

CONTRACT TO PERFORM PROFESSIONAL SERVICES

This agreement is made and entered into on this 14th day of September, 2018, in Jackson, Mississippi, by and between Jeffrey Geller, MD, MPH (Expert Witness), on the one hand, and the Mississippi Department of Mental Health (DMH), the Mississippi Division of Medicaid (DOM), and the Mississippi Attorney General's Office (Attorney General), on the other hand.

WHEREAS, DMH, DOM, and the Attorney General are in need of the services of an expert witness to advise and present expert testimony as to issues in a lawsuit styled *United States of America v. State of Mississippi*, 3:16-cv-622-CWR-FKB, which is pending in the United States District Court for the Southern District of Mississippi, Northern Division (Lawsuit);

WHEREAS, the Expert Witness has the type of expertise needed for this matter;

WHEREAS, the Expert Witness represents that he/she and his/her staff are free of ethical conflicts which would adversely impact their ability to perform the services contemplated by this Agreement;

WHEREAS, DMH, DOM, and the Attorney General have the authority to contract with the Expert Witness to undertake and perform such service;

NOW, THEREFORE, in consideration of these premises, the mutual covenants contained herein, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

A. WORK TO BE PERFORMED

Expert Witness shall review and advise DMH, DOM, and the Attorney General, pursuant to the requests and instructions of the Attorney General and/or its outside counsel Phelps Dunbar, on matters and issues of fact and policy raised in the Lawsuit.

Expert Witness shall, at the request and instruction of the Attorney General and/or its outside counsel Phelps Dunbar, prepare an expert report which meets the requirements of Fed. R. Civ. P. 26(a)(2)(B), and provide in-person testimony in the Lawsuit. The Expert Witness shall coordinate the performance of services to be provided hereunder through the Attorney General and/or its outside counsel Phelps Dunbar.

B. TERM OF THE AGREEMENT/TERMINATION

The term of the agreement shall commence as of the day and year first written above and continue for a period of one year from that date, unless earlier terminated by either party upon thirty (30) days written notice. Any and all documents prepared or developed by the Expert Witness are the sole property of the Attorney General and in the event of termination of this Agreement, all finished and unfinished data, analysis, reports, documents, and other materials prepared by or in the possession of Expert Witness shall promptly be delivered to the Attorney General by Expert Witness. If Expert Witness breaches any of its material representations, warranties or agreements set forth herein and fails to cure such breach within a reasonable time, as determined by the circumstances, but in no event less than forty-eight (48) hours, or if Expert Witness fails to perform all duties to the satisfaction of the Attorney General according to the sole determination of the Attorney General, or if Expert Witness fails to fulfill its obligations under this Agreement in a professional and timely manner, then the Attorney General shall have the right, in addition to all of its other rights and remedies at law or in equity under Mississippi law, to terminate this Agreement effective immediately upon the Attorney General giving written notice thereof to Expert Witness, such notice may be oral if the circumstances so require. The State of Mississippi will provide the agreed-to compensation to Expert Witness for all work completed to the satisfaction of the Attorney General prior to the termination of this Agreement.

Nothing contained in this Agreement shall require the Attorney General to utilize the services of Expert Witness.

C. PAYMENT

Expert witness shall be compensated at the hourly rate of \$300. In no event will the total compensation to be paid under this Agreement exceed the specified amount of \$80,000 during the term of this Agreement. For the purposes of determining the amount of compensation or qualified reimbursement, Expert Witness shall keep complete and accurate records of the services performed pursuant to this Agreement.

All reasonable and necessary expenses incurred by the Expert Witness in furtherance of this Agreement shall, if authorized by law, be paid by the State, on the condition that written or oral authorization shall be secured by the Expert Witness prior to such expenditures. Air travel expenses will be limited to coach air fare with airline ticket receipts attached. Expert Witness's travel expenses will be reimbursed according to Mississippi Department of Finance and Administration's travel policy rules and regulations (<http://www.dfa.ms.gov/media/6573/travel-manual-0418.pdf>) unless otherwise authorized in advance and in writing by the State.

Expert Witness shall invoice the Attorney General monthly for actual services rendered and pre-approved, reimbursable expenses incurred. The invoice shall set forth the amount of work performed on all matters. The invoice shall be submitted to the attention of Assistant Attorney General Harold Pizzetta at the Attorney General's regular mailing address for approval. The State of Mississippi will remit payments directly to Expert Witness. The parties expressly agree and acknowledge that the State of Mississippi may defer all payments in excess of \$37,500 until the Legislature enacts a deficit appropriation in the 2019 legislative session.

D. STATUS OF EXPERT WITNESS

At all times during the term of this Agreement, the Expert Witness shall be an independent contractor. Nothing in this Agreement is intended, nor shall it be construed, to establish an employer-employee relationship or joint venture relationship. The Expert Witness agrees not to pursue any claims with or against the State of Mississippi or Internal Revenue Service or other judicial or administrative authority relating to the status of Expert Witness as an independent contractor. Expert Witness is solely responsible for social security and income tax withholding payments and other related requirements as DOM, DMH, and the Attorney General will not withhold any such deductions from payments to the Expert Witness.

E. JURISDICTION AND VENUE

Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of the laws of the State of Mississippi, without regard to any conflicts of law provisions. Venue for any action arising hereunder shall be in Hinds County, Mississippi.

F. NON-ASSIGNMENT AND SUBCONTRACTING

The Attorney General, DMH, and DOM are not obligated or liable under this Agreement to any party other than Expert Witness named herein. Expert Witness understands and agrees that it shall not assign, transfer, delegate or subcontract with respect to any of its rights, benefits, obligations, interests or duties under this Agreement except as explicitly set forth in this Agreement.

G. INTEGRATION

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. All amendments to this Agreement shall be in writing and signed by all parties hereto. All whereas clauses contained in the preface of this Agreement are understood to be restated in full herein.

H. CONFIDENTIALITY

The Expert Witness and his/her staff agree that confidential or private information regarding the Lawsuit and DMH, DOM, and the Attorney General will be kept strictly confidential. The Expert Witness and his/her staff are prohibited from using any such confidential or private information obtained pursuant to this Agreement without the express written consent of the Attorney General, DMH, or DOM.

I. FAILURE OF LEGISLATURE TO APPROPRIATE

If any party's performance under this contract depends upon the appropriation of funds by the Mississippi legislature, and if the legislature fails to appropriate the funds necessary for performance, then the affected party may provide written notice of such non-appropriation and cancel this contract without further obligation.

J. FORCE MAJEURE

In the event that any party is unable to fulfill their obligations under this contract by act or event outside of their control, the affected party is relieved of their obligations under this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

JEFFREY GELLER, MD, MPH

BY: 
Jeffrey Geller, MD, MPH


MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

BY: 
DIANA MIKULA
EXECUTIVE DIRECTOR

MISSISSIPPI DIVISION OF MEDICAID

BY: 
DREW SNYDER
EXECUTIVE DIRECTOR

MISSISSIPPI ATTORNEY GENERAL'S OFFICE

BY: 
JIM HOOD
ATTORNEY GENERAL

By  Assistant Attorney General

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

September 5, 2018

Ms. Catoria Martin, Director
Office of Personal Service Contract Review
501 North West Street, Suite 700E
Jackson, Mississippi 39201

Re: Emergency Contract for Expert Witness Jeffrey Geller, MD, MPH

Dear Ms. Martin:

As authorized by Public Procurement Review Board (PPRB) regulation 3-207, please accept this letter as my approval of an emergency procurement for the Mississippi Attorney General's Office to contract with Jeffrey Geller, MD, MPH, for the purposes of serving as a testifying expert witness in the case styled *United States of America v. State of Mississippi*, 3:16-cv-622-CWR-FKB pending in the United States District Court for the Southern District of Mississippi. The United States of American, represented by the Department of Justice, has filed suit against the State of Mississippi alleging that the State has violated federal law by failing to provide appropriate community-based mental health services, programs, and treatment to thousands of Mississippians as allegedly required by the United State Supreme Court's decision in *Olmstead v. L.C.* The Department of Justice has asked the federal court to order the State to create additional mental health services and programs which are estimated to cost the State tens of millions of dollars annually. If the Department of Justice is successful in this litigation, the federal district court will exercise considerable authority over the operation and costs of the State's mental health care programs for the foreseeable future. The outcome of this litigation is exceptionally important to State's programmatic and budgetary autonomy.

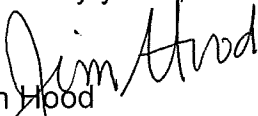
As part of the litigation, the federal court ordered the Department of Justice to identify its expert witnesses for trial and to provide full-reports on that testimony to the State by July 31, 2018. On that day, the Department of Justice identified nine experts who will testify for the United States. The federal court ordered the State of Mississippi to identify its rebuttal expert witnesses by October 12, 2018. In order to meet that deadline, the State must digest the hundreds of pages of expert reports submitted by the Department of Justice, identify nationally recognized experts in those fields, and retain those experts sufficiently in advance to permit the State's experts to complete their own reports by October 12, 2018.

Ms. Catoria Martin, Director
September 5, 2018
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It is clear that the complexity of the work and the short amount of time to complete the expert reports create an emergency as that term is defined in Mississippi Code Section 31-7-1(f). A failure to timely provide high-quality expert reports pursuant to deadlines set by the federal court could cause a significant "adverse impact" to the State by prejudicing the State's litigation defense of this exceptionally important litigation.

The Attorney General's Office, in connection with the Mississippi Department of Mental Health and the Division of Medicaid have identified Jeffrey Geller, MD, MPH, of the Department of Psychiatry at University of Massachusetts Medical School as one of several expert witnesses the State will need to rebut the contentions of the Department of Justice's experts. The State has chosen Dr. Geller because of his previous work and knowledge in the areas of treatment planning and delivery of treatment services systems in mental health care; the Americans with Disabilities Act/*Olmstead* Decision and integrated settings; and the history of American psychiatry. The emergency contract with Dr. Geller will be limited to a term of one-year, consistent with state law.

Sincerely yours,


Jim Hood
Attorney General