

UCP obtains guardianship of some patients

By ANEMONA HARTOCOLLIS

A private agency that runs an institution in Willowbrook has quietly gone to court and obtained parental authority over 47 mentally retarded patients, raising startled and strong objections from civil liberties groups.

The agency, United Cerebral Palsy Associations of New York State (UCP), began the controversial process of obtaining legal guardianship nearly a year ago.

UCP reportedly intended to pursue the sluggish process until it embraced all patients whom the agency contended had no traceable family or other interested parties.

Sources close to the institution, the Karl D. Warner Center on the grounds of the Staten Island Developmental Center, estimate that the agency might have sought guardianship of nearly a quarter of its approximately 450 patients.

Guardianship allows UCP officials to make crucial decisions about the

handicapped person's life. For example, the guardian has unique authority to dictate where the person should live and whether he should undergo risky, sometimes fatal, elective medical treatment.

This authority is similar to that vested in a natural parent, covering every aspect of daily life except decisions regarding property, such as money in a bank account.

It is this ultimate control over the patients that has alarmed civil liberties groups. A hearing to recon-

sider the guardianship awards is scheduled to begin March 25 in Staten Island Surrogate's Court, where the awards were made.

Murray B. Schneps, a Manhattan lawyer, said he believes UCP is the first non-profit agency in the state that has tried to exercise so much dominion over its patients.

With a multi-million-dollar budget, funded almost entirely through state and federal Medicaid, UCP is the largest private provider of residential care to the retarded in New

York state.

"I think it has very grave potential," said Schneps, who will ask the judge for reversal in the cases of the 47 patients, as well as a halt to further consideration of UCP as a legal guardian.

He was retained by the Consumer Advisory Board, a watchdog group composed of people with retarded offspring and established by the Wilbrook Consent Decree, a 1975 decision in Brooklyn Federal Court.

Chris Hansen, a lawyer for the

New York Civil Liberties Union, criticized the power sought by UCP as a conflict of interest. He said there is a danger UCP might do what is convenient for the bureaucracy -- while sacrificing the well being of individual patients.

An agency administrator "could consent to anything on behalf of his clients," Hansen said: "a frontal lobotomy, electroshock or cutting off their leg."

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Despite repeated messages left with their secretaries over a two-day period, Glenn Rickles, the attorney for UCP, and Robert Schonhorn, the agency's executive director, did not respond to requests for comment.

The ability to authorize elective surgery is an especially sensitive provision of guardianship. Often enfeebled by multiple physical handicaps, the population served by UCP faces an intensified risk of death caused by general anesthesia, experts say.

The death on the operating table in December 1979 of a patient institutionalized in the Karl D. Warner Center pointed up that hazard. The patient, Dotinell White, died under general anesthesia administered for dental surgery at Maimonides Hospital in Brooklyn, according to sources close to the institution.

Miss White's parents, Charles and Allean of Manhattan, reportedly were not asked to give permission for the surgery. They are suing UCP. Sources familiar with the case say Miss White's surgery was not

urgent — in which case a guardian's or a judge's consent was required by law.

Rita Martin, a staff member of the Consumer Advisory Board, said that to her knowledge UCP had never sought court approval for the medical treatment of Warner Center patients.

Mrs. Martin monitors the care of Warner Center patients because the Consumer Advisory Board is specifically directed to do so under the Willowbrook Consent Decree.

By contrast with UCP, other

agencies caring for patients whom Mrs. Martin monitors have gone to court to clear surgery, she said.

To avoid the need for a judge, Mrs. Martin, representing the Consumer Advisory Board, has been designated the legal guardian of patients without active families at the Flower-Fifth Avenue Hospital in Manhattan.

Members of the Consumer Advisory Board said they are disturbed by the stealth UCP used in filing for guardianship. They also doubt the diligence of the agency's search for parents.

Court papers show UCP checked

parents' phone numbers and addresses but failed to check the Patient Resource Agency or the Department of Motor Vehicles.

And UCP ignored a state law requiring it to inform the Consumer Advisory Board and the Mental Health Information Service. Both organizations discovered the guardianship proceedings by chance.

In their court papers, UCP officials argue they were trying to make it easier to provide surgery for patients who have been "abandoned" by guardians.

Advocates of the mentally retarded concede the legal guidelines on surgery are inconvenient, but they insist the guidelines offer important protection to patients.

Under the guidelines, agencies must prove the need for risky medical treatment in state supreme court. This requirement may be bypassed only in a "life-saving emergency."

"If you sell a piece of somebody's real estate, you certainly have to go to court," Ronald M. Gottlieb, director of the Mental Health Information Service in Manhattan, said. "If somebody's life is at stake, you should at least give it the consideration that you give a piece of real property."

"It's interesting to see how physicians testify under oath, as opposed to in the ordinary course of a conversation," added David LeVine, an MHIS attorney in Albany who has

represented mentally retarded patients in surgical hearings.

LeVine argued that "everyone has a right to be free from intrusion" without consent. "That's a right founded in the Constitution," he said. "Trying to guess what a patient would decide is difficult. That's why there are courts and judges."

MHIS is a state agency assigned to defend patients in state-funded institutions.

New York state's laws are being rewritten to facilitate bids for guardianship by private agencies, according to a spokesman for mental retardation commissioner James E. Introne. The new laws will be subject to the Legislature's approval.

Gottlieb, however, suggested that the revised law might meet resistance. Although he had not seen the court papers filed by UCP, he said that however well-intentioned, the agency seemed to be overreaching.

"I would think that anybody but (UCP) should have guardianship," he said.

Hansen recalled that the Civil Liberties Union lobbied for UCP to take over part of the state-run Staten Island Developmental Center in 1977, forming the Warner Center. The agency's care was considered better than the state's, he said.

Nonetheless, Hansen characterized the agency's quest for guardianship as "dangerous."

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