

Respectfully Submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case is about a residential facility, House of Hope Central Ohio (“HHCO”), operating without any oversight by a state regulatory agency, as is required by law. Defendant is not certified by the Ohio Department of Job and Family Services (“ODJFS”) or other approved regulating entity to operate a residential facility. Ohio law requires that a residential facility be certified by ODJFS or other specified state agency. ODJFS is requesting that this Court enjoin HHCO from operating until HHCO comes into compliance with law by getting a certificate or license to operate by ODJFS or other specified state agency.

ODJFS learned that HHCO is operating a residential facility after a complaint was filed against HHCO by a resident’s parents. See Appendix A. On multiple occasions, both by letter and personal visitation, ODJFS has demanded that HHCO comply with Ohio law, but HHCO has steadfastly refused. Therefore, ODJFS is requesting that this Court grant its motion for an injunction and order HHCO to cease its operations until it is properly certified. ODJFS also requests that this Court schedule an expedited evidentiary hearing so that ODJFS may present additional evidence in support its Motion.

II. STATEMENT OF FACTS

HHCO is currently located at 9373 Stoneburner Rd., NW, Crooksville, Ohio 43731, in Morgan County. Mr. and Mrs. Ronald and Kathy Kovacs are the co-founders and directors of HHCO. HHCO is a non-profit 501(c)(3) corporation registered under the name “Extreme Hope Ministries.” See Appendix B. Although the residential facility is located in Morgan County at the above referenced address, HHCO or Extreme Hope Ministries is incorporated in Franklin County, at 1541 Briar Meadow Dr., Columbus, Ohio 43235. *Id.*

HHCO is residential facility that accepts youth between the ages of 13 and 17. See http://www.houseofhopeohio.com/House_of_Hope_Central_Ohio/Program.html attached as Appendix C. The residents are home schooled at HHCO while they complete the HHCO program. See HHCO, program handbook attached as Appendix D. The residential program is expected to last approximately 9 to 18 months and consists of an orientation followed by a series of five phases. See generally Appendix C and D. The orientation is a 30 day period when the resident is supposed to adjust to living at HHCO. See Appendix D, at p. 3. During that time, residents have no phone or visitation privileges. *Id.* After passing orientation, residents begin to work through the five phases. *Id.* at p. 8. Residents return home during the fifth phase, unless it has taken the resident longer than one year to complete the first three phases. *Id.* In that case, the resident may return home before phase five. *Id.* In addition to the five phases, while at HHCO, the residents are on a daily schedule, including Saturday and Sunday. *Id.* at pp. 12 – 13.

On or about September 6, 2011, ODJFS learned that HHCO is operating residential facility after a resident's parent filed a complaint against HHCO. See Affidavit of Kathy Yuzwa attached as Appendix A. On December 8, 2011, Kathy Yuzwa, ODJFS Licensing Specialist conducted an on-site inspection at HHCO, at the Crooksville address. *Id.* During her inspection Ms. Yuzwa determined that a resident, who is believed to still be living at HHCO, had been placed at HHCO for approximately three months. *Id.*

On December 12, 2011, ODJFS sent HHCO a cease and desist letter. See December 12, 2011, Cease and Desist Letter attached as Appendix E. The December 12th letter advised HHCO to immediately stop caring for children until HHCO is certified by ODJFS or another similar state licensing entity. *Id.* HHCO responded that it would not stop operating nor would it seek certification. See HHCO response letter attached as Appendix F. As a result, on February 28,

2012, the Ohio Attorney General's Office, counsel for ODJFS, sent another cease and desist letter to HHCO. See February 28, 2012, cease and desist letter attached as Appendix G. The February 28th letter advised HHCO of the applicable statutes and required HHCO to comply with Ohio law by ceasing its operations until HHCO is properly certified. *Id.*

On March 12, 2012, counsel for HHCO responded to the February 28th letter. See March 12, 2012, Response Letter attached as Appendix H. HHCO stated that it is not required to obtain a valid certificate from ODJFS because HHCO "residents are always sent home within any two (2) week period and then, at the option of the parent, may be returned for another period of less than two (2) consecutive weeks." *Id.* As a result, ODJFS has filed this action.

III. LAW AND ARGUMENT

A. Standard of review for statutory injunction actions.

When ODJFS determines that an institution or association is operating without a certificate, its obligation is set out in R.C. 5103.03(H), which provides:

If the director of job and family services determines that an institution or association that cares for children is operating without a certificate, the director may petition the court of common pleas in the county in which the institution or association is located for an order enjoining its operation. **The court shall grant injunctive relief upon a showing that the institution or association is operating without a certificate.**

(emphasis added).

In Ohio, it is well established that the traditional concepts for the issuance of equity injunctions do not apply in statutory injunction actions. *Stephan v. Daniels* (1875), 27 Ohio St. 527, 536. See also, *State v. Alexander Brothers, Inc.* (1974), 43 Ohio App.2d 154, 156; *Ackerman v. Tri-City Geriatric & Health Care, Inc.* (1978), 55 Ohio St.2d 51, 56. If the statutory prerequisites for an injunction are met, the injunction should be granted.

In *Ackerman*, the Director of Health brought an action to enjoin the operation of an unlicensed nursing home. 55 Ohio St.2d, at 54. The Supreme Court, citing the majority rule applied by federal courts and the law in a growing number of state jurisdictions, held that an injunction should be granted if the statutory prerequisites for a similar injunction under R.C. 3721.08 have been met. *Id.* at 58. The Court held that the Director should not be required to show irreparable harm or lack of an adequate legal remedy “once he has already proved that the conditions which the General Assemble has deemed worthy of injunctive relief exist.” *Id.* at 57.

The distinction between the two types of injunctive relief was further delineated by the Court’s statement that R.C. 3721.08 “was designed by the General Assembly to benefit society by proscribing behavior (the unlicensed operation of nursing homes) which the General Assembly has determined not to be in the public interest.” *Id.* The Court concluded that:

* * * R.C. 3721.08 injunctions and similar 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.

* * * We therefore hold that, in an R.C. 3721.08 action brought by the Director of Health to enjoin the operation of an unlicensed nursing home, the injunction should be granted if the statutory conditions exist.

Id. at 57-8. Therefore, governmental agency injunctions designed to prevent harmful activities are “not designed primarily to do justice to the parties, but to prevent harm to the general public.” *Id.* Thus, the injunction “should be granted if the statutory conditions exist.” *Id.*

The rule established by *Ackerman* has been followed by numerous courts. See e.g., *State ex rel. Brown v. Chase Foundry & Mfg. Co.* (1982), 8 Ohio App.3d 96, *17; *Brown v. Deacon’s Chrysler Plymouth, Inc.* (1979), 14 Ohio Op. 3d 436, *5.

Similar injunctive relief is also afforded to ODJFS. R.C. 5103.03(H) permits the Director of ODJFS to seek an injunction against an alleged unauthorized institution or association.

Parallel to R.C. 3721.08, R.C. 5103.03 authorizes a government agent to sue to enjoin activities, which the General Assembly as designated harmful to the general public of this state – in this case, unlicensed residential facility.

B. HHCO is an institution or association that requires governmental oversight.

HHCO is operating an uncertified institution or association in violation of Ohio law. An “association or institution includes any incorporated or unincorporated organization, society, association, or agency, public or private, that receives or cares for children for two or more consecutive weeks; an individual, ...who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless the individual is related to them by blood or marriage.” R.C. 5103.02(A). HHCO is an institution or association as defined in R.C. 5103.02(A) because HHCO cares for children for two or more consecutive weeks. The HHCO program is geared to last anywhere between 9 and 18 months. See Appendix A. During the 30 day orientation residents are not allowed to leave the property. See Appendix B. And after the first 30 days, leave days are minimal. *Id.* HHCO’s daily schedule that the residents are mandated to follow is in effect seven days a week. *Id.* In addition, ODJFS intends to present evidence during a hearing, from a resident’s parent that their son was at HHCO for longer than two weeks. These facts establish that HHCO’s routine practice is to care for children for two or more consecutive weeks.

HHCO’s argument, in its March 12th letter, that R.C. 5103.02(A) does not apply to them is against public policy and the plain language of the statute and inconsistent with the facts of this case. The plain language of R.C. 5103.02(A) does not require residential facilities to care for children each day for two or more consecutive weeks before ODJFS certification is required. Under HHCO’s interpretation, residential facilities, like HHCO, would be able to circumvent the

statute by sending its residents off its grounds for five minutes, once every two weeks, with his or her guardian for ice cream, leaving Defendant free from all certification and oversight requirements. Such an interpretation is against the purpose of R.C. Chapter 5103, which is to provide protection to children by allowing ODJFS to monitor the facility for compliance with the laws and rules governing the placement of children in out of home settings. Not only is HHCO's argument legally flawed, but it is factually flawed. HHCO's marketing and programmatic materials are inconsistent with Defendant's position that it does not continuously care for children. Additionally, ODJFS intends to present testimony during the hearing establishing the residents lived at HHCO for more than two weeks.

C. ODJFS has statutory authority to file for injunctive relief against HHCO's illegal operations.

The General Assembly has mandated that the operation of an institution or association without a certificate shall result in injunctive relief if requested.

If the director of job and family services determines that an institution or association that cares for children is operating without a certificate, the director may petition the court of common pleas in the county in which the institution or association is located for an order enjoining its operation. **The court shall grant injunctive relief upon a showing that the institution or association is operating without a certificate.**

R.C. 5103.03(H) (emphasis added). Thus, the Court must order an injunction where ODJFS is able to show that HHCO is operating as an institution or association without a certificate. As stated above, HHCO is an institution or association as defined by R.C. 5103.02(A). Currently HHCO is not certified by ODJFS. And to the best of ODJFS' knowledge, HHCO is not certified any other state licensing agency. HHCO has not provided to ODJFS any documentation to verify that it is certified any state regulating entity. ODJFS and the Attorney General's Office informed Defendants of ODJFS' certification requirements. Despite being given the opportunity

to come into compliance, HHCO continues to operate a residential facility without certification or any oversight.

D. Request for a hearing

ODJFS requests that this Court schedule an expedited evidentiary hearing on this matter so that ODJFS may present additional evidence in support of its Motion. In addition to documentary evidence, ODJFS intends to call witnesses, including but not limited to, the parents of a former resident, the Deputy who investigated the complaint that was filed against HHCO, and the ODJFS licensing specialist who conducted the December 8th on-site inspection.

IV. CONCLUSION

For the reasons stated above, HHCO's conduct has been identified by the General Assembly as behavior not in the public interest and a statutory condition exists for an injunction to be granted. HHCO has blatantly ignored the statutes and rules governing the placement of children. Therefore, ODJFS respectfully requests that this Court grants it requests for injunctive relief and expedited hearing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Complaint was sent via fax and regular U.S. mail on May __, 2012 to Stephen S. DeWeese, counsel for House of Hope, at 7737 Olentangy River Road, Columbus, Ohio 43234-1316 and to fax number (614) 848-6516.

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