

Report to the Barbara McDowell & Gerald S. Hartman Foundation Children's Rights

Case Background

In June 2017, Children's Rights filed our *M.B. v. Corsi* class action lawsuit in Missouri, a state where foster children are prescribed powerful and potentially dangerous psychotropic medications in the absence of an effective system of oversight. Our plaintiffs include a three-year-old child in foster care who was put on psychotropic medications; a 14-year-old placed on 6 different psychotropic and antipsychotic medications simultaneously who experienced numerous adverse effects, including facial tics, slurred speech and an inability to stay awake during the day; and a 12-year-old girl who required psychiatric hospitalization when given the wrong dosage of her medications upon moving from one home to another with no written medical instructions.

The case presents a direct challenge, the first of its kind, to a state's longstanding failure to ensure the safe administration of psychotropic and antipsychotic medications to children in state foster care. The suit alleges that the State of Missouri's Children's Division (CD) is engaging in harmful practices that put all children in state care at risk, including:

- Failure to maintain complete and current medical records for children in foster care and to provide those records to foster parents and health providers to ensure effective and well-informed treatment;
- Failure to maintain a secondary review system to identify and address high risk and outlier prescriptions to children when they occur; and
- Failure to maintain adequate procedural safeguards to assure the legal rights of children relating to informed consent to the administration of psychotropic medications.

Progress Report

In January 2018, the Judge denied almost the entirety of Defendants' August 2017 Motion to Dismiss the case, and shortly thereafter issued a revised scheduling order that places the case on an aggressive path to trial in January 2019. Children's Rights filed our motion for class certification in March 2018, and in July 2018, United States District Judge Nanette K. Laughrey granted class certification, allowing Children's Rights to represent all children in Missouri foster care. In certifying class action status in the suit, the judge emphasized that powerful psychotropic drugs expose children to serious side effects, including hallucinations, self-harm and suicidal thoughts, and chronic illnesses such as type 2 diabetes, adding that psychotropics "should be administered only when necessary." Furthermore, the judge pointed out that the state has knowingly engaged in these harmful practices: "CD itself is aware that the lack of a reasonable system of oversight and monitoring of the administration of psychotropic medications to children in its custody poses a substantial and ongoing risk of harm to the children."

Active discovery in this case has continued at a steady pace since the Judge denied almost the entirety of Defendants' motion to dismiss the case in January 2018. We continue to learn more about the state's longstanding failure to ensure the safe administration of psychotropic and antipsychotic medications to children in state foster care. We have received thousands of pages of discovery and have begun taking depositions of agency officials. In addition, we are working with a team of nationally known and respected experts in the field of child psychiatry and pharmacology, with an eye toward preparing for a trial in 2019. Our colleagues at the National Center for Youth Law, St. Louis University School of Law, and Morgan, Lewis & Bockius LLP continue to be staunch allies in this campaign. Most recently, we have agreed to explore possible

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settlement, but on a dual track with discovery and trial preparation, which we think serves us well strategically at this stage.

Anticipated Future Activities

The case has progressed through class certification with the Court granting our motion to establish a statewide Plaintiff class. Discovery is ongoing and set to be completed in January 2019. Trial is set for June 2019.

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