STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF MENTAL HEALTH
1600 - 9TH STREET
SACRAMENTO, CA 95814
(916) 654-2309

January 4, 1996

DMH INFORMATION NOTICE NO.: 96-01

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
LOCAL MENTAL HEALTH HOUSING COORDINATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL BOARDS

SUBJECT: CITY OF EDMONDS v. OXFORD HOUSE, INC.

REFERENCES: Fair Housing Act (FHA) of 1988

EXPIRES: Retain Until Rescinded

Enclosed for your information is a summary discussion of the recent United States Supreme Court ruling regarding application of the FHA of 1988. In the case of City of Edmonds v. Oxford House, Inc., 115 Supreme Court Reporter 1776, the Court found that the FHA applies to a municipal ordinance regulating the number of unrelated individuals residing in a single family home. The ruling allows the operators of a group home for adults recovering from alcohol and substance abuse (Oxford House) to challenge the ordinance on the basis of discrimination. The paper includes discussion of both Justice Ginsburg's majority opinion and Justice Thomas' dissenting opinion.

In 1990, Oxford House opened a group home for 10-12 adults recovering from alcohol and substance abuse in Edmonds, Washington, in an area zoned for single family residences. The city then issued a citation on the ground that Oxford House had violated a zoning ordinance regarding the composition of "family" in a single family home area. In response, Oxford House argued that the ordinance should not be applied because the FHA required "reasonable accommodation" so that persons with mental or physical disabilities could have access to housing. The city's position was that the FHA did not apply as there is a specific exemption for any "reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The exemption assured that there would not be wholesale elimination of all restrictions on housing, particularly those for the purpose of assuring safety.

The Supreme Court ruling distinguishes between ordinances designed to prevent overcrowding and those that define the characteristics of a "family." Since the latter have nothing to do with safety, they are subject to challenge.

If you need further information, please call Alan Nakano at (916) 654-2552.

STEPHEN W. MAYBERG, Ph. D.
Director

Enclosure

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

City of Edmonds v. Oxford House:

The United States Supreme Court Issues

Its First Ruling Under the Fair Housing Amendments Act

John Petrila
Professor and Chair
Department of Mental Health Law and Policy
Florida Mental Health Institute
University of South Florida
Tampa, Florida 33617
813-974-9301

On August 28, 1995, John Petrilia gave permission to distribute and reproduce this paper. This paper will also be published in the September, 1995, issue of Psychiatric Services.

The importance of housing for people with mental illness has been clear since the American Psychiatric Association in 1984 published its task force report on homelessness and mental illness.1 However, obtaining housing has often been difficult, in part because of discrimination against people with mental illness.2

In 1988, Congress addressed the problem of discrimination by enacting the Fair Housing Amendments Act (FHAA). The FHAA prohibits discrimination in housing on the basis of mental or physical disability. It amended the Fair Housing Act of 1968, which barred housing discrimination on the basis of race. The FHAA is a significant milestone in disability law, and foreshadowed the enactment in 1990 of the Americans with Disabilities Act, a comprehensive civil rights statute designed to end discrimination based on mental and physical disabilities.

Since becoming law, the FHAA has become an important tool in challenging governmental and private actions which either by intention or effect discriminate against people with mental disability. For example, courts have ruled illegal municipal and state laws which impose special safety features on housing for people with mental disability; requirements that public notice and hearings be provided before housing permits are granted for community residences; and rules requiring that community residences be separated by prescribed distances (known as "dispersal" legislation).3 4 5

While these decisions are important, the United States Supreme Court had not decided a case applying the FHAA until May 15, 1995, when the Court issued its opinion in City of Edmonds v. Oxford House.6 In City of Edmonds, the Court ruled that the municipal ordinance establishing the maximum number of unrelated individuals who could reside in a single family home could be challenged by the operators of a group home as discriminatory under the FHAA. This ruling is important because this type of ordinance has been used as a barrier to the siting of some types of community residences for people with mental disabilities.

In 1990, Oxford House opened a group home for 10-12 adults recovering from alcohol and substance abuse in Edmonds, Washington, in an area zoned for single family residences. The city then issued criminal citations against Oxford House, on the ground that it had violated a zoning ordinance defining the composition of a "family" in a single family home area. The ordinance defined "family" as "an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage." In response, Oxford House argued that the ordinance should not be applied because the FHAA required the City to make "reasonable accommodations" so that people with mental or physical disabilities could have access to housing.

The City then brought suit in federal court, stating that the FHAA did not apply; Oxford House and the United States counter-sued, seeking applications of the FHAA. The District Court ruled for the City; the Court of Appeals for Oxford House. The Supreme Court agreed to hear the case, and in addition to the parties to the case, a large number of advocacy organizations under the leadership of the Bazelon Center for Mental Health Law joined in amicus ("friend of the court") brief urging adoption of the Oxford House position.

The Supreme Court had to decide whether the FHAA applied to the ordinance in question. The FHAA does not apply to "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."7 This exemption assured that the FHAA would not eliminate all restrictions on housing, particularly those designed to assure safety. If the exemption applied to the ordinance, the City could force Oxford House to restrict the number of occupants in the group home to five. However, if the ordinance could be challenged under the FHAA, Oxford House could then argue at a trial that its application to the home was discriminatory.

The Court, in an opinion by Justice Ginsburg, ruled that the ordinance was not exempt from challenge under the FHAA. The Court distinguished between ordinances designed to limit overcrowding (by requiring that dwellings provide minimum square feet of living space per resident) and ordinance defining the characteristics of a "family." In the Court's view, the former seek to assure safety by prescribing minimum living space for each resident. The latter, however, have nothing to do with safety (since the ordinance in question only capped the number of unrelated individuals who could live as a "family" but did not regulate the number of related family members who could live together).

Therefore, under the Court's ruling, the FHAA does not apply to ordinances designed to prevent overcrowding. However, it does apply to ordinances defining "family" for the purpose of implementing single family zoning ordinances. Therefore, Oxford House may now challenge as discriminatory under the FHAA the City of Edmonds ordinance limiting to five the number of unrelated individuals who may reside in a single family dwelling.

Three Justices dissented from the Court's ruling, in a dissent by Justice Thomas which argued that the ordinance should be exempt from challenge under the FHAA because it was the type of ordinance that Congress intended to exempt.

The United States Supreme Court in City of Edmonds did not decide that Edmonds had discriminated against Oxford House. It ruled only that Oxford House could present such arguments at trial, where it will have to show that the ordinance is discriminatory in intent or impact. The majority itself downplayed the

significance of its ruling, characterizing the issue it addressed as one of "limited scope" and "only a threshold question" (City of Edmonds, p. 11).

However, the case is important for other reasons. Because it is the first case decided by the Supreme Court either under the FHAA or the ADA, it may signal a recognition by a majority of the Court that statutory exceptions to these laws should be read narrowly so that application of the antidiscrimination policies they embrace will not be inhibited. In fact, the Court notes in its opinion the "broad and inclusive compass" of the Fair Housing Act (City of Edmonds, p. 5).

Second, the ruling has practical consequences. Oxford House operates more than 500 group homes nationally, and the viability of those homes both economically and therapeutically rests on having 10-12 residents in each home.8 Other types of housing for people with mental illness are often designed for a number of unrelated individuals that may exceed numbers contemplated by municipal ordinances defining "family." The Court's holding means that the municipal ordinances similar to the one at issue in this case will not be immune from challenge under FHAA if they are applied to housing for people with disabilities.

1. Lamb, HR (ed): The Homeless Mentally Ill: A Task Force Report of the American Psychiatric Association. Washington, DC, American Psychiatric Association, 1984.

2. Alisky J, Iczkowski K: Barriers to housing for deinstitutionalized psychiatric patients. Hospital and Community Psychiatry 41: 93-95, 1990.

3. Petrila J, Ayers K: Enforcing the fair housing amendments act to benefit people with mental disability. Hospital and Community Psychiatry 45: 156-160, 1994.

4. Schonfeld R, Stein S: Fighting municipal "tag-team": the federal fair housing amendment act and its use in obtaining access to housing for persons with disabilities. Fordham Urban Law Journal 21: 299-341, 1994.

5. Petrila J: Housing discrimination and the mentally ill: the impact of federal law. Developments in Mental Health Law 14: 1, 16-19, 1994.

6. City of Edmonds v. Oxford House, Inc., No. 94-23, United States Supreme Court, 1995.

7. 42 USC 3607(b)(1).

8. Allen M: Memorandum to amici curiae, Bazelon Center for Mental Health Law, May 22, 1995.