

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ALBERTO N., ET AL.,
Plaintiffs,

vs.

ALBERT HAWKINS, ET AL.,
Defendants

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CIVIL ACTION NO. 6:99CV459

SECOND JOINT STIPULATION OF VOLUNTARY PARTIAL DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the Parties, by and through the undersigned counsel, hereby stipulate that they have reached a second partial settlement, and that the settled claims, set forth below, be and hereby are dismissed with prejudice.

Paragraph 17.1 of the Second Partial Settlement Agreement (“Second Agreement”), which the Court approved, adopted, and incorporated into its Order dated June 23, 2005, set forth the particular claims to be dismissed. This “Stipulation will dismiss with prejudice all claims against Defendant James Hine, Commissioner of the Texas Department of Aging and Disability Services,” and “all claims against Albert Hawkins, Executive Commissioner of the Texas Health and Human Services Commission, except for Plaintiffs’ claims related to the following:

Whether Title XIX of the Social Security Act requires the Agency or its Contractor to eliminate all prior authorization criteria or any other criteria that require a Beneficiary’s Parent/Guardian to provide part of the Beneficiary’s nursing services; and

Whether Title XIX of the Social Security Act prohibits the Agency or its Contractor from denying or reducing the amount of requested nursing services because the Beneficiary’s Parent/Guardian is trained and capable of performing nursing services tasks, but chooses not to do so.”

For the claims not dismissed by this Stipulation, the Second Agreement provides that “[e]ither Party may seek a judicial ruling by motion for summary judgment as to the above undismissed claims no sooner than September 15, 2005, but no later than December 31, 2005. If no judicial ruling is sought before January 1, 2006, the Court will dismiss all remaining claims with prejudice.” Second Agreement, ¶ 17.1.

Further, for the sake of clarity, all claims against former Defendant William R. Archer, III, M.D., Commissioner of the now-defunct Texas Department of Health, are also dismissed with prejudice.

In accordance with paragraph 14.1 of the Second Agreement, it is agreed and stipulated that the United States District Court for the Eastern District of Texas will retain exclusive jurisdiction over all matters relating to the enforcement of the Second Agreement and attorneys’ fees, and that the Second Agreement may be enforced until July 1, 2009. The Court, therefore, in its Order of Partial Dismissal, shall expressly incorporate the terms of the Second Agreement and retain jurisdiction over all matters relating to the enforcement of the Second Agreement and attorneys’ fees.

Respectfully Submitted,

/s/
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