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Richard S. v. Dept. of Developmental Serv. of Cal.



MR-CA-004-002

Attorneys for: Richard S. et al.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD S., CYNTHIA R., VALDINA
R., and ROES 1 through 800,
individually and on behalf of all
those similarly situated by
WILLIAM CABLE, M.D. as Guardian
ad Litem

Plaintiffs,

vs.

DEPARTMENT OF DEVELOPMENTAL
SERVICES OF THE STATE OF
CALIFORNIA, FAIRVIEW
DEVELOPMENTAL CENTER, SOUTH
COAST REGIONAL PROJECT, HARBOR
REGIONAL CENTER, REGIONAL CENTER
OF ORANGE COUNTY, SAN DIEGO
REGIONAL CENTER, SOUTH CENTRAL
LOS ANGELES REGIONAL CENTER,
WESTSIDE REGIONAL CENTER, DENNIS
G. AMUNDSON, as Director of the
DEPARTMENT OF DEVELOPMENTAL
SERVICES STATE OF CALIFORNIA,
HUGH KOHLER, as Executive
Director of FAIRVIEW
DEVELOPMENTAL CENTER, LILIA TAN
FIGUEROA, M.D., as Medical
Director of FAIRVIEW
DEVELOPMENTAL CENTER, DAWN
LEMONDS as director of SOUTH
COAST REGIONAL PROJECT, and Does
1 through 500, inclusive,

Defendants

CASE NO:

COMPLAINT FOR INJUNCTIVE
RELIEF

VIOLATION OF TITLES II AND V
OF THE AMERICANS WITH
DISABILITIES ACT OF 1990 [42
U.S.C. §12101 et seq.],
INFRINGEMENT OF PROCEDURAL
DUE PROCESS, VIOLATION OF THE
CIVIL RIGHTS ACT OF 1991 [42
U.S.C. §1983]

1 1. Jurisdiction of this Court is invoked pursuant to 28
2 U.S.C. § 1331 and 28 U.S.C. §§ 1343 (3) and (4). This suit is
3 authorized and instituted pursuant to Titles II and V of the Act
4 of Congress known as the "Americans with Disabilities Act of
5 1990" [42 U.S.C. §12101 et seq.]; the "Civil Rights Act of 1991"
6 [42 U.S.C. §§ 1981, 1983 and § 1988].

7 2. The jurisdiction of this Court is invoked to secure
8 protection of and to redress deprivation of Constitutional
9 guarantees and federal rights secured by the Fifth and
10 Fourteenth Amendments of the Constitution of the United States
11 denying procedural due process. For violation of §§1981 and
12 1983 of the Civil Rights Act of 1991, and for infringement of
13 Titles II and V of the Americans with Disabilities Act ("ADA")
14 providing for relief against discrimination and retaliation in
15 State institutions.

16 3. Plaintiffs elected, because of the urgency of their
17 plight, not to pursue administrative remedies. Pursuant to
18 those regulations governing subtitle A of the ADA set forth in
19 28 C.F.R. PART 35 at "supplementary information" it states:

20 "This regulation implements subtitle A of title II of
21 the ADA, which applies to State and local
22 governments".

23 28 C.F.R. PART 35, §35.172 further provides:

24 "The Act requires the Department of Justice to
25 establish administrative procedures for resolution of
26 complaints, but does not require complainants to
27 exhaust these administrative remedies. The Committee
28 Reports make clear that Congress intended to provide a

1 private right of action with the full panoply of
2 remedies for individual victims of discrimination.
3 Because the Act does not require exhaustion of
4 administrative remedies, the complainant may
5 elect to proceed with a private suit at any time."

6 4. This is an action for injunctive relief. Cynthia R.
7 and Valdina R. are profoundly retarded developmentally disabled
8 persons who in 1996, while residents at Fairview Developmental
9 Center and State Hospital, Costa Mesa, California, and patients
10 under the care of William Cable, M.D., the present Chief of the
11 Medical Staff at Fairview, were discriminated against in access
12 to medical care, deprived and denied the full benefits of the
13 State programs that they were entitled to, denied the benefit of
14 parental and uncoerced medical involvement in placement
15 decisions and retaliated against in violation of their
16 constitutional rights to due process and in violation of those
17 laws of the United States and of the State of California
18 providing for their protection. "CR" and "VR" are at an
19 immediate and substantial risk of "irreparable harm" from
20 personal injuries or death and from the denial of procedural due
21 process and the protections of the laws of the United States and
22 of the State of California. The remedies at law are inadequate
23 and can not compensate for denial of constitutional rights and
24 deprivation of the fundamental rights to life and liberty.

25 5. Plaintiff Richard S., (hereinafter "RS"), on
26 information and belief, is residing at Fairview Developmental
27 Center located in Costa Mesa, California. "RS" is a 43 year old
28 profoundly retarded person who has been a resident of Fairview

1 since on or about 1961. On information and belief, "RS" has no
2 conservator of the person. "RS'" parents have not been involved
3 with his care and treatment for ten (10) or more years. A
4 special relationship exists between Dr. Cable, as Chief of the
5 Medical Staff at FDC and "RS" as a patient at FDC. "RS" is an
6 individual unable to enjoy life's major activities. "RS" is
7 qualified to receive the benefits of state hospital care, and is
8 a qualified person within the meaning of §201 of the Americans
9 with Disabilities Act of 1990, 42 U.S.C. §12115(2). "RS" is
10 subject to discharge and community placement at the sole
11 discretion of the Regional Center of Orange County. "RS" is at
12 an immediate and substantial risk of "irreparable harm" from
13 personal injuries or death and from the denial of procedural due
14 process and the protections of the laws of the United States and
15 of the State of California. The remedies at law are inadequate
16 and can not compensate him for denial of constitutional rights
17 and deprivation of the fundamental rights to life and liberty.

18 6. Plaintiff Cynthia R., FDC #3784-6, (hereinafter "CR"),
19 on information and belief, is residing at Fairview Developmental
20 Center (hereinafter "FDC") a State Hospital Hospital located in
21 Costa, Mesa, California. "CR" is a female between the ages of
22 thirty and forty and profoundly retarded. "CR" is non-verbal.
23 She has a significant seizure disorder, is on large doses of
24 anti-convulsants and wears a helmet at all times. She is
25 unsteady on her feet and has a long history of frequent falls
26 and has had multiple head injuries and heavy facial scarring.
27 She has a severe and aggressive behavioral disorder. "CR" is an
28 individual unable to enjoy life's major activities. "CR" on

1 information and belief had no conservator of the person at the
2 time of the incidents complained of herein. A special
3 relationship exists between Dr. Cable as Chief of the Medical
4 Staff at FDC and "CR" as a patient at FDC. A special
5 relationship also exists between Dr. Cable and "CR" arising out
6 of the doctor/patient relationship which relationship has not
7 been terminated by "CR" or her legally authorized
8 representative, if any exists. "CR" is qualified to receive the
9 benefits of state hospital care, and a qualified person within
10 the meaning of §201 of the Americans with Disabilities Act of
11 1990, 42 U.S.C. §12115(2).

12 7. Valdina R., FDC #0266, (hereinafter "VR"), on
13 information and belief, is residing in a community home, at an
14 unknown location, in San Diego County, California. "VR" is a
15 profoundly retarded fifty (50) year old former Fairview
16 Developmental Center (hereinafter "FDC") in-patient discharged
17 from FDC over the objection of her then attending physician Dr.
18 William Cable. "VR" suffers from a condition known as pica
19 which causes her to roam the house almost every night seeking
20 out hair brushes, tooth brushes, sheets and other objects which
21 she eats. She has inhaled hair and bristles and has been
22 hospitalized at U.C.I.'s ICU for aspiration pneumonia and twice
23 hospitalized at FDC for aspiration. She has been
24 institutionalized most of her life usually in a locked facility.
25 She requires close 24 hour, and awake night time, supervision.
26 She is occasionally fecally incontinent and, if left alone, has
27 been known to smear the walls with feces. She can not complete
28 the toileting cycle and can not enjoy all of life's major

1 information and belief had no conservator of the person at the
2 time of the incidents complained of herein. A special
3 relationship exists between Dr. Cable as Chief of the Medical
4 Staff at FDC and "CR" as a patient at FDC. A special
5 relationship also exists between Dr. Cable and "CR" arising out
6 of the doctor/patient relationship which relationship has not
7 been terminated by "CR" or her legally authorized
8 representative, if any exists. "CR" is qualified to receive the
9 benefits of state hospital care, and a qualified person within
10 the meaning of §201 of the Americans with Disabilities Act of
11 1990, 42 U.S.C. §12115(2).

12 7. Valdina R., FDC #0266, (hereinafter "VR"), on
13 information and belief, is residing in a community home, at an
14 unknown location, in San Diego County, California. "VR" is a
15 profoundly retarded fifty (50) year old former Fairview
16 Developmental Center (hereinafter "FDC") in-patient discharged
17 from FDC over the objection of her then attending physician Dr.
18 William Cable. "VR" suffers from a condition known as pica
19 which causes her to roam the house almost every night seeking
20 out hair brushes, tooth brushes, sheets and other objects which
21 she eats. She has inhaled hair and bristles and has been
22 hospitalized at U.C.I.'s ICU for aspiration pneumonia and twice
23 hospitalized at FDC for aspiration. She has been
24 institutionalized most of her life usually in a locked facility.
25 She requires close 24 hour, and awake night time, supervision.
26 She is occasionally fecally incontinent and, if left alone, has
27 been known to smear the walls with feces. She can not complete
28 the toileting cycle and can not enjoy all of life's major

1 activities. A special relationship also exists between Dr.
2 Cable and "VR" arising out of the doctor/patient relationship
3 which relationship has not been terminated by "VR" or her
4 legally authorized representative, if any exists. "VR" is a
5 qualified disabled person within the meaning of §201 of the
6 Americans with Disabilities Act of 1990, 42 U.S.C. §12115(2) in
7 that she is qualified to receive the benefits of continued State
8 hospitalization.

9 8. ROES 1 through 800 are adult developmentally disabled
10 "clients" now resident at Fairview Developmental Center, Costa
11 Mesa, California, who have no conservator of the person or other
12 legally "authorized representative(s)" within the meaning of
13 California Welfare & Institutions Code §4701.6. A special
14 relationship exists between Dr. Cable and these Plaintiffs as a
15 result of his fiduciary obligations toward them as Chief of the
16 medical staff. Additionally, in some cases a doctor/patient
17 relationship may exist with some of the disabled not yet
18 identified.

19 8. William Cable, M.D. was the attending physician at
20 Fairview State Hospital for "CR" and "VR" during all relevant
21 time periods herein.

22 6. Dr. Cable has filed a petition concurrently with the
23 filing of this lawsuit and is seeking standing as guardian ad
24 litem for "CR" and "VR" for purposes of this action.

25 7. Dr. Cable is a Board Certified Psychiatrist and
26 Neurologist and Board eligible in Pediatrics and Internal
27 Medicine. Dr. Cable is the elected Chief of the Medical Staff
28 and Chairman of the Medical Executive Committee ("MEC") of the

1 approximately twenty five (25) doctor Fairview State Hospital
2 Medical Staff, Costa Mesa, California. His term of office as
3 Chief of Staff expires on December 31, 1998. Dr. Cable was
4 formerly an Associate Clinical Professor of Neurology at the
5 Massachusetts General Hospital in Boston, Massachusetts and
6 presently holds an Assistant Clinical Professorship in
7 Neurology/Psychiatry at the University of California, Irvine.
8 Dr. Cable is, and at all relevant times herein was, a resident
9 of Orange County, California. Dr. Cable maintains a private
10 practice in Psychiatry/Neurology in Huntington Beach,
11 California. He is member of the medical staff at Hoag Memorial
12 Hospital Presbyterian, Newport Beach, California, where he was
13 formerly the Chairman of the Department of Psychiatry and
14 Neurology. He is also a member of the medical staff at
15 Huntington Beach Community Hospital where he was a former
16 Chairman of the Department of Internal Medicine.

17 8. Defendant DEPARTMENT OF DEVELOPMENTAL SERVICES of the
18 State of California (hereinafter "DDS") is a department within
19 the California Health and Welfare Agency and an arm of the
20 executive branch of government of the State of California. Its
21 principal place of business, on information and belief, is
22 Sacramento, California.

23 9. Defendant FAIRVIEW DEVELOPMENTAL CENTER ("FDC") is a
24 fully licensed acute care general hospital, skilled nursing
25 facility and intermediate care center for the developmentally
26 disabled licensed pursuant to California Health and Safety Code
27 §1250 and doing business as a State Hospital for the
28 developmentally disabled in Costa Mesa, California.

1 10. Defendant SOUTH COAST REGIONAL PROJECT (hereinafter
2 "SCRCP") characterizes itself as an "interagency collaborative
3 venture" between the Department of Developmental Services,
4 Fairview State Hospital and five (5) local regional centers e.g.
5 Regional Center of Orange County, San Diego Regional Center,
6 Harbor Regional Center, South Central Los Angeles Regional
7 Center and Westside Regional Center. SCRCP is not listed in
8 public records as a California corporation or partnership.
9 SCRCP's principal place of business is Building 20, Fairview
10 Developmental Center, 2501 Harbor Boulevard, Costa Mesa,
11 California, 92626.

12 11. Defendant SAN DIEGO REGIONAL CENTER (a.k.a. San Diego-
13 Imperial Counties Developmental Services, Inc.) (hereinafter
14 "SDRC") is believed to be a private non-profit corporation
15 organized pursuant to California's Lanterman Act and operating
16 as one of the twenty one (21) California "Regional Centers".
17 SDRC's principal place of business is believed to be 4355 Ruffin
18 Road, Suite 204, San Diego, California 92123-1648.

19 12. Defendant HARBOR REGIONAL CENTER is believed to be a
20 private non-profit corporation organized pursuant to
21 California's Lanterman Act and operating as one of the twenty
22 one (21) California "Regional Centers". Its principal place of
23 business is believed to be the Del Amo Business Plaza, 21231
24 Hawthorne Blvd. (90503), P.O. Box 2930, Torrance, California,
25 90509.

26 13. Defendant REGIONAL CENTER OF ORANGE COUNTY is believed
27 to be a private non-profit corporation organized pursuant to
28 California's Lanterman Act and operating as one of the twenty

1 one (21) California "Regional Centers". Its principal place of
2 business is believed to be the Central Tower, Union Bank Square,
3 530 South Main St., P.O. Box 6030 (92613-6030), Orange,
4 California 92668-4579.

5 14. Defendant SOUTH CENTRAL LOS ANGELES REGIONAL CENTER is
6 believed to be a private non-profit corporation organized
7 pursuant to California's Lanterman Act and operating as one of
8 the twenty one (21) California "Regional Centers". Its
9 principal place of business is believed to be 2160 W. Adams
10 Blvd., Los Angeles, California, 90018.

11 15. Defendant WESTSIDE REGIONAL CENTER is believed to be a
12 private non-profit corporation organized pursuant to
13 California's Lanterman Act and operating as one of the twenty
14 one (21) California "Regional Centers". Its principal place of
15 business is believed to be 5901 Green Valley Circle, Suite 320,
16 Culver City, California, 90230-6938.

17 16. Plaintiff is informed and believes, and thereon
18 alleges, that Defendant DENNIS G. AMUNDSON (hereinafter
19 "AMUNDSON"), sued herein in his official capacity, as Director
20 of the DEPARTMENT OF DEVELOPMENTAL SERVICES OF THE STATE OF
21 CALIFORNIA, was at all times herein mentioned and now is, a
22 resident of the State of California.

23 17. Defendant HUGH KOHLER, (hereinafter "KOHLER"), sued
24 herein in his official capacity, based upon information and
25 belief, is and at all times relevant was, a citizen of the State
26 of California residing in Orange County, California.

27 18. Defendant KOHLER is the Executive Director and chief
28 administrative officer at Fairview Developmental Center.

1 19. Defendant LILIA TAN FIGUEROA, M.D., (hereinafter "TAN
2 FIGUEROA"), sued herein in her official capacity, based upon
3 information and belief, is and at all times relevant was, a
4 citizen of the State of California residing in Orange County,
5 California.

6 20. Defendant TAN FIGUEROA is the State appointed and
7 administrative Medical Director at Fairview Developmental
8 Center.

9 21. Defendant DAWN LEMONDS (hereinafter "LEMONDS"), sued
10 herein in her official capacity, As director of South Coast
11 Regional Project, based upon information and belief, is and at
12 all times relevant was, a citizen of the State of California
13 residing in Orange County, California.

14 FACTUAL ALLEGATIONS

15 22. The California Department of Developmental Services
16 ("DDS") owns and operates seven (7) state hospitals for the
17 developmentally disabled known as "developmental centers".

18 23. The developmentally disabled are persons suffering
19 from conditions such as autism, epilepsy and mental retardation.

20 24. Many suffer from birth injuries and genetic and
21 chromosomal disorders and are injured by self inflicted wounds.

22 25. There are twenty one (21) "regional centers".
23 Regional centers are non-profit corporations and quasi-
24 governmental social service agencies that are authorized
25 pursuant to California's Lanterman Act [California Welfare &
26 Institutions Code §4500 et seq.] (hereinafter "W&I") to contract
27 with the California Department of Developmental Services for the
28 provision of hospital or "resident" care in one or in any of the

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1 seven (7) California "Developmental Centers". Regional Centers
2 also obtain placement for the developmentally disabled into
3 community group homes, board and care facilities, single
4 apartments, skilled nursing facilities and other types of
5 community living arrangements.

6 26. On or about January, 1994, the Department of
7 Developmental Services ("DDS"), regional centers, owners and/or
8 operators of off- site homes for the developmentally disabled
9 and others executed a "class action" settlement agreement known
10 as the "Coffelt Agreement" ("COFFELT") which agreement was
11 approved by the California Superior Court [SFSC case #916401] in
12 San Francisco on or about January 21, 1994.

13 27. Pursuant to COFFELT the DDS and regional centers
14 agreed to expedite and discharge from the seven (7) California
15 Developmental Centers into community housing some two thousand
16 (2000) developmentally disabled patients and to close down two
17 (2) Developmental Centers over a five year period of time.

18 28. On or about June 20, 1993 the Los Angeles Times,
19 reported the deaths of six (6) children within six weeks at
20 Mountain View Child Care Center, in San Bernardino County and
21 the deaths of three (3) other children in a convalescent home in
22 Gilroy, California between January and March 1993 after transfer
23 from a community home that had its license revoked.

24 29. On or about, July 1994, DDS was provided with a copy
25 of a manuscript entitled "The Prediction of Mortality in
26 Children with Severe Mental Retardation The Effect of Placement"
27 from the "Life Expectancy Project" at the University of
28 California, Riverside. The research was funded by a substantial

1 grant from the National Institutes of Health ("NIH"), in
2 Washington, D.C. and this and a subsequent study were based upon
3 DDS's own computer data base of information.

4 30. This study was recently published, in slightly revised
5 form, in the peer reviewed October, 1996 edition of the American
6 Journal of Public Health. It covered the time period from
7 January 1, 1980 through December 31, 1992 and did not include
8 the nine (9) deaths in children from Mountain View or Gilroy.

9 31. This study asserts that "Own home residence and
10 community care facilities have an estimated 25% higher risk-
11 adjusted odds on mortality than institutions and health
12 facilities".

13 32. That on or about January, 1995 the pre-publication
14 manuscript of the peer reviewed article "Strauss, DJ and
15 Kastner, TA (1996). "Comparative mortality of people with mental
16 retardation in institutions and the community." American Journal
17 on Mental Retardation, 101" was circulated at Fairview
18 Developmental Center and to DDS personnel.

19 33. In this study "Risk-adjusted mortality rates in
20 institutions and the community in California from 1980 through
21 1992 were compared with the aim of improving our understanding
22 of the capacity of the community health system to support
23 deinstitutionalization. Risk-adjusted odds on mortality were
24 estimated to be 72% higher in the community than in
25 institutions" (in adults age forty (40) and over).

26 34. Despite knowledge of reasonably reliable peer reviewed
27 analyses DDS in 1995 accelerated COFFELT placements and, in some
28 cases, financially penalized regional centers that did not meet

1 COFFELT quotas.

2 35. In or about this time frame of mid 1993 through 1996
3 DDS employed physicians at FDC noticed an increase in anecdotal
4 reports concerning mortality and morbidity of clients discharged
5 from that facility to community placement.

6
7 36. Client "RD", on information and belief, discharged
8 from FDC on or about 1995 walked through a plate glass window at
9 his community residence and died in a San Diego Emergency Room,
10 in 1996, before his lacerations could be repaired.

11 37. Client "DB" died in or about 1993-1994 approximately
12 six (6) months after discharge from FDC. Client DB, on
13 information and belief, had been discharged from FDC with a
14 nephrotomy tube known to be leaking pus when discharged.

15 38. Client "CB" died within six months of discharge from
16 FDC, on information and belief, in 1995, of pneumonia.

17 39. Client "JB" died, December 1996, twelve (12) days
18 after discharge from FDC's skilled nursing facility to a skilled
19 nursing facility in Long Beach. This death occurred
20 approximately three (3) weeks after the filing of a related case
21 Cable v. DDS U.S. Fed. Dist. Ct. Santa Ana, case #SACV96 1190 GLT
22 (EEX).

23 40. Client "JW" was discharged from FDC in or about 1995,
24 on information and belief, over the strong objection of his
25 parents. JW was known to become aggressive when agitated.
26 Shortly after placement in the community JW loosened himself
27 from his seat belt and is alleged to have attacked a bus driver
28 causing the bus to crash into another vehicle killing a thirty

1 (30) year mother and injuring her three children. Tran v.
2 Hernandez, Orange Co. Superior. Ct. Case #752808.

3 41. Client "EF" was discharged from FDC on or about 1993.
4 Client EB was returned to FDC after becoming pregnant.

5 42. "RS", "CR", "VR" and ROES 1 through 800 are citizens
6 within the public trust and of diminished intellectual capacity
7 who are unable to effectively protect themselves when selecting
8 or receiving health care services.

9 43. Plaintiffs, on information and belief, herein allege
10 that since the beginning of the implementation of COFFELT the
11 DDS and the other Defendants, and each of them, have engaged in
12 a practice known as "client shopping". This involves a "walk
13 through" of the facility put on by DDS personnel whereby private
14 community home owners or agents or representatives of them are
15 provided confidential medical information and are permitted to
16 "view" patients. Those patient/clients without parents for
17 guardians i.e. where the State is acting in parens patriae, the
18 most docile as well as those whose mental or physical conditions
19 renders them the least able or least competent of the disabled
20 to make informed decisions are targeted for community placement.
21 Once selected for discharge it is usually a fait accompli
22 irrespective of medical contraindications or the ability to
23 weigh the risks or comprehend the consequences.

24 44. Plaintiffs allege, on information and belief, that on
25 or about April 18, 1996, representatives of Defendants and
26 owners of group homes were escorted through residences and
27 buildings at Fairview, appraised of the medical conditions of
28 various patients and clients, advised of their potential for

1 discharge and generally engaged in the practice of "client
2 shopping" at Fairview.

3 45. On or about April 18, 1996, CABLE attended an "exit
4 conference" aka "treatment team meeting" concerning the
5 community placement of "CR". "CR" had been under CABLE'S
6 regular care for some time.

7 46. Said conference was attended by approximately fifteen
8 (15) individuals including three psychologist, several social
9 workers, three persons from Independent Options, an owner of
10 group homes, and numerous administrative personnel. CABLE was
11 the only physician in attendance. CABLE was provided with no
12 more than 30 minutes notice of the meeting and was not advised
13 that it was an exit conference.

14 47. CABLE objected to community placement, given "CR's"
15 multiple and serious health problems. CABLE, further, expressed
16 concern that off-site physician visits would occur only once
17 every fifty nine (59) days, the minimum required to receive
18 Federal funding.

19 48. CABLE requested information concerning attempts made
20 to notify the parents/guardians of CR who were not present at
21 the exit conference.

22 49. CABLE received non-responsive answers to his request
23 concerning the manner or number of attempts made to contact
24 relatives.

25 50. CABLE counselled those in attendance that the
26 published medical literature showed higher morbidity and
27 mortality rates in off-site community housing for individuals
28 with problems similar to CR's than those institutionalized with

1 the same or similar problems. CABLE suggested that the family
2 be contacted to participate in this important decision since
3 there was a perception in the community that the regional
4 centers "go after" developmentally disabled who have no parental
5 involvement.

6 51. CABLE requested that the conference be postponed until
7 the parents/guardians were provided with an opportunity to
8 attend. The request for continuance was sharply refused by
9 regional center personnel and ignored by Fairview Program
10 Director Karen Larson who would not act to postpone.

11 52. "CR" was a qualified disabled person being
12 discriminated against in access to information concerning the
13 risks and benefits of the proposed community placement and in
14 being denied the benefit of parental consent in violation of her
15 rights pursuant to Title II and Title III, §§202, 302 of the
16 Americans with Disabilities Act of 1990, 42 U.S.C. §§12132,
17 12182. CABLE was a member of a protected class providing "aid
18 and assistance" to a qualified disabled person within the
19 meaning of Title V of the Americans with Disabilities Act of
20 1990.

21 53. After it was revealed to CABLE at the meeting, and for
22 the first time, that private vendors routinely visit the FDC
23 facility prior to exit conferences CABLE asked Ms. Helgeson
24 whether Independent Options was a for profit organization.

25 54. CABLE then asked a Regional Center representative if
26 he could be provided with a list of those patients under his
27 care who were targeted for discharge. Such request was refused.

28 55. Following the exit conference representatives of

1 Defendants and group homes and others conferred at a "post
2 meeting" at which slanderous statements were made concerning
3 Plaintiff.

4 56. Thereafter, on or about April 22, 1996, Phil
5 Guarabascio, Associate Director of Defendant South Coast
6 Regional Project ("SCRIP"), an organization created by the DDS to
7 administer COFFELT, corresponded with Dawn Lemonds, Director of
8 the SCRIP. In such letter GUARDABASCIO complained of Plaintiff's
9 "unacceptable behavior" and stated that the "service provider"
10 had called the next day and complained to Judy Borchert the SDRC
11 (San Diego Regional Center) "Coffelt Manager".

12 57. Subsequently, on or about April 30, 1996, Rebecca
13 Helgeson, Regional Director for IPI, corresponded with and
14 complained to Defendant KOHLER, Executive Director of FAIRVIEW
15 that Plaintiff was on a "one man mission" to eliminate community
16 placements. In the last paragraph of her letter Defendant
17 HELGESON said to KOHLER that "I know you will not take this
18 correspondence lightly". Such letter was copied to Judy
19 Borchert of the "Coffelt Unit" SDRC.

20 58. On or about August 12, 1996, CABLE was officially
21 "reprimanded" in his position as Physician and Surgeon and
22 served with a Notice of Adverse Action, signed by Defendant TAN
23 FIGUEROA, charging Plaintiff with violations of
24 California Government Code §19572 (d) Inexcusable neglect of
25 duty. (m) Discourteous treatment of the public or other
26 employees. (t) Other failure of good behavior either during or
27 outside of duty hours which is of such a nature that it causes
28 discredit to the agency or the employment.

1 59. CABLE alleges that on August 12, 1996 he suffered
2 retaliation by Defendants in violation of his rights pursuant to
3 Title V of the Americans with Disabilities Act of 1990.

4 60. On or about June 19, 1996, Plaintiff attended the exit
5 conference concerning community placement of "VR". "VR" had
6 been under CABLE's regular care for more than a year.

7 61. CABLE objected to the discharge of "VR" based upon the
8 severity of her medical conditions and CABLE's belief that the
9 community placement represented a "clear and present danger" to
10 "VR's" life or health.

11 62. On or about June 19, 1996, CABLE caused a patient
12 summary to be created concerning "VR". Cable had his nurse
13 practitioner insert the following paragraph in the summary:

14 (from the owners of the house) "we learned
15 that her new home is a level 3 community
16 facility. She is not in a locked facility.
17 The windows are glass, not plexiglass. She
18 has one caretaker, TD who has not had
19 special training in mental retardation
20 behavioral problems. "VR" will be one of as
21 many as 5 other clients in this facility
22 with one attendant. The attendant sleeps at
23 the home at night. There are no awake night
24 staff to observe her and prevent injuries."

25 63. Thereafter, on or about June 21, 1996, CABLE wrote a
26 memo to Defendant TAN FIGUEROA expressing his concerns about the
27 placement. CABLE received no response to this memo.

28 64. Therefore, on June 26, 1996, shortly after arriving to
work, CABLE wrote another memo to Defendant TAN FIGUEROA
regarding "VR". Sometime later on the morning of June 26, 1996,
Dr. Cable received a request from the medical records department
to sign "VR's" discharge summary. As CABLE knew that as soon as
the summary was signed "VR" would be immediately discharged

1 CABLE elected to await Defendant Figueroa's response. When none
2 came CABLE left work at his usual time. The next morning
3 Plaintiff found a memo in his box from Defendant Figueroa which
4 did not address his concerns but instead contained excerpts from
5 the Fairview Policy and Procedure manual regarding discharge
6 summaries.

7 65. Thereafter, medical records attempted to get the
8 patient summary signed by another Fairview physician, Dr.
9 Russell Steinberg, who declined to sign it.

10 66. Unable to obtain the required signature from two
11 physicians Defendant FIGUEROA caused the paragraph dictated by
12 CABLE, and set forth hereinabove at paragraph number 59, to be
13 deleted, signed the discharge summary herself and "VR" was sent
14 to community placement.

15 67. Some three (3) weeks later, on or about July 14, 1996,
16 and immediately upon first learning that such paragraph had been
17 intentionally deleted from the medical record by Defendant TAN
18 FIGUEROA, CABLE wrote a memo to Raymond Peterson, M.D.,
19 Executive Director of the San Diego Regional Center, informing
20 him of the deletion and expressing his concerns regarding "VR's"
21 medical conditions.

22 68. On or about October 1, 1996, CABLE was served another
23 Notice of Adverse Action charging CABLE with violations of
24 California Government Code §19572 subdivisions (c), (d), (f),
25 (m), (r), and (t) which include charges of "dishonesty",
26 "inexcusable neglect of duty" and "using, or having access to,
27 confidential information available by virtue of state employment
28 for private gain or advantage".

1 69. On or about October 15, 1996, CABLE was suspended for
2 10 days without pay. CABLE alleges that on October 1, 1996 and
3 October 15, 1996 he suffered retaliation by Defendants in
4 violation of Title V of the Americans with Disabilities Act of
5 1990 because he aided and assisted "VR" who was discriminated
6 against in access to medical care in violation of her rights
7 pursuant to Title II of the Americans with Disabilities Act.

8 70. On or about August 20, 1996, CABLE's medical office at
9 FAIRVIEW was entered by personnel from Program 4, under the
10 authority and control of FDC program director Karen Larson who,
11 without CABLE's consent or prior knowledge, moved CABLE's
12 belongings to another, almost deserted, building, to a window
13 less office, which was a former treatment room, and in which, in
14 the corridor outside such office, linoleum was being torn up and
15 which contained yellow paper tape adhered to doorways stating
16 "DANGER ASBESTOS".

17 71. Since August, 1996 CABLE has been removed from any and
18 all duties regarding Coffelt placements and has been assigned to
19 a unit involved with acute medical conditions and no exit
20 conferences.

21 72. On or about December, 1995 or January, 1996 an
22 unscheduled pharmacy review of CABLE's charts was undertaken by
23 the FDC pharmacy department.

24 73. On or about late July, 1996 CABLE learned that another
25 unscheduled FDC pharmacy review was being undertaken. CABLE
26 wrote a letter to the pharmacist inquiring why and was told that
27 if he wanted further information he would have to ask Defendant
28 Kohler.

1 74. On or about November, 1996 CABLE was removed from the
2 Pharmacy and Therapeutics Committee without explanation.

3 75. On or about August 17, 1995, the former Chief of
4 Staff, Frederick Herzig, M.D., was "peer reviewed" at the
5 instigation of Defendant Tan Figueroa three (3) weeks after
6 Herzig had provided a deposition opposing a Coffelt community
7 placement, on medical grounds, IN THE MATTER OF RAYMOND MASAO
8 KAWAGUCHI, Orange County Superior Court Case # A-178009.

9 76. On or about October 27, 1995 Defendant Figueroa
10 instigated a unscheduled pharmacy review concerning Herzig.

11 77. On or about January 5, 1996 Dr. Herzig was summarily
12 suspended from MOD and transferred from a regular ward to
13 Employee Health some (6) weeks after Herzig had made a motion at
14 a SEPA (Union) Board meeting and obtained a \$10,000 union grant
15 to assist client/patient's of Developmental Centers pay attorney
16 fees in cases of medically inappropriate discharge. Part of
17 this grant was also donated to the "Life Expectancy Project" at
18 the University of California, Riverside to support further
19 research concerning mortality in the mentally retarded.

20 FEDERAL CAUSES OF ACTION

21 COUNT ONE

22 TITLE II OF THE AMERICANS WITH DISABILITIES ACT

23 78. The allegations set forth in paragraphs 1 through 78
24 are incorporated herein by reference as though fully set forth.

25 79. This Count one is brought against all Defendants.

26 80. Plaintiffs allege that Defendants have violated 42
27 U.S.C. §12131 and 28 C.F.R. PART 35 §35.130 (d) which requires
28 that "a public entity shall administer services, programs and

1 activities in the most integrated setting appropriate to the
2 needs of qualified individuals with disabilities".

3 81. Plaintiffs allege that by denying them uncoerced
4 access to physician advice, by prematurely discharging them from
5 the benefits of continued hospitalization, by discharging them
6 into the community when either the community setting to which
7 they are discharged to is unsafe or that they themselves have
8 not reached an adequate level of training or sufficient
9 stabilization of their medical conditions so that they can
10 "integrate" into the community within the meaning of Title II of
11 the ADA then Defendants have violated the integration mandate of
12 the ADA. Plaintiffs have been damaged by this conduct.

*Very
well
reasoned*

13 COUNT TWO

14 TITLE II OF THE AMERICANS WITH DISABILITIES ACT

15 82. The allegations set forth in paragraphs 1 through 81
16 are incorporated herein by reference as though fully set forth.

17 83. This Count is brought against all Defendants.

18 85. Plaintiffs have failed to provide adequate medical
19 care, have failed to provide sufficient training to help
20 residents maintain self-care skills and to ensure a reasonably
21 safe environment free from unnecessary restraint; and have
22 failed to consider all residents for possible community
23 placement, as required by professional judgment.

24 86. Plaintiffs allege that the practice of "client
25 shopping", by failing to consider certain severely disabled
26 persons for community placement, is discrimination amongst the
27 disabled based on severity of disability in violation of Title
28 II of the ADA. Plaintiffs have been damaged by this conduct.

COUNT THREE

TITLE II OF THE AMERICANS WITH DISABILITIES ACT

87. The allegations set forth in paragraphs 1 through 86 are incorporated herein by reference as though fully set forth.

88. This Count is brought against all Defendants.

89. Plaintiffs have selectively chosen for community placement those clients without conservators of the person and have failed to consider all residents for possible community placement, as required by professional judgment. Plaintiffs have been damaged by this conduct.

COUNT FOUR

TITLE V OF THE AMERICANS WITH DISABILITIES ACT

90. The allegations set forth in paragraphs 1 through 89 are incorporated herein by reference as though fully set forth.

90. This Count is brought against all Defendants.

91. Plaintiffs allege that retaliation against physicians responsible for their care and removing such physicians from associating with the disabled has damaged the disabled at Fairview and is a Violation of Titles II and V of the ADA.

CONSTITUTIONAL CLAIM

VIOLATION OF THE FOURTEENTH AMENDMENT

FAILURE TO PROVIDE PROCEDURAL DUE PROCESS

92. The allegations set forth in paragraphs 1 through 91 are incorporated herein by reference as though fully set forth.

93. This Count is brought against The Department of Developmental Services of the State of California and the five named regional centers and the South Coast regional project as agents of the Department of Developmental Services.

1 94. Plaintiffs allege that inappropriate community
2 placement represents an unreasonable risk of harm.

3 95. Plaintiffs allege that they are denied and potentially
4 denied the benefits of continued hospitalization and training
5 and the property rights and benefits created for them and others
6 under the laws of the state of California and the United States.

7 96. Plaintiffs allege that denial of physician and or
8 parental input and the opportunity for an authorized
9 representative to object to their placement and institute appeal
10 proceedings is a violation of their constitutional rights to due
11 process under the fourteenth amendment to the constitution of
12 the United States which process requires that procedures leading
13 to the best accurate decision that can be reached be provided
14 concerning their placement and/or denial or reduction of their
15 benefits.

16 97. Plaintiff VR has been damaged by this conduct. CR has
17 been damaged by this conduct. ROES 1 through 800 are damaged by
18 this conduct.

19 INFRINGEMENT OF CIVIL RIGHTS

20 COUNT ONE

21 42 U.S.C. 1983

22 98. The allegations set forth in paragraphs 1 through 97
23 are incorporated herein by reference as though fully set forth.

24 99. This action is brought against Defendants Fairview
25 Developmental Center, Amundson, Kohler, Tan Figueroa, Lemonds,
26 and the five named regional centers.

27 100. The hereinabove described actions, omissions, policies
28 and conduct engaged in under color of state authority and/or as

1 a result of official policy or custom by Defendants, regional
2 centers, AMUNDSON, KOHLER, TAN FIGUEROA, and DOES 1 through 500,
3 inclusive, and including Defendant DDS, responsible because of
4 their authorization, condonation, and ratification thereof for
5 the acts of their agents, deprived Plaintiffs of rights secured
6 to them under the Americans with Disabilities Act of 1990 and by
7 the Constitution of the United States, including, but not
8 limited to, Plaintiffs first amendment right to the freedom of
9 association and their fifth and fourteenth amendment rights to
10 liberty and due process of law.

11 101. Plaintiffs have been proximately damaged by
12 Defendants' conduct.

13 COUNT TWO

14 42 U.S.C. 1983

15 102. The allegations set forth in paragraphs 1 through 101
16 are incorporated herein by reference as though fully set forth.

17 101. This action is brought against all Defendants.

18 102. Plaintiff alleges that the conduct of Defendants, and
19 each and all of them, violates California Business & Professions
20 Code §2056 which states in pertinent parts:

21 "(b) It is the public policy of the State of
22 California that a physician and surgeon be
23 encouraged to advocate for medically
appropriate health care for his or her
patients"

24 "(c) The application and rendering by any
25 person of a decision to terminate an
26 employment or other contractual relationship
27 with or otherwise penalize a physician and
28 surgeon principally for advocating for
medically appropriate health care consistent
with that degree of learning and skill
ordinarily possessed by reputable physicians
practicing according to the applicable legal
standard of care violates the public policy

1 of this state. (emphasis added)".

2 103. The hereinabove described actions, omissions, policies
3 and conduct engaged in under color of state authority and/or as
4 a result of official policy or custom by Defendants, regional
5 centers, AMUNDSON, KOHLER, TAN FIGUEROA, and DOES 1 through 500,
6 inclusive, and including Defendant DDS, responsible because of
7 their authorization, condonation, and ratification thereof for
8 the acts of their agents, deprived Plaintiffs of rights secured
9 to them under California Business & Professions Code §2056.

10 104. Plaintiffs have been proximately damaged by Defendants
11 conduct.

12 FOR PRELIMINARY AND PERMANENT INJUNCTION

13 105. The allegations set forth in paragraphs 1 through 104
14 are repeated and re-alleged.

15 106. As a consequence of the actions of Defendants, and
16 each of them, Plaintiffs, will continue to be damaged and suffer
17 irreparable harm until and unless Defendant's discriminatory and
18 retaliatory conduct is stopped and Plaintiffs are afforded due
19 process of law.

20 107. Defendants, have made it plain that, unless and until
21 enjoined by order of this Court they intend to continue in this
22 course of conduct. Plaintiffs have no adequate remedy at law
23 because the damage to their personal and life is not
24 ascertainable in money damages and because a multiplicity of
25 suits would result from the Court failing to intervene with
26 injunctive relief.

27 108. Therefore, equity should intervene and enjoin
28 Defendants and each of them, and their servants, employees,

1 agents, and all other persons acting with, for, or under, in
2 concert with them from further retaliatory and discriminatory
3 action.

4 WHEREFORE, Plaintiffs, demands the following relief
5 jointly and severally, against all the Defendants:

6 A. That the Court issue a preliminary injunction
7 restraining the Department of Developmental Services of the
8 State of California (DDS), Fairview Developmental Center (FDC),
9 South Coast Regional Project (SCRCP) and five (5) Regional
10 Centers (RC) from conducting any "exit conferences", at FDC or
11 elsewhere, regarding planned discharge of FDC developmentally
12 disabled clients from FDC to non-institutional placement during
13 the pendency of this action.

14 B. That the Court issue a preliminary injunction
15 restraining Defendants from discharging or transferring from FDC
16 to other California developmental centers or to non-
17 institutional placement any adult client who has no conservator
18 of the person, during the pendency of this action.

19 C. That the Court issue an Order compelling Defendants
20 DDS, FDC, AMUNDSON, KOHLER AND TAN FIGUEROA to:

21 1. Restore William Cable, M.D. to his former
22 position as Physician and Surgeon in Program 4.

23 2. Restore William Cable, M.D. to his former patient
24 assignments.

25 3. Restore William Cable, M.D. to his former
26 position on the Behavior Management Committee.

27 4. Restore William Cable, M.D. to his former
28 position on the Pharmacy and Therapeutics Committee.

1 5. Restore William Cable, M.D. to his former office
2 location on Program 4.

3 D. That the Court issue an Order restraining Defendant
4 administrator Hugh Kohler from:

5 1. Credentialing any physician for medical staff
6 privileges at FDC without such physician having first been
7 credentialed by the appropriate medical staff committee.

8 2. Instigating or conducting any further pharmacy
9 audits on physicians.

10 3. Interfering in any medical staff committee or in
11 any manner involving himself in activities traditionally
12 reserved to licentiates practicing medicine.

13 E. That the Court issue an Order restraining the FDC
14 pharmacy and pharmacist from conducting any drug audit
15 concerning any FDC physician without the express written
16 authorization of the Medical Executive Committee.

17 F. That the Court issue an Order compelling the custodian
18 of the medical records at FDC to produce, on demand to the
19 Medical Executive Committee or it's duly authorized agent, even
20 without prior administrative authorization, the entire and
21 complete medical record concerning any DDS client whose records
22 are maintained at FDC in the normal course of business.

23 E. That the Court issue an Order compelling the custodian
24 of the guardianship/conservatorship documents at FDC to produce,
25 on demand to the Medical Executive Committee or it's duly
26 authorized agent, even without prior administrative
27 authorization, the entire and complete
28 guardianship/conservatorship documents concerning any DDS client

1 whose documents are maintained at FDC in the normal course of
2 business.

3 F. That the Court issue an Order restraining the practice
4 of "client shopping" at Fairview Developmental Center.

5 G. That the Court issue an Order compelling the DDS
6 Regional Centers to maintain, in the records of their ordinary
7 course of business, all death certificates, all autopsy reports,
8 all police and fire department reports, all hospital discharge
9 summaries and all emergency room visit records concerning all
10 DDS clients, living or dead, who have been in their charge.

11 H. That the Court issue an Order compelling the DDS
12 Regional Centers to release, upon demand, and without the
13 necessity of prior administrative authorization, any and all
14 death certificates, autopsy reports, police and fire department
15 reports, hospital and emergency room discharge summaries to any
16 officer of the FDC MEC upon the Regional Center's receipt of a
17 written or faxed request signed by such officer.

18 I. That the Court issue an Order compelling the DDS to
19 have a physician present at each exit conference concerning the
20 placement of a developmental center resident into community
21 housing.

22 J. That the Court issue an Order compelling the DDS to
23 provide 10 days written notice to the physician designated to
24 attend an exit conference.

25 K. That the Court issue an Order compelling the DDS to
26 provide to the exit conference physician, at least one hour
27 prior to the commencement of such conference, the following
28 documents:

1. The complete and entire medical record.
2. All guardianship/conservatorship documents.
3. Copies of All correspondence and documents reflecting any and all telephone conversations made to the next of kin attempting to notify such persons of the exit conference.