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

MR-CA-004-007

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: DECLARATION OF LINDA COPELAND, M.D., IN SUPPORT OF PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION Date: March 20, 1997 Time: 10:00 a.m. Place: Federal District Court, Santa Ana, California

I, **LINDA COPELAND, M.D.**, declare

1. I am a board certified Pediatrician with a subspeciality in pediatric Developmental Disabilities. I am a licensed physician and surgeon in the State of California. If called as a witness in a Court of law I could and would testify to the following facts which are of my own personal knowledge:

2. I am presently employed as a staff pediatrician with Kaiser Permanente North in Sacramento, California. As a staff pediatrician and sub-specialist in developmental disabilities at Kaiser I evaluate and refer patients to the Alta California Regional Center ("Alta").

3. I was formerly a clinical associate professor of pediatrics and a member of the voluntary teaching staff at the University of California, Davis.

4. I have twelve years experience as a physician in the field of developmental disabilities in children and adults.

5. Attached hereto as Exhibit #1 is a true and correct copy of my curriculum vitae.

6. I was the Medical Director of the Alta California Regional Center ("Alta") in Sacramento, California from July, 1993 until my departure in September, 1994. Prior to becoming Medical Director I was a staff physician at Alta for five (5) years.

7. Alta is one of the twenty one (21) Regional Centers serving Californians with Developmental Disabilities under the Lanterman Act.

8. Regional Centers are private non-profit agencies that contract with the Department of Developmental Services (DDS) to

provide services within local communities for the developmentally disabled. Regional centers are not hospitals and do not operate clinics.

9. Based upon my background, training and experience, my six (6) years with Alta, and my stewardship as a Medical Director of a regional center during the early implementation of the "Coffelt" agreement, it is my opinion that there are serious **Quality Assurance** deficiencies endemic to the system especially in the areas of communication, coordination and accountability which detrimentally impacts upon the health and safety of children and adult developmentally disabled persons.

10. In my experience as medical director of the Alta California Regional Center, I became aware of the following disturbing incidents:

A. Client "V" had suffered a stage 4 decubitus ulcer (an open sore all the way down to her sacral bone from not being turned in bed). The community care provider contracted to care for her had been charged with criminal felony neglect. I found about the incident totally by accident when I heard two social workers talking about it in the hallway. There was no infrastructure, no formal procedural guidelines, to ensure that the Medical Director would be kept appropriately informed of critical medical issues affecting the well being of clients. Thereafter, I and the senior R.N. drafted proposed procedures to keep me informed of medical incidents. They were less than warmly received and inconsistently followed.

B. I learned last summer that Client "M", drowned at a camp vendored by another regional center. Client "M" was a non-

swimmer and had a seizure disorder that was clearly stated to camp personnel. Nonetheless, Client "M" was allowed into the pool area without a life jacket and without a 1:1 attendant. Client "M" was found floating face down in the pool and could not be resuscitated. Subsequently, two weeks after the drowning incident I called a staff physician, who I believe is the Medical Director, at the regional center that vendored the camp. The doctor told me that she had not been informed of the drowning. I later learned from the California Health and Welfare Agency that there is no licensure requirement for camps for the developmentally disabled.

C. The tragic drowning of a preschool aged boy in another Alta-vendored community care facility is also public record. Client Y, about age 4 or 5, had Autism Spectrum Disorder. There was a legally required fire-escape door in his bedroom. He apparently got out this door into the back yard, where he managed to climb into the pool and suffered a fatal drowning during my term as medical director. Community Care Licensing had suggested putting alarms on fire escape doors to detect just such undesirable exiting of clients as had occurred in this case. When I suggested to Alta administration that nurses could be hired for monitoring of safety features in community care homes there was no response to this suggestion. Months after I resigned my position at Alta I was surprised to learn that the caregiver had been criminally prosecuted for child endangerment. Administration at Alta did not share with me the fact that this criminal prosecution of a care provider was ensuing while I was medical director. The criminal case had been pursued because

the child who drowned had not been checked for an inordinate amount of time (13 hours I believe). The backyard gate had been left open and the dough-boy pool steps had been left down. When the paramedics were called to resuscitate the boy they could not reach him in a timely manner because of the care-provider's pit bull preventing them from doing so right away. These additional safety questions had not been brought to my attention when I initially found about the incident and the question arises as to whether these care providers were over-taxed in their ability to care for clients.

C. Some regional center personnel seemed to have inadequate training to realize the importance of medical issues or the need to involve diagnostic staff. I found it necessary to periodically go to different Unit meetings to emphasize the importance of medical issues and the need to communicate with diagnostic staff. I recall one such Unit meeting when a social worker, close to the end of the meeting, seemed to almost hesitate before asking if it was appropriate to inform me that her client, Client "W", was known to be HIV positive and had informed her that they were engaged in unprotected intercourse with other clients in the community care facility they resided in. I informed this social worker that this was exactly the kind of issue that was imperative to involve medical staff because of the enormous health risks involved, liability issues, and the regional center's obligation to protect the well-being of all clients served. I passed on information to this social worker so that Client "W" could receive additional confidential sexuality counseling with Planned Parenthood in the Sacramento

Valley. I also contacted ARCA AIDS office and talked to persons regarding AIDS education services for DD clients. Additionally, I arranged for notification of known sexual contacts so that they could be informed of the availability of confidential HIV testing.

11. As my year as Medical Director unfolded, it seemed to me that each week I was confronted with new, serious situations, affecting quality of care of clients in the community. I became increasingly uneasy about what I would "find out next". What resources I did have to address discovered problems I felt I had to dig and research to come up with, as there was no centralized source of resource information that empowered me clinically to do what I felt my job to be.

12. Client X was a young retarded woman known to have been previously sexually abused with subsequent development of provocative behaviors on her part. She was placed in a care home operated by a woman whose husband was a police officer, after carefully describing the client's situation and provocative behaviors. Subsequently, the care provider's husband had sex with the client, and was charged with rape. The officer was acquitted of rape, as testimony suggested that Client X could give informed consent for consensual relations.

13. Client Z, a severely retarded woman, was brought to my attention as a suspected sexual abuse case. The care provider in this facility was herself in her eighties, had Parkinson's disease, had recently had surgery and had become confined to a wheelchair. She also required a foley catheter. Two of the hired personnel were believed to be previous Regional Center

clients. Client Z was referred to a gynecologist and additional, qualified staff, were hired.

14. An on-going crisis throughout my whole term as Medical Director was the difficulty in accessing medical care for clients with Medi-Cal as their only form of health coverage.

15. This consumed a lot of my time, as fewer and fewer physicians in our catchment area would accept Medi-Cal, a problem beyond my control. I did what I could to ensure health care access in individual cases I was made aware of, frequently writing letters of referral to departments at UC Davis Medical Center, but even UCDMC became harder to access as time went on.

16. The Geographic Managed Care (GMC) program for Medi-Cal was initially implemented in Sacramento during my year as medical director. While this solved some problems of access for Medi-Cal clients (and I would venture to guess the majority of Alta's clients are covered by Medi-Cal), it created other access problems, especially access to specialists that might not be paneled with a particular GMC health plan. For instance, a number of clients with complicated metabolic disorders (such as PKU) who had previously been followed closely by University of California Davis, ("UCD") specialists and clinics were no longer able to go to UCD if they chose other GMC plans (the latter of which typically did not have comprehensive metabolic clinics).

17. Access to mental health services is an on-going critical issue for Alta clients.

18. There were frequent mental health crises for a substantial number of Alta clients resulting in failed community care placements, sometimes local psychiatric hospitalization,

and at times a need to be placed in a State Developmental Center.

19. In my clinical opinion, the dual diagnosed client, with both a developmental disability and a mental health illness (e.g. schizophrenia, depression, sexual offender) remains a great challenge to the whole DDS system.

20. The vast majority of clients remaining in State Developmental Centers have severe behavior problems, and the majority are adults.

21. In my opinion the community was not prepared for Coffelt, especially the discharges of the dual diagnosed, which was a time bomb waiting to happen.

22. I was informed that if Alta did not meet its Coffelt placement goals that Alta would be financially penalized by the DDS.

23. Client S, a 17 year old with mild mental retardation had been committed to a State Developmental Center at age 16 because of severe physical aggression. He showed some improvement in the developmental center, and was then placed in a community home. On or about March, 1994, the caregivers had to call the police because of client S's out of control behavior. Two days later the careproviders gave seven (7) days notice to have Client S moved. It was later rescinded but they still requested movement of the client. An incident occurred at school where he attempted to stab someone with a pencil. Verbally aggressive incidents recurred on the school bus. Then at the community home he got into an altercation with another client, punched and bit the other client on the leg, and got a

wire from a garbage can, poking a staff person in the hand with it. I left Alta without finding out the outcome of this case.

24. Alta over the years has renewed Memorandums of Understanding (MOUs) with County Mental Health Services. Many social work case managers came to me as medical director when they felt their clients were not receiving necessary mental health services, especially for acute crisis, because of turf issues in which Mental Health Agencies would simply indicate the client was Alta's problem. In other words, the mental illness was overlooked and only the developmental disability was focused on, throwing the entire problem in Alta's lap despite that Alta has no psychiatrist on staff, and is a social work agency, not a hospital or clinic.

25. Because of my background in child psychiatry and psychotropic medication, and the tremendous mental health needs of our clients, I offered my services to participate with Alta administration in renewing Alta's MOU with County Mental Health, but my offer was declined.

26. Another area giving rise to serious safety concerns were medication errors that were made when clients were transferred from one community care facility to another. This often necessitated change in the client's personal physician due to geographic reasons. There were a number of instances where vital medication orders were dropped during such transfers. A client with schizophrenia became actively psychotic when their anti-psychotic medication order was not renewed in transfer, but their medicine to counteract side effects of the antipsychotic medication was continued.

27. It has been my experience that the Regional Center's Administration did not effectively support diagnostic staff (physicians, nurses and psychologists) in their roles to protect clients and meet Lanterman mandates.

28. The latter fact was highlighted by a serious turnover and attrition of diagnostic staff over my six years of employment at Regional Center. Diagnostic staff had 100% turnover those six years.

29. When I first started employment at the Regional Center, I was one of three physicians on the medical staff. The year I assumed Medical Directorship, I was the only remaining physician.

30. Despite a substantial increase in the number of clients served by the Regional Centers as a result of Coffelt, and the horrendous complexity of problems caring for many of these clients in the community, staffing has been decreased.

31. After I left there was no physician on staff at Alta and the Regional Center took ten (10) months to recruit and hire another Medical Director.

32. I am informed and believe, that some Alta Regional Center clients are residents at Fairview Developmental Center as well as residents of other California developmental centers.

33. Therefore, I believe that my experiences at Alta have relevance to those Alta clients presently resident at Fairview who may later be discharged from Fairview back to this area or whose parents may move to this area or to other Fairview residents who may be placed in community homes or supportive living arrangements within Alta's catchment area who are

technically clients of other regional centers.

34. On or about late November or early December, 1996, Mr. Hardiman, counsel for Dr. William Cable, telephoned me and indicated that he had contacted me because of my expertise in developmental disabilities and my experience as a regional center medical director in the California developmental disabilities system.

35. I was asked to review certain documents provided to me (attached hereto as Exhibit #2) related to charges brought against Dr. Cable by DDS pursuant to California Government Code § 19572 and to provide my opinions regarding Dr. Cable's professional conduct within the context of the DDS, the standard of care, neglect of duty, violation of policy and client confidentiality.

36. It is my opinion, based upon my background, training, experience and the documents I have reviewed and attached hereto as Exhibit #2, that:

a. Dr. Cable's conduct, with regard to clients VR and CR, was well within the standard of care for the medical community and for a medical member of the "interdisciplinary team" responsible for the development and implementation of regional center clients' individual program plans ("IPP").

b. There are no facts to support an allegation that Dr. Cable's conduct, in the context of an "exit conference" or follow up by letter, constitutes "inexcusable neglect of duty" as I understand or experienced the duties of a physician and interdisciplinary team member to be in the DDS/Regional Center scheme.

c. Dr. Cable's conduct did not "demonstrate a disregard of the Department's well established goal of community placement of clients". On the contrary, it is my opinion that Dr. Cable's conduct in seeking to assure that a parent or family member was informed of the risks and benefits of the proposed community placement, in seeking to alert the regional center medical director that important information had been deleted from a client medical record, in seeking to assure client safety, wellness and adequacy of training promoted the longer established policy of integrating the clients into a reasonably safe environment rather than simply "community placement".

d. Dr. Cable's letter to Dr. Raymond Peterson, Medical Director of the San Diego Regional Center regarding deleted information in a client's medical record was, in my opinion, proper, appropriate and did not violate client confidentiality.

e. At this time the published peer reviewed and most reliable data indicates that there is a higher mortality in the developmentally disabled in the community, in California, as compared to the institutions.

f. There was no conduct by Dr. Cable that I saw in the documents I reviewed that could be characterized as "dishonest".

37. It is my opinion based upon my training, background and experience as a Medical Director of a Regional Center, my background with the DDS/Regional Center system and my Coffelt experiences that the disciplinary actions of reprimand and suspension without pay resulting, from the conduct which occurred, as reflected in the documents set forth in Exhibit #2, is retaliatory in nature.

38. That based upon my training, background and experience it is my opinion that the Medi-Cal Geographic Managed Care system operates disproportionately to deny access to medical care to the developmentally disabled in the community setting.

39. That based upon my training, background and experience, the published peer reviewed medical literature concerning the developmentally disabled, the serious Quality Assurance problems that I encountered in the system, it is my opinion that community placement, as practiced in California at the present time, does not provide for reasonably safety to those clients presently being discharged from developmental centers.

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct.

Executed on: 3/15/97

At: Sacramento, California

Linda Copeland M.D.

LINDA COPELAND, M.D., DECLARANT

CURRICULUM VITAE
LINDA ELIZABETH COPELAND, M.D.

PERSONAL

Work Address:	3240 Arden Way Sacramento, California 95825
Home Phone:	[redacted]
Birthplace:	Pittsfield, Massachusetts
Marital Status:	Married; one son and one daughter
Social Security Number:	[redacted]

UNDERGRADUATE EDUCATION

1970-1971	Sacramento City College
1971-1975	University of California, Davis. Bachelor of Science-Physiology. Phi Beta Kappa

MEDICAL EDUCATION

1975-1979	School of Medicine, University of California Davis. M.D. Degree. Alpha Omega Alpha. Upjohn Award for Outstanding Clinical Proficiency.

POST GRADUATE EDUCATION

1979-1980	Internship in Pediatrics- Raymond Blank Children's Hospital. Iowa Methodist Medical Center; Des Moines, Iowa.
1980-1982	Child Psychiatry Fellowship, University of Iowa Hospitals & Clinics, Iowa City, Iowa.
1982-1984	Pediatrics Residency, U. of Iowa Hospitals & Clinics, Iowa City, Iowa.
1984-1985	Fellowship, Developmental Disabilities, University of Iowa Hospitals & Clinics Iowa City, Iowa.

EMPLOYMENT

July 1985-July, 1988	General Pediatrics Practice, Moses Lake Clinic, Moses Lake, Washington.
August, 1988-June, 1993	Developmental Pediatrician at Alta California Regional Center.
June, 1993-Sept. 1994	Medical Director, Alta California Regional Center
Oct. 1994-April 1995	Pediatric Medical Associates, Sacramento,Ca.

May 1995-June,1996	Foundation Health Medical Group 500 University Ave. Sacramento, Ca. 95825 and Elk Grove/Roseville satellite offices
July,1996-present	Kaiser Permanente Medical Group 3240 Arden Way. Pediatrics Sacramento, Ca. 95825

BOARD CERTIFICATION

February, 1987 — Board Certified in Pediatrics with AAP.

HOSPITAL APPOINTMENTS

1985-1988	Staff Physician, Samaritan Hospital, 801 E. Wheeler Road, Moses Lake, Washington, 98837.
1989-1991	Assistant Clinical Professor of Pediatrics U C Davis Medical Center.
1994-present	Staff Physician, Sutter Memorial Hospital 5301 F Street Sacramento, Ca. 95819

PUBLICATIONS

Journal of Developmental and Behavioral Pediatrics- "Pediatricians' Reported Practices in the Assessment and Treatment of Attention Deficit Disorders; Vol. 8, No. 4, August, 1987, pp. 191-97.

Chapter: Attention Deficit Disorder-Hyperactivity in "The Practical Assessment and Management of Children with Disorders of Development and Learning", Mark Wolraich-Editor. Yearbook Medical Publishers, 1987.

GRANTS

Co-Author of Proposal #92-227 funded by Sierra Health Foundation in 1993 for $75,000 over 3 years to develop early intervention behavioral treatment services for young autistic children networking with UCLA Young Autism Project.

LICENSURE

1985	Washington [redacted]
1989	California [redacted]

PROFESSIONAL SOCIETIES

California State Medical Association
Sacramento-El Dorado County Medical Society
Fellow- American Academy of Pediatrics
Sacramento Pediatric Society
Society of Adolescent Medicine
Society of Behavioral Pediatrics

COMMUNITY SERVICES

Board Member	Assistance to Pregnant and Parenting Teens, 1986-1988
Board Member	*Early Childhood Services Organization* Grant County, Washington 1987.
Board Member	Head Start, Grant County. 1986-1988.
Medical Consultant	Consultation Network for Child Abuse/Neglect, University of Washington, 1986-1988
Board Member	Families for Early Autism Treatment (FEAT), Sacramento, Ca.; 1992-Present.

REFERENCES: Available upon request