

D-1-GU-07-001546

**COPY**

CAUSE NO. ~~D-1-GN-07-002255~~ Filed in The District Court of Travis County, Texas

STATE OF TEXAS,  
Plaintiff,

v.

JAMES W. JEWEL, d/b/a  
AMBERWOOD CARE CENTER  
Defendant.

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IN THE DISTRICT COURT OF JUL 20 2007

At 2:20pm  
Amalia Rodriguez-Mendoza, Clk

TRAVIS COUNTY, TEXAS

3454 JUDICIAL DISTRICT

**AGREED**

**TEMPORARY RESTRAINING ORDER,**  
**ORDER APPOINTING TEMPORARY TRUSTEE AND**  
**ORDER DISBURSING EMERGENCY TRUST FUND MONIES**

On the date set forth below the Court considered the State's application for temporary restraining order, appointment of trustees, and emergency disbursement of trust fund monies in the above entitled and numbered cause, due notice having been given. The State appeared through its attorney. *Mr. Jewell appeared without counsel by phone. (S.Y.)* Based on the pleading, the Court finds that appointment of a temporary trustee is necessary pursuant to TEXAS HEALTH AND SAFETY CODE § 242.094(a)(4) and (5), and that Defendant should be restrained from interfering with the Trustee's performance of the duties set out in this order and that emergency trust fund monies should be disbursed to the Trustee pursuant to TEX. HEALTH AND SAFETY CODE § 242.096.

IT IS THEREFORE ORDERED that **DAVID CROWSON** be appointed as Trustee of the following institution owned by Defendant:

**AMBERWOOD CARE CENTER** at 601 Ohio Street, Celina, Texas 75009.

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 Defendants' 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 and fire 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.

C. To direct the notification of residents, persons responsible for their support or 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, on behalf of Defendant, so that staffing arrangements established by the Trustee will be reasonably permanent.

M. To enter any service contracts deemed necessary for training of facility staff, including the Administrator, so staff will know how to care for residents without causing physical, emotional or mental harm to the residents.

IT IS FURTHER ORDERED that Defendant, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them **shall not:**

A. Interfere with the discharge of the duties of the Trustee or any person acting for the Trustee.

B. Destroy, alter, conceal, hypothecate, pledge, assign, transfer or remove any books, records, property or assets of Defendant located at Defendant's facility without the consent of the Trustee.

C. Conceal from the Trustee or remove from the Trustee's 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, surrender 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, pursuant to TEX. CIV. PRAC. & REM. CODE, §64.051(a)(1), 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, pursuant to TEXAS HEALTH AND SAFETY CODE § 242.096, DADS shall disburse **\$200,000.00 to DAVID CROWSON** for the trusteeship of Defendant's facility listed above, from the Emergency Nursing and Convalescent Trust Fund.

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

IT IS FURTHER ORDERED that the Trustee will report to the Court at the end of the first week and then at least every two weeks thereafter 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 Trustees will send a copy of each report to DADS, to the Office of the Attorney General, and to Defendant's attorney(s). These reports shall include: a report of any accounts used by the Trustees on behalf of the facility, along with copies of checks, if available; an itemization of expenditures from the trust fund money;

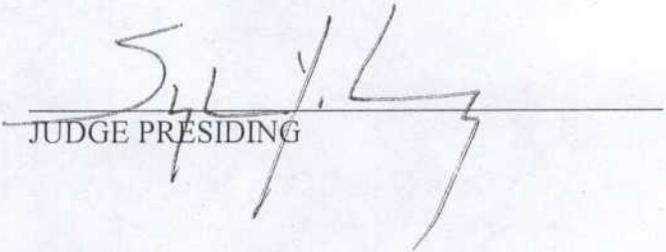
and an itemization of funds going into the accounts and funds disbursed from the accounts.

No bond is required pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE § 6.001.

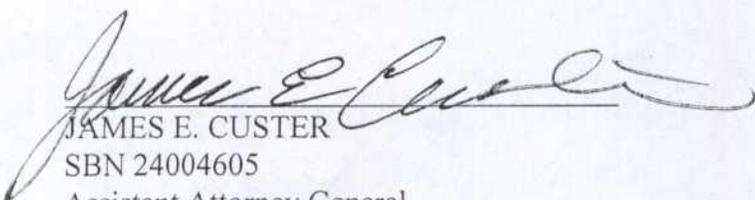
A hearing on the State's application for temporary injunction is hereby set for the

9<sup>th</sup> day August, 2007 at 2:00 p.m.

SIGNED this 20 day of July, 2007, at 3:20 p.m.

  
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JUDGE PRESIDING

APPROVED:

  
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