

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Defendants.

Civ. No. 99 - 1435 (GAG)

**ORDER APPOINTING
A SUCCESSOR JOINT COMPLIANCE COORDINATOR AND ASSISTANT TO THE
JOINT COMPLIANCE COORDINATOR**

Several weeks ago, John J. McGee, Ph.D., the Court-appointed Joint Compliance Coordinator (“JCC”) in this case, passed away rather unexpectedly. Dr. McGee had served as the JCC since almost the beginning of this case. He served the Court, the parties, and people with disabilities with great distinction and integrity, bringing his considerable compassion, insight, and humanity to the day-to-day work of monitoring the Commonwealth’s efforts to comply with existing orders in this case. During his time as the JCC, Dr. McGee played a critical role in helping to bring about meaningful and positive change that deeply impacted countless vulnerable and often voiceless people with disabilities; the action taken to create an integrated community-based service delivery system to replace an archaic and bleak institutional system is perhaps his greatest legacy.

Although he can never be replaced, it is necessary to appoint a successor to continue his important oversight work associated with the ongoing efforts to ensure the health, safety, and welfare of persons with developmental disabilities in the Commonwealth of Puerto Rico.

A short time ago, the Court appointed Sylvia M. Fernandez Colorado, Ph.D., as the successor JCC. Order, Nov. 27, 2012, Doc. No. 1300. In addition to her considerable independent professional credentials, Dr. Fernandez is, as referenced in that minute order, uniquely and best qualified for the post given that, for the past two years, she had worked closely with, and under the tutelage of, Dr. McGee as his assistant in monitoring the Commonwealth's efforts to comply with the various Court orders in this case. See Order Appointing Assistant to Court Monitor, Oct. 29, 2010, Doc. No. 1049.

As referenced in the minute order, Dr. Fernandez is to immediately assume all of Dr. McGee's duties as JCC and she shall have the same JCC authority conferred upon her as set forth in prior orders, including the Supplemental Interim Settlement Agreement, originally filed on April 14, 2000 (Doc. No. 15).

Consistent with existing orders in this case, the Court expects the Commonwealth to work cooperatively with Dr. Fernandez at all times, by facilitating the JCC's access to all persons, residences, facilities, programs, services, documents, and materials the JCC deems necessary or appropriate to consult or utilize in performing the duties and functions of the JCC. To that end, the Commonwealth shall provide the JCC with requested documents and other materials promptly, so as to enable the JCC to conduct reviews, to conduct interviews, and to issue reports in a timely manner.

In addition, the Commonwealth shall proactively provide the JCC with prompt notice of sentinel events, including: participant deaths, psychiatric hospitalizations, clinical hospitalizations and hospital visits, allegations of abuse, allegations of neglect, participant injuries (such as fractures, lacerations, or bruises), significant participant behaviors (such as aggression to staff, aggression to peers, self-injurious behavior, elopement attempts, pica, and

sexually-inappropriate behavior), use of physical, mechanical, or chemical restraint, the onset of decubitus ulcers, as well as details on any and all individual transitions and the closure or opening of any community residence.

As has been the practice for many months now, the Court anticipates receiving monthly reports from the JCC with regard to outstanding issues associated with the delivery of protections, services, and supports to all persons with developmental disabilities in the Commonwealth's service-delivery system. So as to ensure the health, safety, and welfare of these persons and to minimize any substantive disputes between the parties, the Court expects the Commonwealth to develop and implement prompt and effective remedial measures to address any and all legitimate concerns set forth in the monthly JCC reports.

In addition, also consistent with existing orders in this case, the Commonwealth shall continue to promptly reimburse the JCC for time spent on monitoring activities, as well as for reasonable associated expenses and the expense of assistants and consultants, if any. The Court instructs Dr. Fernandez to submit invoices for her work as JCC at the same \$150.00/hour rate previously set for Dr. McGee as JCC. The Court notes that because Dr. Fernandez resides in Puerto Rico, the Commonwealth will now not be billed for local rental car or U.S. travel expenses typically associated with Dr. McGee's past visits to the island.

Consistent with prior practice, the Court will authorize and direct payment from the Court Registry for all reasonable invoices that the JCC files with the Court. To minimize the Court having to issue orders associated with the Court Registry account, the Commonwealth shall proactively replenish the funds in the Court Registry so as to ensure that there will always be sufficient funds available to meet JCC-invoiced expenses.

After receiving input from Dr. Fernandez, the Court hereby appoints Dimaris García Mercado, Psy.D., as the assistant to the JCC. The duties and responsibilities of this assistant shall be consistent with those set forth in the Court's previous order appointing an assistant to the JCC (Doc. No. 1049).

So ordered.

In San Juan, Puerto Rico, on this 12th day of December, 2012.

s/Gustavo A. Gelpí
Gustavo A. Gelpí
United States District Judge