

**CAUSE NO. D-1-GV-06-000017**

STATE OF TEXAS,  
Plaintiff

v.

HEARTWOOD NURSING AND  
REHABILITATION CENTER, INC.,  
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53<sup>RD</sup> JUDICIAL DISTRICT

**AGREED TEMPORARY INJUNCTION AND  
ORDER CONTINUING APPOINTMENT OF TEMPORARY TRUSTEE**

On this date, Plaintiff, the State of Texas ("State"), acting by and through its Attorney General, GREG ABBOTT, and at the request of the Commissioner of the Texas Department of Aging and Disability Services ("DADS"), Jim Hine, Heartwood Nursing and Rehabilitation Center, Inc., the Defendant by and through its Attorney Nancy Shellhorse, and the Trustee by and through his attorney, David F. Bragg, came for hearing in the above entitled and numbered cause and announced ready for such hearing. The Court, having considered the State's First Amended Original Petition for Temporary Restraining Order, Emergency Disbursement of Trust Fund Monies, Appointment of a Temporary Trustee, and Temporary and Permanent Injunctions, including the affidavits and exhibits attached, and noting the agreement of the parties, is of the opinion that a temporary injunction and the continued appointment of a temporary trustee is necessary pursuant to TEXAS HEALTH AND SAFETY CODE § 242.094, and that Defendant should be restrained from interfering with the Trustee's performance of the duties set out in this order.

Emergency Trust fund monies were Ordered disbursed to the Trustee pursuant to § 242.096, TEX. HEALTH AND SAFETY CODE on January 6, 2006.

Plaintiff has proved that TEXAS HEALTH AND SAFETY CODE § 242.063 authorizes the entry of this order based on the evidence presented.

**IT IS THEREFORE ORDERED** that **DAVID FRENCH** continue in his appointment as Trustee of HEARTWOOD NURSING AND REHABILITATION CENTER, INC located at

2704 North Main Street, Taylor, Texas 76574. The Trustee is hereby invested with the following powers, to be used in the sole discretion of the Trustee:

- A. To enter, occupy, administer and fully control the facility for that period of time necessary to eliminate the threat to the health and safety of the residents of Defendant's facility listed above, until such time as DADS has determined that the facility can ensure continued compliance with the minimum standards for certification, or until further order of the Court. In addition, if appropriate and necessary in the sole opinion of the Trustee, the Trustee will provide for and assure an orderly and safe relocation of some or all of the residents of the Defendant's facility listed above.
- B. To hire assistants, consultants and employees of the facility, as reasonably necessary in the sole opinion of the Trustee to assist the Trustee in carrying out the duties described in this order, and place employees on suspension or administrative leave.
- C. To direct the notification of residents, persons responsible for their support and nearest relatives of the residents prior to any residents being relocated.
- D. To receive any money currently held by DADS and owed to Defendant, for the Trustees to perform or cause to be performed the above described duties; and to enter into contracts with DADS to carry out this provision.
- E. To take possession, control and custody of all patient records, books of account or other written material, or material stored in computers, relating to the operation of Defendant's facility.
- F. To open accounts, as necessary to the orderly operation of Defendant's facility, with any financial institution whose accounts are federally insured.
- G. To receive, collect and open all mail directed to Defendant, or contained in any post office box held by Defendant or any of their agents or employees.
- H. Upon request, to receive and to cause issuance of all checks and other instruments withdrawing, depositing or transferring funds with respect to all of Defendant's accounts, insofar as such funds arise out of, are related to, or derived from the business operation of Defendant's facility.

I. To approve or deny access to Defendant's facility by Defendant and Defendant's agents, servants and employees, as appropriate for carrying out the Trustee's duties and preventing interference.

J. To negotiate and contract directly with DADS for Medicaid services, as the Trustee deems necessary for the efficient and orderly management of Defendant's facility and for the well-being of their residents.

K. To make any records the Trustee considers appropriate documenting the condition of residents at the facility, including photographic, video-graphic, or sound recordings, as long as the privacy rights of residents under Texas law are protected, provided that records tending to invade any resident's privacy shall not be disclosed except to the resident or the resident's responsible parties, or to agents of state or federal agencies whose access to these confidential records is authorized by law.

L. To enter employment contracts on Defendant's behalf, after giving notice to Defendant, with Certified Nurse Aides Licensed Vocational Nurses, Registered Nurses, and other employees deemed necessary for operation of the facility in a manner that assures compliance with state and federal standards.

M. To enter any service contracts deemed necessary for training of facility staff, including the Administrator.

**IT IS FURTHER ORDERED** that the Trustee is to file a report with the court by January 12, 2006, at 2:00 P.M., and the Trustee is to deliver a copy of the one week report to the Defendant by January 11, 2006, at 5:00 P.M.

**IT IS FURTHER ORDERED** that the Trustee is to file a report with the Court at least every two weeks beginning on January 26, 2006, documenting conditions in the facility and actions made by the facility and by the Trustee to alleviate threats to resident health and safety and to assure continued compliance, in the future, with state and federal standards. The Trustee will send a copy of each report to DADS, to the Office of the Attorney General, and to Defendant's attorney(s).

**IT IS FURTHER ORDERED** that Defendant, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them are hereby enjoined from:

- A. Interfering with the discharge of the duties of each Trustee or any person acting for each Trustee;
- B. Destroying, altering, concealing, hypothecating, pledging, assigning, transferring or removing any books, records, property or assets of Defendant located at these facility for which the Defendant have held the licenses to operate prior to completion of transition of the facility to new operators or closure;
- C. Concealing from the Trustee or removing from the Trustee' control any money related to operation of the facility.

**IT IS FURTHER ORDERED** that if the Trustee deems it necessary for the performance of his duties, Defendant will, upon request by the Trustee, make available to the Trustee all books, records, property, accounts and assets in their possession or under their control that may be located at or pertain to the operation of Defendant's facility.

**IT IS FURTHER ORDERED** that Defendant pay the Trustee, from earnings of the property held under this order, a reasonable fee, plus reasonable expenses, including reasonable attorney fees incurred by the Trustee in performing his duties under this order or effecting payment of amounts owed them by Defendant.

**IT IS FURTHER ORDERED** that Defendant reimburse DADS for any emergency assistance received or spent for care of the residents of Defendant's facility, pursuant to § 242.098, TEX. HEALTH AND SAFETY CODE.

This temporary injunction shall be effective immediately and shall remain in full force pending final trial or further orders of the Court.

This order shall be effective without the execution and filing of a bond as Plaintiff, State of Texas, is exempt from such bond requirement pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE § 6.001.

The clerk of the court is ordered to issue such writs as are necessary for execution of this Order.

**The trial on the merits of this cause is hereby set on \_\_\_\_\_ day of \_\_\_\_\_,  
2006 at \_\_\_\_\_ .m.**

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2006, at \_\_\_\_\_ .m.

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JUDGE PRESIDING

AGREED TO AND ENTRY REQUESTED:

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ATTORNEYS FOR PLAINTIFF The State of Texas

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ATTORNEY FOR DEFENDANT Heartwood Nursing and Rehabilitation Center, Inc

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2006, a true and correct copy of the Agreed Temporary Injunction was served via first class mail, with proper postage affixed, upon the following:

**DAVID BRAGG**

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(Attorney for Trustee David French)

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James E. Custer