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# State faults UCP in fatal surgery

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A state commission has issued a report critical of United Cerebral Palsy (UCP) because the agency failed to obtain parental or court consent before allowing dental surgery that proved fatal to a mentally retarded patient.

The report concluded that Robert Schonhorn, executive director of United Cerebral Palsy Associations of New York

State, ordered the dental surgery in violation of state regulations.

"This was not a permissible course of action," the commission wrote. "Since legal guardianship was not legally given to UCP and the procedure was not an emergency, consent from the court should have been pursued."

Schonhorn did not respond yesterday to repeated requests for comment left with his secretary

in the agency's Manhattan headquarters, at 815 Second Ave.

The patient, Dotinel White, 23, died on Dec. 7, 1979, on the operating table at Maimonides Medical Center in Brooklyn. She lived at the Karl D. Warner Center, a 450-bed institution run by United Cerebral Palsy in Willowbrook.

Miss White's death came to the attention of the state Commission on Quality of Care for

the Mentally Disabled through a series of articles published in the Advance last June. Commission officials said United Cerebral Palsy had failed, although it was required by law, to inform them of the death.

To protect the rights of the mentally incompetent, proper consent, from a judge or guardian, is "essential" in medical matters, Chris Hansen, an attorney for the New York Civil Liberties Union, said yesterday. Without such consent, he said, convenience may influence the treatment.

"In my view, anything more serious than aspirin ought to go to the court for approval," Hansen said.

United Cerebral Palsy, a charitable agency spends about \$30 million annually, primarily in state and federal Medicaid

funds. The agency serves nearly 1,000 mentally retarded patients citywide, half of them on Staten Island.

In a related development, officials said state Comptroller Edward V. Regan is considering a financial audit of the agency. In addition, the Special Prosecutor for Medicaid Fraud, under the state attorney general's office, is contemplating an inquiry into United Cerebral Palsy's use of Medicaid funds, officials said.

The Commission on Quality of Care report takes the form of a two-page letter to Schonhorn dated Feb. 24. The Advance obtained the letter this week. It is signed by Janet M. Samson, director of the commission's Investigations Bureau.

The report finds fault on several grounds with the doctors who attended Miss White at Maimonides Hospital.

A Maimonides spokesman, Ina Gillers, said yesterday that comment would be "inappropriate," because a malpractice suit is pending. The patient's mother, Allean White, has sued the hospital, three doctors and United Cerebral Palsy in State Supreme Court, Brooklyn.

The commission "drew no causal link" between Miss White's sudden death and the absence of legal consent for surgery, Gary Masline, executive assistant to the commission, said.

But the question of proper consent has been a longstanding controversy that "comes up on a daily basis," according to Hansen, the Civil Liberties lawyer.

Legislation to liberalize the state regulations governing consent for medical treatment has been drafted by the state Office of Mental Retardation and Developmental Disabilities, officials said yesterday.

"We've seen a lot of horror stories when the client was ill and the guardian was not available," said Midge McGraw, a spokesman for the Office of Mental Retardation. She said the bill was drafted because court proceedings tend to be overly cumbersome.

But Hansen called the draft bill "ridiculous. I anticipate, if it's in the form you describe, that we would oppose it in the Legislature," he said.

The legislation would let directors sign consent if a physician recommends the treatment in writing, Miss McGraw said. If the treatment poses a graver risk than the illness, then the director may sign consent, but the attorney general must also seek court permission within 72 hours, she said.

Hansen argued that directors would not be likely to contradict the recommendation of physicians. By the same token, judges, he said, would not be likely to order a treatment more risky than the illness. "The whole procedure becomes worthless," he said. "The standards dictate the results."

Hansen suggested the Office of Mental Retardation was "playing politics" to suit the convenience of administrators under its aegis.

Current regulations prevent administrators from making medical decisions except when a life or limb is "immediately threatened." Other cases require permission of a relative, legal guardian or judge.

In its report, the commission attributed Miss White's death to "hypoxia," or loss of oxygen. The condition, it said, was "probably due to misplacement of the endotracheal tube during dental surgery under general anesthesia."

It also criticized the decision of Dr. Murray Ross, the dentist, "not to do a complete preoperative workup prior to the planned dental procedure." A panel of seven physicians appointed by Gov. Carey, investigated the death.

Dr. Ross did not respond to messages left yesterday on his telephone answering machine.

Told of the report yesterday, Mrs. White, the patient's mother, said, "If it helps with the other kids, that will be like it's still helping mine." She was reached by telephone at the business she owns in Harlem.