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

MR-CA-004-004

6 Attorneys for: Richard S. et al.

7
8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10
11 RICHARD S., CYNTHIA R., VALDINA)
R., and ROES 1 through 800,)
12 individually and on behalf of all)
those similarly situated by)
13 WILLIAM CABLE, M.D. as Guardian)
ad Litem)

14 Plaintiffs,)

15 vs.)

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

27 Defendants)
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CASE NO:

DECLARATION OF FREDERICK
HERZIG, 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

1 I, FREDERICK HERZIG, M.D., declare:

2 1. I am a physician and surgeon duly licensed to practice
3 Medicine and Surgery in the State of California. If called to
4 testify in this matter, I would and could testify to the
5 following facts.

6 2. That I was in the private practice of general surgery
7 in Orange County, California for more than 22 years.

8 3. That I was formerly a member of the surgical attending
9 staff at the University of California, Irvine.

10 4. That I was formerly a member of the board of directors
11 of Tustin Community Hospital, in Tustin, California. That I was
12 on the surgical committee and Chairman of the Bylaws committee
13 at Tustin Community Hospital. That I was a member of the
14 medical and surgical staff and a member of the Surgical Committee
15 at Western Medical Center.

16 5. That I have six and a half (6 1/2) years experience
17 working with the developmentally disabled at Fairview
18 Developmental Center, Costa Mesa, California.

19 6. That I was the Chief of the Medical Staff at Fairview
20 from January 1, 1995 through December 31, 1996 and was succeeded
21 in that position by William Cable, M.D.

22 7. I have read the peer reviewed article by Struass
23 demonstrating a 74% excess in mortality in the community
24 compared to the institution in California.

25 8. That is too high a figure and is not medically safe.

26 9. Strauss's report confirms my clinical impression.

27 10. That it is my opinion that this should not be allowed
28

1 to continue and urgent intervention is needed to stop the
2 inappropriate discharges to community placement that are
3 occurring at Fairview.

4 11. During the period of time I have been at the vast
5 majority of exit conferences on my patients.

6 12. I had reservations about the suitability of many of
7 those placements.

8 13. I was told by administration, specifically a program
9 director, that physicians should not be concerned where the
10 patient was placed.

11 14. I was told that the lay staff was more qualified to
12 make placement decisions and that the decision was not up to the
13 doctors as to whether the patient was to be placed into the
14 community.

15 15. I was retaliated against for involving myself with
16 COFFELT discharges.

17 16. I was transferred from duties on exit conferences.

18 17. The Medical Executive Committee, in December, 1996 was
19 unable to obtain a candidate for election to succeed Dr. Cable.

20 18. There are two vacancies on the Medical Executive
21 Committee and the Committee has been unable to find any
22 physicians willing to volunteer for this duty.

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

25 Executed on: March 14, 1997

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Frederick Herzig MD

FREDERICK HERZIG, M.D., DECLARANT