

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNDA CAROL MANLEY : CIVIL ACTION  
: :  
v. : :  
: :  
THE HORSHAM CLINIC, et al. : NO. 00-4904  
: :  
O'NEILL, J. : AUGUST , 2001

MEMORANDUM

Plaintiff Lynda Manley brought suit against the Horsham Clinic, a number of the Clinic's unnamed employees ("staff defendants"), and Roy K. Augusty, M.D. Her claims arise out of her involuntary commitment to the Clinic and injuries she alleges she suffered while in defendants' care. Before me now are the Clinic's motion to dismiss plaintiff's claim under Fed. R. Civ. P. 12(c) and plaintiff's motion for leave to file a second amended complaint.

BACKGROUND

Manley alleges that she was involuntarily institutionalized at the Clinic, and that en route to the facility and upon admission she told both transporting ambulance attendants and staff defendants that she had a painful condition in her right shoulder and left elbow. According to plaintiff, following her arrival at the Clinic staff defendants forced her to lie down on a hard mattress and placed both her arms in restraints. She further alleges that she repeatedly cried out in pain, begging the staff defendants to ease the pressure on her shoulder and to remove the restraints. The restraints were removed after one day; however plaintiff asserts she was thereafter again placed in restraints and despite her crying out in pain, screaming loudly, and begging that they be removed defendants did nothing. Plaintiff states that she suffered injury as a

result of defendants' conduct. According to plaintiff's amended complaint Augusty was the physician responsible for the decisions regarding the use of bodily restraints at the Clinic. She alleges Augusty saw her in the restraints but did nothing in response to her cries of pain and requests that the restraints be removed.

On February 21, 2001 Manley filed an amended complaint seeking compensatory and punitive damages for: violation of the Protection and Advocacy for Mentally Ill Individuals Act ("PAMIIA"), 42 U.S.C. §§ 10801 et seq. (Count I); negligence (Count II); and battery (Count III).<sup>1</sup> On April 23, 2001 I granted Augusty's motion to dismiss plaintiff's complaint against him for failure to state a claim upon which relief could be granted. On June 1, 2001 the Clinic filed a motion to dismiss plaintiff's complaint. On June 11, 2001 plaintiff submitted a motion for leave to file a second amended complaint.

## DISCUSSION

### A. Plaintiff's Motion for Leave to File a Second Amended Complaint

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). If a plaintiff seeks to amend her complaint after the defendant has served its responsive pleading, the plaintiff "may amend [her complaint] only by leave of court." Id. Rule 15(a) further states that, "leave shall be freely given when justice so requires." Id. "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory

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<sup>1</sup> Plaintiff listed "Count IV" as a claim for "punitive damages." As such damages do not constitute a separate basis for liability plaintiff's amended complaint will be read to contain three substantive counts.

motive, prejudice, and futility.” In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted). According to the Court of Appeals, “prejudice to the non-moving party is the touchstone for denial of an amendment.” Id. at 1414.

Plaintiff seeks to amend her complaint for a second time in order “to clarify the relationship between the Commonwealth of Pennsylvania and Defendant The Horsham Clinic so it can establish state action under 42 U.S.C. § 1983.” (Pl.’s Mot. Sec. Am. Comp. at ¶ 2).

Accompanying the motion, plaintiff included a proposed second amended complaint identical to her previous amended complaint with the exception of paragraph “5” under the heading “Jurisdiction and Venue.” To this section plaintiff added the following assertions:

At all times relevant to this action, Defendant Horsham Clinic had a contract with the Commonwealth of Pennsylvania and/or its agents or agencies to accept and treat institutionalized mental patients whose commitments were involuntary or voluntary. The need to send patients (required by law to be involuntarily committed) was brought about in part by the closing of nearby state hospitals such as Haverford State Hospital, a state hospital which formerly performed said duties until the Commonwealth of Pennsylvania made the deliberate decision to close down Haverford State Hospital and assign all its functions to hospitals such as the Horsham Clinic. The functions of involuntary institutionalization of mental patients performed by institutions such as Defendant The Horsham Clinic, Haverford State Hospital and other mental institutions at which mental patients are involuntarily institutionalized in Pennsylvania has historically and traditionally been the exclusive prerogative of the Commonwealth of Pennsylvania.

With respect to the pleading requirements needed to establish jurisdiction and venue, Rule 8(a)(1) provides in relevant part that “[a] pleading which sets forth a claim for relief ... shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends. . . .” Plaintiff’s proposed second amended complaint provides no new basis for jurisdiction, but instead attempts to refute an argument raised in the Clinic’s motion to dismiss, namely that the Clinic is not a state actor and therefore cannot be found liable under § 1983. In

support of that allegation, plaintiff mentions for the first time the existence of a contract between the Commonwealth and the Clinic delegating to the Clinic the task of performing involuntary commitments. Defendant responds by stating: “[a]lthough [the Clinic] must be licensed by the state, the [d]efendant has not entered into any written contract or agreement with the Commonwealth of Pennsylvania to provide services for mental patients in the Commonwealth.” (Def.’s Resp. to Pl’s Mot. Sec. Am. Comp.) In evaluating a motion to dismiss under Rule 12(c) whether or not plaintiff can ultimately establish her allegations as true is not the issue. I must construe all well plead factual allegations contained in the complaint as true. See Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 377 (E.D. Pa. 1995). Therefore, in the interest of justice, I will allow plaintiff to amend her complaint to include the allegations contained in section “5” of her proposed second amended complaint.

#### B. Defendant’s Motion to Dismiss

A motion for judgment on the pleadings under Rule 12(c) is reviewed under the same standard as a motion to dismiss under Rule 12(b)(6). See Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994); Regalbuto, 937 F. Supp. at 376. Judgment will be granted only if it is clearly established that no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law. See Inst. for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir. 1991). I must accept all well-plead factual allegations in the complaint as true, Sheppard, 18 F.3d at 150, and all inferences must be drawn in the light most favorable to the non-moving party. See Janney Montgomery Scott v. Shepard Niles, 11 F.3d 399, 406 (3d Cir. 1993). However, I need not accept bald assertions, unwarranted

inferences, or legal conclusions. See Maio v. Atena, Inc., 221 F.3d 472, 485 n.12 (3d Cir. 2000); Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). “[C]ourts have an obligation in matters before them to view the complaint as a whole and to base rulings not upon the presence of mere words but, rather, upon the presence of a factual situation which is or is not justiciable. We do draw on the allegations of the complaint, but in a realistic, rather than a slavish, manner.” City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 263 (3d Cir. 1998).

### 1. § 1983

Reviewing plaintiff’s amended complaint, I note that she has not alleged a violation of § 1983. This statute is cited in her amended complaint as a basis for jurisdiction; however none of the counts set forth thereafter allege a violation or even contain any mention of this statute. Section 1983 states in relevant part: “Every person who, under color of any statute. . . of any State. . .subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws [of the United States], shall be liable to the party injured.” To succeed plaintiff must therefore prove that she was (1) deprived of a right secured under federal law, (2) by a state actor. Construing her amended complaint in the light most favorable to plaintiff there are two possibilities for a violation of § 1983. First, it is possible plaintiff is attempting to allege a violation of a “law of the United States,” namely the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 1081 et seq. Second, plaintiff also appears to allege a violation of her due process rights under the Fourteenth Amendment, as she dedicates a significant portion of her response to the Clinic’s motion to establishing under what circumstances sufficiently shocking physical

abuse may rise to the level of a constitutional violation. (Pl.'s Resp. Br. at 6-8, 14-16). Before examining the merits of either of these claims, however, I must first determine if the Clinic was acting under color of state law when it engaged in the behavior alleged by plaintiff.

Plaintiff stated in her amended complaint

Defendant the Horsham Clinic is a mental health treatment facility which admitted Plaintiff on the strength of involuntary admission forms and in so doing acted under color of state law, since it was only being clothed with [the] authority of state law that it possessed [the] power to commit her on the strength of said forms.

(Pl. Am. Comp. ¶5). The law referred to by plaintiff is the Pennsylvania Mental Health Procedures Act, 50 Pa. Cons. Stat. § 7101 et seq. (“MHPA”). In ruling in favor of Augusty’s motion to dismiss I held that the factual allegations contained in the above paragraph, if proved, would not be sufficient to establish that Augusty acted under color of state law for the purposes of § 1983. In support of this assertion I relied on Janickso v. Pellman, 774 F. Supp. 331, 339 (M.D. Pa. 1991), aff’d, 970 F.2d 599 (3d. Cir. 1997)(“this court cannot say that the involuntary commitment of the mentally ill by private physicians and hospitals is. . . a function compelled by or sufficiently connected to state directives to attribute those actions to the state”), as well as Bodor v. Horsham Clinic Inc., Civ. A. No. 94-7210, 1995 WL 424906 (E.D. Pa. July 19, 1995) and Covell v. Smith, Civ. A. No. 95-501, 1996 WL 750033 (E.D. Pa. Dec. 30, 1996), both holding that the involuntary commitment of the mentally ill in the Horsham Clinic does not constitute state action for the purposes of establishing a violation of § 1983.

In support of her contention that her §1983 claim against the Clinic may survive notwithstanding my dismissal of her claim against Augusty, plaintiff makes a number of arguments. First, plaintiff attempts to distinguish her case from Covell and Bodor by arguing

that those cases involved only a challenge to the act of commitment whereas she alleges that she suffered physical abuse while in defendant's care in addition to her involuntary commitment. (Pl.'s Resp. at 10). However this distinction does not help establish that the Clinic is a state actor for purposes of § 1983. If an entity is not a state actor when it deprives an individual of her liberty by involuntarily committing her, it does not become one simply because its employees use excessive force in restraining that individual.

Plaintiff also argues that Bodar and Covell are unpublished<sup>2</sup> and therefore “not binding on this court”, while Davenport v. St. Mary Hospital, 633 F. Supp. 1228 (E.D. Pa. 1986), a “published” decision, “is binding authority.” (Pl.'s Resp. to Def.'s Rep. at 2). In matters concerning federal law a District Court is bound only by the decisions of the Court of Appeals for the Circuit in which it sits and by the decisions of the United States Supreme Court. I am not bound by the holdings of my fellow district court judges, whose opinions are rendered no more or no less persuasive due to their status as “published” or “unpublished.”

In Bodor, the court carefully examined whether the Horsham Clinic and its employees were to be considered state actors for the purposes of establishing a § 1983 claim. As in the case before me the plaintiff in Bodor alleged a violation of his Fourteenth Amendment rights following his involuntarily commitment pursuant to sections 7301 and 7302 of the MHPA. See Bodor, 1195 WL 424906 at \*3-\*9. In rendering its decision the Bodor court applied four tests developed by the Supreme Court in Rendell-Baker v. Kohn, 457 U.S. 830 (1982), designed to test when the

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<sup>2</sup> “Unpublished” as used here apparently refers to cases that do not appear in West's Federal Supplement and are only available through commercial electronic databases. This is to be distinguished from “unpublished” cases issued in some Federal Courts of Appeal that have been designated as having no precedential value.

actions of a private actor can be fairly attributed to the state: (1) the “close nexus” test, (2) the “government compulsion” test, (3) the “traditional government function” test, and (4) the “symbiotic relationship” test. Bodor, 1195 WL 424906 at \*3-\*9. Following a careful and well reasoned application of each of these tests the Bodor court concluded that the Horsham Clinic and its employees were not state actors and therefore the plaintiff had not stated a claim for a due process violation under the Fourteenth Amendment. I find the reasoning of the Bodor court persuasive.<sup>3</sup> See also Benn v. Universal Health Systems, Inc., Civ. A. No. 99-6526, (E.D. Pa. July 30, 2001)(relying on Bodor and Covell to find that the Horsham Clinic was not a state actor for the purposes of the plaintiff’s § 1983 claims.)

In Davenport, the case relied on by plaintiff, the court explicitly declined to decide “whether the authority apparently delegated to the hospital defendants will, in fact, be sufficient to establish that any or all of them acted under color of state law.” Davenport, 633 F. Supp. at 1237. However, the Davenport court did suggest that a sufficiently close nexus between the state and a private hospital might be found if the challenged conduct of the hospital involved functions that are traditionally the exclusive prerogative of the state. 633 F. Supp. at 1234. This inquiry revolved around whether the involuntary commitment had been compelled by the state, an issue upon which the court stated it had no factual record. See id. Further, the Davenport court stated that even though the plaintiff had not plead facts as to the relationship between the hospital and the state regarding the confinement and treatment of mentally disabled individuals, some arrangement might be fairly inferred from the plaintiff’s allegations that she was taken to the

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<sup>3</sup> The Covell court adopted the reasoning of Bodor and other cases, including Janickso, and held that the Horsham Clinic and its employees, acting pursuant to the MHPA, were “not state actors for the purposes of § 1983.” Covell, 1996 WL 750033 at \*6.

hospital by the police. Id. at 1235. This is distinguishable from the case before me where there was no police involvement. The Bodor court held that where the only connection alleged by the plaintiff between the Clinic and the Commonwealth is that his commitment took place in accordance with the MHPA the clinic is not a “state actor” under § 1983. 1995 WL 424906 at \*5. Despite the alleged presence of a contract between the Commonwealth and the Clinic, the case before me is similar to Bodor as there is nothing contained in plaintiff’s allegations to suggest that this contract expanded the level of state involvement with the Clinic beyond its obligations under the MHPA.

Section § 7302(b) of the MHPA, states that an individual “shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled. . . and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately.” 50 Pa. Cons. Stat. § 7302(b). Plaintiff maintains that as a result of this “mandatory language” the state compels, rather than permits, the involuntary commitment of patients thereby turning the Clinic into a state actor. (Pl.’s Resp. Br. at 13, 16). I am persuaded by the court’s reasoning in Janickso v. Pellman, 774 F. Supp. 331, 339 (M.D. Pa. 1991), aff’d, 970 F.2d 599 (3d. Cir. 1997), which rejected an identical argument. The Janickso court noted that more is required to establish state action than merely pointing to the language of section 7302(b) of the MHPA. Id. at 336. The court’s reasoning was based on three factors. First, the “shalls” of section 7302(b) relating to the necessity of emergency treatment were put in place more for the protection of the person to be committed than to compel that person’s commitment by private actors. See id. at 338. Second, section 7302(a), relating to the application for examination, does not use the word

“shall” but instead states: “Emergency examination *may* be undertaken at treatment facility upon the certification of a physician stating the need for an examination.” See id at 338-39 (emphasis added by Janicko court). Third, although the term “mentally disabled” is extensively defined in section 7301 there is a considerable amount of discretion left to the doctor who initially examines the patient. See id at 339. The Clinic is not therefore compelled to commit people under the MHPA, but is instead granted the discretionary power to do so depending on the determination of a physician. Plaintiff’s involuntary commitment under the MPHA was not a function compelled by or sufficiently connected to state directives to render the Clinic a “state actor” for the purposes of § 1983..

Plaintiff also argues that the involuntary commitment of mental patients is a power traditionally exercised by the states. (Pl.’s Resp. Br. at 16). The Bodor court rejected a similar argument pointing out that, as here, the plaintiff had alleged no facts in support of this contention, and that a review of both English and American history reveals that private parties have always been essential to the process of involuntary commitment, and therefore it has not been within the exclusive domain of the state. 1995 WL 424906 at \*9. Plaintiff may not establish state action on this basis.

In her second amended complaint plaintiff mentions for the first time, without citation, that “[a]t all times relevant to this action, [the Clinic] had a contract with the Commonwealth of Pennsylvania and/or its agents or agencies to accept and treat institutionalized mental patients whose commitments were involuntary or voluntary.” (Pl.’s Prop. Sec. Am. Comp. ¶5).

Accepting this allegation as true, the involuntary commitment of mentally disabled individuals at the Clinic would still fall under the regulations the MPHA. Therefore, even if the Clinic had

been specially designated to treat institutionalized patients by the state, the discretion granted by the MPHA discussed above would continue to operate and therefore preclude such institutionalizations from rising to the level of state action. Moreover, in Rendell -Baker, examining a school that received 90% of its funding from the state, operated under a state contract, and was heavily regulated by the state, the Supreme Court held that there was not a sufficiently close nexus between the state and the school to support a § 1983 claim. 457 U.S. at 840-42. The holding of the Rendell-Baker Court was based on its determination that despite substantial connections between the state and the school there was nothing to indicate that the decision at issue, the discharge of a number of school employees, was “compelled or even influenced by state regulation.” Id. at 841. Similarly in the case before me there is nothing contained in plaintiff’s second amended complaint to suggest that the alleged contract between the Clinic and the Commonwealth compelled or even encouraged the Clinic to involuntarily commit her or any other mentally disabled patient.

As plaintiff cannot establish that the Clinic acted under color of state law her § 1983 claim will be dismissed.

## 2. PAMIIA

In deciding in favor of Augusty’s motion to dismiss plaintiff’s claim under the PAMIIA, I stated: “It is well settled that this statute does not create a private right of action; the precatory language of this statute merely expresses a Congressional preference for certain kinds of treatment,” citing Brooks v. Johnson and Johnson, Inc., 685 F. Supp. 107 (E.D. Pa. 1988) as the seminal case on this issue, and also citing Monahan v. Dorchester Counseling Center, Inc., 961

F.2d 987 (1st Cir. 1992) and Duffy v. Delaware Co. Bd. Of Prison Inspectors, Civ. A. No. 90-9125, 1991 WL 193404 (E.D. Pa. Sept. 18, 1991). (Mem. & Ord. 4/23/01 at 2). Notwithstanding this decision and despite the fact that the Clinic relies on the above cases in support of its motion to dismiss, plaintiff's response contains no mention of these cases. Instead, plaintiff simply states, "[l]egal remedies are specifically permitted under § 10805(1)(c) and authorized under § 10805(1)(c) and under § 10807. A private cause of action exists" (Pl.'s Resp. at 6); and later, "Congress intended a patient to be permitted to file a claim for [abuse as defined under the statute] in enacting § 10801 et seq. If not it has no purpose." Id. at 14.

Turning to the merits of plaintiff's contentions there are a number of things I note at the outset. First, I will assume that plaintiff's citation to the same provision for "permission" and "authorization" of legal remedies was intentional. Second, I am somewhat mystified to note that despite the fact that I held that the PAMIIA does not provide for a private right of action in holding in favor of Augusty, (Mem. & Ord. 4/23/01), in her brief responding to the Clinic's motion to dismiss plaintiff not only failed to address any of the cases I cited in my previous ruling, she submitted a brief whose sections concerning the PAMIIA were, but for minute changes, identical to those submitted in her brief in defense of Augusty's motion. Compare (Pl.'s Resp. to Augusty's Mot. at 5-6, 15) with (Pl.'s Resp. to Clinic's Mot. at 5-6, 14). While several months more mature, plaintiff's arguments have not become more persuasive with age. It is not until plaintiff's response to defendant's reply to plaintiff's response to the Clinic's motion to dismiss that plaintiff attempts to address those cases which have held that a private cause of action does not exist under the PAMIIA. (Pl.'s Resp. to Def.'s Rep. to Pl.'s Resp. at 1). Plaintiff attempts to distinguish her case from Brooks in one sentence, arguing that Brooks concerned

rights under § 10841 of the PAMIA, the bill of rights for mental health patients, whereas the case before me concerns “rights under § 10802(1)(c).” Section 10802 subsection 1(c) however, simply states that the use of excessive force when placing an individual in bodily restraints falls within the definition of “abuse” for the purposes of the PAMIA. Section 10802 merely defines the terms used in the statute and may not serve as a basis for a private right of action.

I note further that another of the sections alleged by plaintiff to provide for “a private cause of action” under the PAMIA, “§ 10805(1)(c)” does not exist. I can only presume that plaintiff intended to cite § 10805(a)(1)(c). I note this discrepancy for reasons other than simply to highlight the carelessness which has characterized plaintiff’s submissions to this court, but also because the absence of subsection “(a)” from the above citation is significant. Section 10805 is entitled “System Requirements.” Subsection “(a)” describes the authority of these systems stating: “A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall--”.<sup>4</sup> This portion of the statute is then followed by a number of subsections including subsection “1(c),” upon which plaintiff apparently relies, and which states that these systems shall “have the authority to. . . pursue administrative, legal, and other appropriate remedies on behalf of an individual who (1) was a[n] individual with mental illness; and (2) is a resident of the state. . . .” It is the state-established systems then and not individuals that are the subject of this section of the PAMIA. In other words the plain language of § 10805(a)(1)(c) indicates that its provisions apply to state agencies that are properly constituted under the PAMIA. It is these agencies that are entrusted with

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<sup>4</sup> Section 10803 establishes that the term “system” mentioned in § 10805(a) refers to an “eligible system,” which under § 10802(2) is defined as a “system established in a State to protect and advocate the rights of persons with developmental disabilities. . . .”

pursuing remedies on behalf of individuals and there is nothing in § 10805(a)(1)(c) that might provide plaintiff with a direct private right of action.

Plaintiff also cites § 10807 of the PAMIA as providing for a private right of action. Similarly, this provision provides for no such right but instead directs any entity that has entered into a contract with an eligible system under § 10804(a) to exhaust all administrative remedies prior to instituting any legal action on behalf of an individual.

Interestingly, among plaintiff's submissions there are indications that she is aware that the above sections of the PAMIA are directed toward encouraging states to establish mechanisms to protect individuals with mental illness and not toward granting individual rights. First, plaintiff states:

[t]he language of § 10807(a)&(b) mentions an eligible system as a candidate to bring a claim under this section. Plaintiff at the time she filed this complaint pro se was not aware of the availability of any such system that could help her and was never told of such a system. It was the intent of Congress that precisely the type of injury alleged here . . . be subject to a federal remedy. Mere illegal involuntary institutionalization has never been the subject of a specific federal statute. Congress intended that [p]laintiff have the right to a federal claim here. What if the system refuses to bring a claim? Is [p]laintiff left without a remedy? This was not what Congress intended.

(Pl.'s Resp. at 6-7, n.1). Plaintiff also filed a document dated July 5, 2001, entitled: Supplement to Plaintiff's Response to Motion of Defendant Horsham Clinic to Dismiss. It consisted of a one page affidavit signed by plaintiff in which she outlined her efforts to secure legal representation in this matter. She concludes by stating: "No one prior to my filing the complaint in this case ever told me I could only sue in federal court through a qualified system, or made any effort to investigate my case. I made every reasonable effort to have an agency or qualified system investigate my case or represent me in court. None would do so." I am not entirely sure how the

information contained in the footnote and affidavit relate to the issues before me; however, it appears that plaintiff seeks to excuse any private federal remedy she may have lost due to a failure to exhaust her claims with an appropriate agency. However, the PAMIIA contains no provision that allows an individual to sue in federal court even if she has exhausted her administrative remedies. Section 10807 simply states that an entity that has contracted with an eligible system under § 10804(a), if such an entity exists, must exhaust administrative remedies when representing an individual before proceeding in court. The PAMIIA is a recommendation from Congress that states should review their mental health laws. It contains rights for them to consider when undertaking this review as well as incentives to create “eligible systems” as defined by the statute. It does not grant a private federal remedy to individuals alleging violations of its recommendations.

Plaintiff may not pursue a private cause of action against the Clinic under the PAMIIA and her claim will be dismissed. Further, as plaintiff cannot establish that the Clinic acted under color of state law her § 1983 claim will also be dismissed. Having dismissed plaintiff’s federal claims, I decline to exercise jurisdiction over plaintiff’s state law claims, which will be dismissed without prejudice. 28 U.S.C. § 1367(c)(3).

An appropriate Order follows.<sup>5</sup>

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<sup>5</sup> Having granted plaintiff’s motion to file a second amended complaint I considered all new factual allegations raised in her proposed second amended complaint in ruling on the Clinic’s motion to dismiss. Therefore in the Order attached to this memorandum I have designated the Clinic’s motion as one to dismiss plaintiff’s second amended complaint.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNDA CAROL MANLEY : CIVIL ACTION  
 :  
v. :  
 :  
ROY AUGUSTY, M.D., THE :  
HORSHAM CLINIC, et al. : NO. 00-4904

**ORDER**

AND NOW, this Day of August, 2001:

1. Plaintiff Lynda Manley's motion for leave to file a second amended complaint is GRANTED.
2. Defendant Horsham Clinic's motion to dismiss plaintiff's second amended complaint is GRANTED and:
  - A. Count I of the second amended complaint against defendant Horsham Clinic is DISMISSED for failure to state a claim.
  - B. Counts II and III of the second amended complaint against defendant Horsham Clinic are DISMISSED without prejudice.

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THOMAS N. O'NEILL, JR., J.