintendent, if said person is in a department facility, or of the medical director if said person is at Bridgewater State Hospital, which shall include, but not necessarily be limited to, (1) a thorough clinical examination, (2) an evaluation of the legal competency of the person and the necessity or advisability of having a guardian or conservator appointed or removed, (3) a consideration of all possible alternatives to continue hospitalization or residential care including, but not necessarily limited to, a determination of the person's relationship to the community and to his family, or his employment possibilities, and of available community resources, foster care and convalescent facilities, and (4) unless a guardian or conservator has been appointed, an evaluation of each person who is an inpatient or resident of a facility in order to determine how much of his funds shall be designated as dependent funds and how much as independent funds, and the formulation and maintenance of a financial plan for the use of his dependent funds. Said periodic review shall take place at least upon admission, once during the first three months after admission, once during the second three months after admission and annually thereafter. Said person shall be given a physical examination by a physician licensed under the provisions of chapter one hundred and twelve at least once in every twelve-month period during which he is resident in said departmental facility or at the Bridgewater State Hospital....

104 CMR 3.08 implements MGL Ch. 123, Sec. 2, by requiring:

(2) Consent to Treatment. Upon admission to a facility for care and treatment, a person shall receive treatment and rehabilitation in accordance with accepted therapeutic practice, including oral, subcutaneous and intramuscular medication when appropriate and when ordered by a physician. However, electroconvulsive treatment and lobotomy shall require separate consent by the patient pursuant to M.G.L. c. 123, s. 23....

(3) Written Treatment Plan. As a part of the treatment of a patient in a facility, there shall be a written assessment of the pathology of the individual and a written multidisciplinary treatment plan; the treatment plan shall be implemented by the facility staff in good faith within the limits of available resources, there shall be a periodic written assessment of treatment progress; significant modifications of the treatment plan and their rationale shall be recorded by the responsible clinicians. (Emphasis supplied)

104 CMR 16.01 sets up additional treatment regulations:

(2) Purposes. The purposes of this chapter, 104 CMR 16.00, are:

.....

(g) to ensure that the Department provide, purchase, arrange, monitor, and coordinate services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs and least restrictive of the client's freedom;

(h) to ensure that mental health services are planned and provided in an individual rationale, and fair manner with fullest possible participation of the client;

(i) to set forth the requirements for the establishment of procedures for individual service planning and development. (Emphasis supplied)

B. PROFESSIONAL STANDARDS

The foregoing statutes and regulations provide the framework and lay the foundation for standards governing mental health treatment in a context where the patient is to be cared for and restrained in the least restrictive manner possible. To further determine these standards, it is helpful and

instructive for this Court to review the ethical principles which govern and guide clinicians who provide or train others to provide care and services within the Massachusetts Department of Mental Health system. These clinicians include: psychiatrists, psychologists, social workers, nurses, student trainees and mental health service providers generally.

### **Psychiatrists**

As physicians, psychiatrists are governed by the Principles of Medical Ethics of the American Medical Association. These Principles state the following:

#### **PREAMBLE**

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility not only to patients but also to society, to other health professionals, and to self. The following Principles, adopted by the American Medical Association, are not laws but standards of conduct which define the essentials of honorable behavior for the physician:

#### **Section 1**

A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

.....

#### **Section 3**

A physician shall respect the laws and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

#### **Section 4**

A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.

### Section 5

A physician shall continue to study, apply, and advance scientific knowledge, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

.....

### Section 7

A physician shall recognize a responsibility to participate in activities contributing to an improved community.

### **Psychiatry**

As licensed psychiatrists who practice in Massachusetts and who are obligated by state law and their own standards of professional practice to (1) provide quality patient care, (2) safeguard patient well-being, (3) train and establish criteria for training future generations of psychiatrists in this state, and (4) take positive social action when patient well-being is threatened by existing or proposed public policy, the Amici psychiatrists support the Plaintiffs in this case.

The Amici psychiatrists believe that the budget cuts proposed by the Defendants in this case threaten to dramatically downgrade the quality of care available to their patients in DMH care and custody.

For example, the affidavits of Frank M. Gatti, M.D. and Scott McCormick, M.D. given in support of Plaintiffs' Motion for a Preliminary Injunction are evidence that for the individuals discussed in these affidavits, the budget cuts have caused or will soon cause: (1) an unacceptable loss of safety and freedom from harm, (2) a severe and unacceptable restriction of their physical freedom, (3) less freedom from bodily restraint than is minimally acceptable, (4) serious deterioration of their physical and mental condition, and (5) deprivation of treatment. Such violations are likely, possibly inevitable, consequences of the abandonment of multidisciplinary

treatment plans and the imposition of administrative rather than clinical decisions regarding patient care.

As professionals responsible not only to promulgate appropriate standards of care, but also to define criteria relevant to the clinical training of psychiatry residents, Amici psychiatrists believe that the threats to quality care embodied in the proposed cuts will, if implemented, undermine the ability of the state to provide for psychiatrists in training minimally acceptable clinical training sites.

### **Psychologists**

Psychologists are governed by the Ethical Principles and Guidelines and the General Guidelines for Providers of Psychological Services established and promulgated by the American Psychological Association. The following statements from these Ethical Principles and Guidelines are informative regarding their professional responsibilities:

#### **PREAMBLE**

Psychologists respect the dignity and worth of the individual and strive for the preservation and protection of fundamental human rights. They are committed to increasing knowledge of human behavior and of people's understanding of themselves and others and to the utilization of such knowledge for the promotion of human welfare. While pursuing these objectives, they make every effort to protect the welfare of those who seek their services and of the research participants that may be the object of study. They use their skills only for the purposes consistent with these values and do not knowingly permit their misuses by others. While demanding for themselves freedom of inquiry and communication, psychologists accept the responsibility this freedom requires: competence, objectivity in the application of skills, and concern for the best interests of clients, colleagues, students, research assistants, and society.

#### **Principle 1 RESPONSIBILITY**

In providing services, psychologists maintain the highest

standards of their profession. They accept responsibility for the consequences of their acts and make every effort to ensure that their services are used appropriately.

.....

1.f As practitioners, psychologists know that they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social, organizational, financial, or political situations and pressures that might lead to misuse of their influence.

.....

## Principle 2 COMPETENCE

The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole.

.....

## Principle 3 MORAL AND LEGAL STANDARDS

Psychologists' moral and ethical standards of behavior are a personal matter to the same degree as they are for any other citizen, except as these may compromise the fulfillment of the professional responsibilities or reduce the public trust in psychology and psychologists.

.....

3.c. In their professional roles, psychologists avoid any action that will violate or diminish the legal and civil rights of clients or of others who may be affected by their actions.

3.d. As practitioners and researchers, psychologists act in accord with Association standards and guidelines related to practice and to the conduct of research with human beings and animals. In the ordinary course of events, psychologists adhere to relevant governmental laws and institutional regulations. when federal, state, provincial, organizational, or institutional laws, regulations, or practices are in conflict with Association standards and guidelines, psychologists make known their commitment to Association standards and guidelines and, wherever possible, work toward a resolution of the conflict. Both practitioners and researchers are concerned with the development of such legal and quasi-legal regulations as best serve the public interest, and they work toward changing

existing regulations that are not beneficial to the public interest.  
(Emphasis supplied)

Principle 6

WELFARE OF THE CONSUMER

Psychologists respect the integrity and protect the welfare of the people and groups with whom they work. When conflicts of interest arise between clients and psychologists' employing institutions, psychologists clarify the nature and direction of their loyalties and responsibilities and keep all parties informed of their commitments.

The following statements from the General Guidelines for Providers of Psychological Services established by the American Psychological Association are also informative with respect to the responsibilities and standards of practicing psychologists:

GENERAL GUIDELINE 1: Providers

.....

1.6 Professional psychologists limit their practice, including supervision, to their demonstrated areas of professional competence . . .

GENERAL GUIDELINE 2: Programs

.....

2.1.1. The composition and programs of a psychological service unit strive to be responsive to the needs of the people and settings served. . .

2.1.2. A psychological service unit strives to include sufficient numbers of professional psychologists and support personnel to achieve its goals, objectives and purposes.

In assessing the professional conduct of psychologists, the Massachusetts Board of Registration of Psychologists is mandated to apply the American Psychological Associations Code of Ethics. 251 CMR 3.07.

## **Psychology**

As licensed psychologists who practice in Massachusetts and who are obligated by state law and their own standards of professional practice to (1) provide quality patient care, (2) safeguard patient well-being, (3) train and establish criteria for training future generations of psychologists in this state, and (4) take positive social action when patient well-being is threatened by existing or proposed public policy, the Amici psychologists support the Plaintiffs in this case.

The Amici psychologists believe that the budget cuts proposed by the Defendants in this case threaten to dramatically downgrade the quality of care available to patients in DMH care and custody and, furthermore, threaten to bring about a violation of these minimally acceptable standards of care.

For example, the affidavits of Peter Adler, Ph.D. and Bonnie Becker, Ph.D., given in support of the Plaintiffs' Motion for a Preliminary Injunction are evidence that for the individuals discussed in these affidavits the budget cuts have caused or will soon cause: (1) an unacceptable loss of safety and freedom from harm, (2) a severe and unacceptable restriction of their physical freedom, (3) less freedom from bodily restraint than is minimally acceptable, and (4) serious deterioration of their physical and mental condition. Such violations are likely, possibly inevitable, consequences of the abandonment of multidisciplinary treatment plans and the imposition of administrative rather than clinical decisions regarding patient care.

As professionals responsible not only to practice according to appropriate standards of care, but also to respect criteria relevant to high quality clinical training of psychology interns, in accredited clinical training sites, Amici psychologists believe that the threats to quality

care embodied in the proposed cuts undermine the ability of the state to provide for psychologists in training minimally acceptable clinical training sites.

### **Social Workers**

Social Workers are governed and guided by Ethical Principles promulgated by NASW and applied by the Board of Registration of Social Workers. The following statements from those principles are informative of their professional responsibilities:

#### **Summary of Major Principles**

- I. **The Social Worker's Conduct and Compartment as a Social Worker**
  - A. **Priority.** The social worker should maintain high standards of personal conduct in the capacity or identity as social worker.
  - B. **Competence and Professional Development.** The social worker should strive to become and remain proficient in professional practice and the performance of professional functions.
  - C. **The social worker should regard as primary the service obligation of the social work profession.**
    1. The social worker should retain ultimate responsibility for the quality and extent of the service that individual assumes, assigns, or performs.
    2. The social worker should act to prevent practices that are inhumane or discriminatory against any person or group of persons.
- II. **The Social Worker's Ethical Responsibility to Clients**
  - F. **Primacy of Clients' Interests. The social worker's primary responsibility is to clients.**
  3. The social worker should not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, color, sex, sexual

orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status.

G. **Rights and Prerogatives of Clients.** The social worker should make every effort to foster maximum self-determination on the part of clients.

3. The social worker should not engage in any action that violates or diminishes the civil or legal rights of clients.

.....

## VI. **The Social Worker's Ethical Responsibility to Society**

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P. **Promoting the General Welfare.** The social worker should promote the general welfare of society.

.....

2. The social worker should act to ensure that all persons have access to the resources, services, opportunities which they require.

3. The social worker should act to expand choice and opportunity for all persons, with special regard for disadvantaged or oppressed groups and persons.

.....

6. The social worker should advocate changes in policy and legislation to improve social conditions and to promote social justice.

258 CMR defines the code of ethics and standards of practice applicable to social workers in Massachusetts

### 20.01: Definition

(1) The social worker's primary responsibility is the welfare of the client.

- (2) A social worker shall not discriminate on the basis of age, sex, race, color, religion, national origin, socio-economic status or sexual preference.  
.....
- (4) The social worker shall carry out his professional practice in a responsible manner and hold him/herself responsible for the quality of service he/she provides.
- (5) The social worker must recognize the boundaries of his/her competence and the limits of his/her method and techniques. The social worker does not offer services nor use techniques without having appropriate professional education and training.  
.....
- (10) A social worker shall contribute his/her knowledge, skills and abilities to further programs of human service and welfare.

As a professional organization comprised of social workers who practice in Massachusetts and who are obligated by state law and their own standards of professional practice to (1) provide quality patient care, (2) safeguard patient well-being, (3) train and establish criteria for training future generations of social workers in this sstate, and (4) take positive social action when patient well-being is threatened by existing or proposed public policy, the Massachusetts Chapter of the National Association of Social Workers support the Plaintiffs in this case. NASW believes that the budget cuts proposed by the Defendants in this case threaten to dramatically downgrade the quality of care available to patients in DMH, inpatient, outpatient and community settings..

For example, the affidavits of Peter M. Caesar, L.I.C.S.W., Susan K. Salinas, L.I.C.S.W., and Irene Smilinski, R.N., L.I.C.S.W., which were given in support of Plaintiffs' Motion for Preliminary Injunction are evidence that for the individuals discussed in these affidavits, the budget cuts will restrain

patient access to standard treatment and care and make it impossible to receive treatment in the least restrictive setting. This will result in: (1) an unacceptable loss of safety and freedom from harm, (2) a severe and unacceptable restriction of their physical freedom, (3) less freedom from bodily restraint than is minimally acceptable, and (4) serious deterioration of their physical and mental condition. Such violations are likely, possibly inevitable, consequences of the abandonment of developed, multidisciplinary treatment plans and the imposition of administrative rather than clinical decisions regarding patient care.

As an organization of professionals responsible not only to promulgate appropriate standards of care, but also for defining criteria relevant to assuring qualified clinical training sites. NASW believes that the threats to quality care embodied in the proposed cuts undermine the ability of the state to provide for social workers in training minimally acceptable clinical training sites.

### **Nurses**

As the following ethical guidelines indicate, registered nurses have also defined for members of their profession a high standard of patient care and professional practice:

#### **American Nurses Association (ANA) Ethical Guidelines and Professional Standards Adopted and Subscribed to by the Massachusetts Nurses Association:**

##### **Standard III. Diagnosis**

THE NURSE UTILIZES NURSING DIAGNOSES AND/OR STANDARD CLASSIFICATION OF MENTAL DISORDERS TO EXPRESS CONCLUSIONS SUPPORTED BY RECORDED ASSESSMENT DATA AND CURRENT SCIENTIFIC PREMISES.

##### **Rationale**

Nursing's logical basis for providing care rests on the recognition and identification of those actual

or potential health problems that are within the scope of nursing practice.

....

### **Standard V. Intervention**

THE NURSE INTERVENES AS GUIDED BY THE NURSING CARE PLAN TO IMPLEMENT NURSING ACTIONS THAT PROMOTE, MAINTAIN, OR RESTORE PHYSICAL AND MENTAL HEALTH, PREVENT ILLNESS, AND EFFECT REHABILITATION.

#### **Rationale**

Mental health is one aspect of general health and well-being. Nursing actions reflect an appreciation for the hierarchy of human needs and include interventions for all aspects of physical and mental health and illness.

### **Standard V-A. Intervention: Psychotherapeutic Interventions**

THE NURSE USES PSYCHOTHERAPEUTIC INTERVENTIONS TO ASSIST CLIENTS IN REGAINING OR IMPROVING THEIR PREVIOUS COPING ABILITIES AND TO PREVENT FURTHER DISABILITY.

#### **Rationale**

Individuals with and without mental health problems often respond to health problems in a dysfunctional manner. During counseling, interviewing, crisis or emergency intervention, or daily interaction, nurses diagnose dysfunctional behaviors, engage clients in noting such behaviors, and assist the client in modifying or eliminating those behaviors.

244 CMR further describes the professional standards of conduct for registered nurses in Massachusetts as set forth by the Board of Registration in Nursing:

### **3.02: Responsibilities and Functions: Registered Nurses**

A registered nurse shall bear full and ultimate responsibility for the quality of nursing care she/he provides to individuals and groups. Included in such responsibility is health maintenance, teaching, counseling, collaborative planning and restoration of optimal functioning and comfort or for the dignified death of

those they serve. A registered nurse, within the parameters of his/her generic and continuing education and experience, may delegate nursing activities to their registered nurses and/or health care personnel, provided that the delegating registered nurse shall bear full and ultimate responsibility for:

- (1) making an appropriate assignment;
- (2) properly and adequately teaching, directing, and supervising the delegatee; and
- (3) the outcomes of that delegation.

A registered nurse shall act, within his/her generic and continuing education and experience to:

- a) systematically assess health status of individuals and groups and record the related health data;
- b) analyze and interpret said recorded data; and make informed judgments therefrom as to the specific problems and elements of nursing care mandated by a particular situation;
- c) plan and implement nursing intervention which includes all appropriate elements of nursing care, prescribed medical or other therapeutic regimens mandated by the particular situation, scientific principles, recent advancements and current knowledge in the field.
- d) provide and coordinate health teaching required by individuals, families and groups so as to maintain the optimal possible level of health;
- e) evaluate outcomes of nursing intervention, and initiate change when appropriate;
- f) collaborate, communicate and cooperate as appropriate with other health care providers to ensure quality and continuity of care;
- g) serve as patient advocate within the limits of the law. (Emphasis supplied)

As registered nurses who practice in Massachusetts and who are obligated by state law and their own standards of professional practice to (1) provide quality patient care, (2) safeguard patient well-being, (3) train and establish criteria for training future generations of nurses in this state, and (4) take positive social action when patient well-being is threatened by existing or proposed public policy, the Amici nurses believe that the budget cuts proposed by the Defendants threaten to dramatically downgrade the quality of care available to patients in DMH care and custody.

For example, the affidavits of Mary Cookley, R.N., Marguerita Reczycki, R.N., Kerline Rivette, R.N., and Beth Yanofsky, R.N., M.Ed., given in support of the Plaintiffs' Motion for a Preliminary Injunction are evidence that the individuals discussed in these affidavits have suffered or will suffer: (1) an unacceptable loss of safety and freedom from harm, (2) a severe and unacceptable restriction of their physical freedom, (3) less freedom from bodily restraint than is minimally acceptable, and (4) serious deterioration of their physical and mental condition. Such violations are likely, possibly inevitable, consequences of the abandonment of developed, multidisciplinary treatment plans and the imposition of administrative rather than clinical decisions regarding patient care.

As professionals responsible to practice and train according to appropriate standards of care, Amici nurses believe that the threats to quality care embodied in the proposed cuts undermine the ability of the state to provide for nurses in training minimally acceptable clinical training sites.

### **Student Trainees**

While each of the major professions (psychiatry, psychology, nursing and social work) train students in the clinical milieu, psychology trainees typify the importance of the process for clients served, institutions

responsible for ensuring quality care to clients, and the profession as a whole. The Massachusetts School of Professional Psychology (MSPP) states its goals as promulgated in the official catalogue of the School as follows:

The primary goal of MSPP is to provide society with qualified doctoral-level practitioners competent in the application of psychological principles and skills. Graduates should be able to:

1. Help evaluate, ameliorate and prevent human psychosocial problems;
2. Help individuals, families, groups, organizations and communities function effectively and creatively;
- ....

The specific educational objectives are to prepare students to become:

1. Aware of the ethical standards of the profession and the legal and moral responsibilities established by society, and to practice psychology accordingly;
- ....
5. Able to help recognize and evaluate the changing needs of society and capable of functioning as versatile and creative change agents, able to suggest and apply a wide variety of preventive and corrective intervention strategies for individuals, groups and social systems;
6. Knowledgeable in areas that support and facilitate primary service and direct practice, such as supervision, consultation and education, administration, program development and advocacy;
7. Active in the promotion of psychological knowledge and human welfare.

**Massachusetts School of Professional Psychology:**

As an institution responsible for the training of professional psychologists, MSPP is obligated by the standards of the profession of psychology and of the bodies that accredit MSPP and other such institutions (the American Psychological Association and the New England Association of

Schools and Colleges) to: (1) train and establish criteria for training future psychologists in this state, and (2) ensure that its trainees learn and provide quality patient care. MSPP supports the Plaintiffs in this case.

MSPP is dedicated to training graduate students in psychology to provide the highest possible standards of care, both through academic course work and through rigorous training and supervision in clinical practice and internships. MSPP is concerned that the budget cuts proposed by the Defendants in this case threaten to dramatically downgrade the quality of care available to patients in DMH care and custody. As such, they also threaten to violate promulgated standards for the education and training of future psychologists who are needed for patient care in the generations to come.

In order to provide acceptable standards of patient care, psychologists (and other mental health professionals) must be appropriately trained. If psychology (and other mental health professional) students do not receive well-supervised training in those settings which serve the Plaintiffs in this case and the classes they represent, they are unlikely to receive such training after graduation. As such, they may not be qualified to serve these populations adequately and according to minimally acceptable standards of care. MSPP is concerned that the budget cuts planned by the Defendants in this case will compromise the training of psychologists and other mental health professionals to the point that the Plaintiff classes will be profoundly underserved.

After reading the affidavits of clinicians stating what effects the budget cuts will have on care and services to individual Plaintiffs, filed in support of Plaintiffs' Motion for a Preliminary Injunction, MSPP concludes that the proposed cuts threaten to impose upon patients in DMH care: (1) an

unacceptable loss of safety and freedom from harm, (2) a severe and unacceptable restriction of their physical freedom, (3) less freedom from bodily restraint than is minimally acceptable, (4) serious deterioration of their physical and mental condition, and (5) indirectly and for many years to come, additional harm through the decrease in the number of psychologists and other mental health professionals whose training has prepared them for the specific and profound mental disabilities of the Plaintiff classes of patients dependent on DMH. Such violations are likely, and possibly inevitable, consequences of the abandonment of developed, multidisciplinary treatment plans and the imposition of administrative rather than clinical decisions regarding patient care and clinical training. These consequences are risks embodied in the magnitude and scheduling of service and staffing cutbacks proposed by the Defendants in this case. Not only do the proposed cuts mean the precipitous loss of staff on whom patients depend for services, but also the precipitous loss of interns' and trainees' supervisors and even of their training placements. These losses, in turn, mean that, at worst, students will be forced to abandon their patients precipitously in breach of professional standards of conduct.

As a training institution responsible for teaching doctoral students high standards of care, MSPP is concerned that the threats to quality care embodied in the proposed cuts undermine the ability of the state to provide minimally acceptable clinical training sites for psychologists in training.

**Mental Health Service Providers Generally:**

While each of the foregoing disciplinary groups is obligated by Massachusetts law and the ethical standards and licensing policies of their separate disciplines, they and mental health service providers of all

disciplines share a collective responsibility for quality care, multidisciplinary collaboration and common attention to the public good in matters of mental health service delivery. The aims and responsibilities of mental health service providers generally are reflected in the mission statement and purpose of the American Orthopsychiatric Association, Inc., which is set forth below:

### **Mission Statement**

Initiated by the Policy & Long-Range Planning Committee

**ORTHO** is organized to provide a common meeting ground for individuals engaged in the interdisciplinary study and treatment of human development, and to foster research and the dissemination of information related to functional and dysfunctional behavior. The Association promotes the development of knowledge, theory, and technique from integrated as well as distinct psychological/biological/social perspectives with the aim of informing social policy and professional practice.

**ORTHO's** multidisciplinary and interdisciplinary approach invites collaboration with other organizations in addressing policy, advocacy, and programmatic aspects of significant issues, and in joint planning of program elements of the Association's Annual Meeting, as well as meetings of related organizations. **ORTHO's** Task Forces and Study Groups, in the course of advancing their specific concerns, are encouraged to explore and make use of these channels.

In keeping with the approach set forth above, the Board of Directors of the American Orthopsychiatric Association has established three areas of primary focus:

1. Family functioning with emphasis on preventive strategies and treatment approaches geared to develop and enhance family cohesion, and with consistent attention to the family in its socioeconomic and environmental context--as expressed in basic issues such as health care, housing, income maintenance, child care, parental support, etc.
2. Governmental regulation and policy affecting the health and emotional well-being of individuals and families--in areas including systems of taxation, criminal justice, Immigration, education, housing, health care, etc.

3. Institutionalized prejudice as it affects the mental health and the development of individuals and families, and the functioning of both community and society--with emphasis on the role of stigma associated with race, class, age, sex and gender, mental and physical illness or disability, etc.

ORTHO's purpose in being involved as an Amici in this case is to support the Plaintiffs and the classes of consumers they represent to receive the recognition they deserve as tremendously vulnerable individuals whose survival is threatened by the cuts in state funding which are the concern of this case.

As a multidisciplinary organization whose membership includes professional and paraprofessional categories of mental health service providers who practice in Massachusetts and who are obligated by state law and our own standards of professional practice to: (1) provide quality patient care, (2) safeguard patient well-being, (3) train and establish criteria for training future generations of mental health providers in this state, and (4) take positive social action when patient well-being is threatened by existing or proposed public policy, ORTHO supports the Plaintiffs in this case.

ORTHO believes that the budget cuts proposed by the Defendants in this case threaten to downgrade the quality of care available to patients in DMH care and custody.

For example, the affidavits of Frank M. Gatti, M.D., Peter Adler, Ph.D., Irene Smilensky, L.I.C.S.W., and Marguerite Redyzcki, R.N., given in support of Plaintiffs' Motion for a Preliminary Injunction in this case are evidence that for the individuals discussed in these affidavits, the budget cuts have caused or will cause (1) an unacceptable loss of safety and freedom from harm, (2) a severe and unacceptable restriction of their physical

freedom, (3) less freedom from bodily restraint than is minimally acceptable, (4) serious deterioration of their physical and mental condition, and (5) deprivation of treatment. Such violations are likely, possibly inevitable, consequences of the abandonment of carefully developed, multidisciplinary treatment plans and the imposition of administrative rather than clinical decisions regarding patient care which are risks embodied in the magnitude and scheduling of the service and staffing cutbacks proposed by the Defendants.

As a multidisciplinary organization responsible not only to promulgate appropriate standards of care, but also to define criteria relevant to multidisciplinary clinical training, ORTHO believes that the threats to quality care embodied in the proposed cuts will, if implemented, undermine the ability of the state to provide for mental health professionals in training minimally acceptable clinical training sites.

## **VI. CONCLUSIONS**

Based upon their separate and collective analysis of the nature, scope, timing and patient care implications of those budget cuts which the Defendants have imposed upon mental health services in Massachusetts (and which are the subject of concern in this case), the Amici conclude that these cuts greatly jeopardize the degree and quality of care and protection which will be afforded patients who rely solely or primarily on DMH services for their care and well-being.

The proposed cuts are of such magnitude as to presage terrible disruptions of service and grave physical and emotional harm to the most vulnerable patients served by DMH. These patients include the Plaintiffs in this case and other patients who need and are entitled to DMH services.

Those patients likely to suffer great harm as a result of the budget cuts envisioned by the Defendants include but are not limited to the following:

1. Patients in DMH custody, including Plaintiffs Daniel McNamara, S.E., Jane Doe and others in the class they represent, whose physical survival and fragile emotional status will be placed at great risk by the precipitous loss of stable residency and the concomitant loss, reduction or fragmentation of vital and long-standing medical, mental health and support services.
2. Patients in DMH custody, including Joe Valentin, John Morrison and others in the class they represent whose prospects for movement from a more to a less restrictive alternative treatment modality will be all but destroyed by the sudden disruption of care and the untimely abandonment of long-standing and effective treatment plans necessitated by the Defendants' actions.
3. Patients, including Josephine Dioguardi, David Heuser, J.R., Annie Marie Tipping, Michael Morrison, William Crayton, On Pol and others in the class they represent, who rely heavily upon DMH outpatient services and who will quickly develop a need for more restrictive inpatient care as continuing access to a needed complement of outpatient mental health, medical and support services is denied or compromised.

If the budget cuts proposed by the Defendants are implemented as planned, we believe other forms of harm will also be done. For example, the reduction in available community resources will create a widespread need

for more costly and long-lasting institutional care. In addition, the proposed budget cuts will eliminate or greatly reduce the availability of other services, including emergency services, upon which patients have come to depend. As these support services are lost, the need for custodial care will again increase. Such shifts will place patients at added and unnecessary risk and will place undue and inappropriate burdens on public sector mental health professionals who will face increased responsibility for an expanding caseload in an environment lacking alternatives to inpatient services.

For all of these reasons, the Amici urge this Honorable Court to grant the Preliminary Injunction sought by the Plaintiffs.

Respectfully submitted,

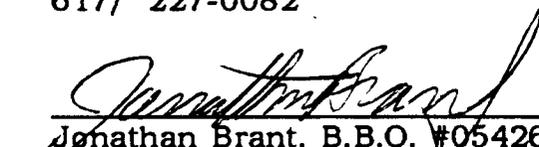
American Orthopsychiatric Association, Inc.;  
Massachusetts Chapter, National Association of  
Social Workers;  
Massachusetts School of Professional Psychology;  
Henry Grunebaum, M.D., William James, M.D.  
Roberta Apfel, M.D., Bennett Simon, M.D.,  
Bessell van der Kolk, M.D., et al  
Jodie Kliman, Ph.D., Deborah Belle, Ph.D.,  
David Trimble, Ph.D., Mary Harvey, Ph.D.,  
Pedro Garrido, Ph.D., et al  
Carol Hartman, R.N. June Horowitz, R.N.,  
Karen Aroian, R.N., Karen Gardner, R.N.,  
Calista Roy, R.N., et al

By their attorneys,



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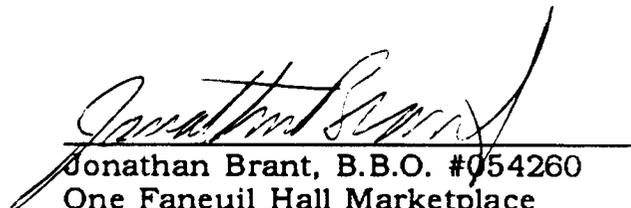
Daniel McNamara, et al v. Michael Dukakis, et al  
C.A. No. 90-12611-Z  
U.S. District Court - Massachusetts

**CERTIFICATE OF SERVICE**

I hereby certify that on this date the foregoing document, Brief Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction, has been served, by mail, postage prepaid, upon counsel of record:

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