

The Honorable MARSH J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CASSIE CORDELL TRUEBLOOD, next
friend of A.B., an incapacitated person, et al.,

Plaintiffs,

v.

THE WASHINGTON STATE
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, et al.,

Defendants.

NO. 2:14-cv-1178 MJP

DECLARATION OF
DR. BRYAN J. ZOLNIKOV

I, Bryan J. Zolnikov, am over the age of 18 years of age, competent to testify to the matters below, and declare based upon personal knowledge:

1. I am the Clinical Director at the Center for Forensic Services located at Western State Hospital. I graduated with a Ph.D. in 2007, have been licensed as a Psychologist since 2008, and have been the Clinical Director at the Center for Forensic Services (CFS) since 2013. In my career within mental health, I have specialized in forensics and played various roles including clinical leader, forensic evaluator, clinical supervisor, clinical psychologist, trainer, and program developer, implementer, and evaluator.

1 2. I have visited Yakima County Competency Restoration Program (YCCRP) on
 2 at least 4 occasions and I am frequently on the forensic wards of WSH. I am well acquainted
 3 with the physical plant of WSH. I last visited YCCRP from February 25, 2016 to February
 4 26, 2016, and have familiarity with the physical plant of that facility at that time.

5 3. The physical plant of YCCRP and WSH are more similar than dissimilar.
 6 Many of the hardened spaces are appreciably the same (e.g., exterior and interior doors are
 7 heavy doors with locks, patio area for patients to access has concrete floors, and fences are
 8 barriers to escape). In fact, YCCRP has a number of features not present in WSH. For
 9 example, the floors in WSH's CFS competency restoration wards are hard floors, not
 10 carpeted as in YCCRP. Also, the day area space within the wards at CFS are substantially
 11 smaller than the day area space at YCCRP.

12 4. There are large skylights in YCCRP which provide more natural light than the
 13 state hospitals. The Department of Health, which has licensed YCCRP, considers natural light
 14 as part of its licensure process. The YCCRP facility is light and bright, and is more inviting
 15 than the WSH and ESH CFS wards, which can be dim and limit the entry of natural light.

16 5. The physical plant of a mental health treatment program, while important, is
 17 not the only factor in creating a therapeutic environment or in providing appropriate levels of
 18 care and treatment to individuals with mental illness. The staff, both the level and the
 19 training, are significant factors in creating a therapeutic milieu. In addition, the content of
 20 the treatment program is vital to achieving a therapeutic environment.

21 6. As part of my job duties, I and other trainers provided training to the contractor
 22 being utilized to operate the YCCRP. This training occurred February 15 through February
 23 19, 2016 and February 25, 2016 and February 26, 2016. The training focused on the core
 24 competency restoration program and services that will be offered at the Yakima facility, and
 25 compliments the experience that Comprehensive Mental Health has in treating persons with
 26 mental disorders. The training covered core therapeutic groups, court room knowledge and

1 understanding, how to interact therapeutically with patients, as well as common patient
 2 disorders, including schizophrenia, mood disorders, and personality disorders. Other aspects
 3 of the programming, including de-escalation, psychiatric emergency response, the breaking
 4 barriers competency program, and trauma informed care were also covered during the seven
 5 days of training. The following materials are a sample of those used during the training, and
 6 demonstrate the programs and services being offered by the contractor at Yakima:

- 7 a. Attachment A: Competency Restoration Staff Training
- 8 b. Attachment B: Best Practices for Interacting with Residents Trauma
 9 Informed Care
- 10 c. Attachment C: Psychiatric Emergency Response Team Training - Incident
 11 Command and Procedures
- 12 d. Attachment D: Psychiatric Emergency Response Team Training - De-
 13 escalation Techniques
- 14 e. Attachment E: Core Elements In Responding To Mental Health Crises

15 7. The training provided to the YCCRP staff is consistent with, but in some ways
 16 superior to, the training delivered to staff at the Center for Forensic Services. The Center for
 17 Forensic Services staff that received the training regarding the Breaking Barriers Program,
 18 responding to a mental health crisis, and trauma informed care are comprised of a very small
 19 proportion of the overall staff at the Center for Forensic Services whereas the majority of the
 20 staff at YCCRP have received these trainings.

21 8. I coordinated a series of visits from contract staff to the Center for Forensic
 22 Services. During these visits, a handful of Center for Forensic Services staff met with
 23 contract staff and shared information relevant to operating competency restoration services.
 24 Contract staff observed competency restoration group therapies and ward staff while they
 25 performed their duties managing the ward environment.
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1 9. I remain a resource for the YCCRP, and will continue to consult and train on
2 an as needed basis to assist YCCRP in implementation of a successful and effective
3 competency restoration program.

4 10. YCCRP is not a corrections-based restoration program. In a correctional
5 program, inmates receiving restoration services could be housed within the inmate general
6 population and cohabitate with other inmates not receiving such services. Also, inmates are
7 typically assigned to a cell and spend a certain amount of hours in a locked cell. Within the
8 culture of that correctional facility, inmates are subject to correctional policies and
9 procedures, such as use of seclusion and isolation to control behavior and maintain order.
10 The staffing in a correctional setting typically is focused on corrections-trained staff, with
11 minimal involvement from trained mental health professionals. Conversely, YCCRP patients
12 will have no interface with corrections inmates, will be able to move freely throughout the
13 facility, will sleep in a bedroom (not a cell), and will be treated as patients receiving
14 therapeutic services by mental health staff.

15 11. Within the YCCRP, patients will not regularly be interfacing with corrections-
16 trained staff. The nature of programming is radically different. The YCCRP is staffed as a
17 mental health facility. The staff are mental health professionals, licensed and trained as
18 treatment professionals. Participants will not be subject to correctional-like policies, such as
19 extended use of seclusion and isolation. This distinction is crucial to the care and treatment
20 of individuals with mental illness because mental health programming is designed primarily
21 to facilitate the recovery from mental illness whereas corrections programming is designed
22 primarily to contain. For example, seclusion and isolation within the context of corrections is
23 used as a higher level of containment whereas seclusion within a mental health context is
24 only used as a last resort for the safety of the patient and, if utilized, the goal is to provide
25 mental health interventions (e.g., verbal de-escalation, as needed medication) with the intent
26 of facilitating the patient movement out of seclusion.

1 12. Corrections-based competency restoration programs in the United States are
2 usually operated one of two ways: either “housing formal restoration programs” within an
3 operating correctional facility, or “offering temporary restoration services” to individual
4 patients inside a jail (Forensic Mental Health Consultant Review Final Report, June 2014,
5 Groundswell Services, Inc.). The YCCRP is in marked contrast to existing corrections-based
6 competency restoration programs given that the YCCRP is supervised by a Medical Director
7 (as opposed to a Warden), licensed as a Residential Treatment Facility by the Department of
8 Health, made up solely of mental health workers, operates within a trauma informed care
9 therapeutic framework, and the goal is to restore patients to competency to stand trial.

10 13. The YCCRP will make use of the same medication formularies as the state
11 hospitals. This is critical to a therapeutic environment because the state hospital medication
12 formularies were designed to meet a wide range of mental health needs.

13 14. There are no restrictions to attorneys or families visiting the YCCRP in
14 person. Allowing video visits is not meant as a replacement for in-person visits, rather it
15 increases the probability for patients to have visitors, particularly those who would find it
16 difficult to travel to any facility no matter the location. The option of video visits is superior
17 to the hospitals, which does not have such capacity at this time. WSH is looking to expand its
18 capacity for video visits to increase access to families and visitors for patients and to mimic
19 this option that is available at the YCCRP. Access to families and visitors, both in person
20 and through video, is crucial to a therapeutic environment because social support plays a role
21 in motivating patients to become competent to proceed and is part of the overall wellness of
22 the patient.

23 15. Videoconferencing (VC) and telepsychology is an acceptable practice and is
24 developing rapidly and widely throughout the world (Manguno-Mire et al., 2007; Batastini et
25 al., 2013; Timpano et al., 2013; and Adjorlolo and Chan, 2015). DSHS has considered the
26 use of VC for forensic evaluations at the YCCRP and is reviewing relevant literature and

1 guidelines (e.g., <http://www.apa.org/practice/guidelines/telepsychology.aspx>) related to the
2 use of VC within the context of forensic evaluation. Use of telepsychology is a growing
3 trend in the industry, can be employed without degrading care, and the Department hopes to
4 develop its use at YCCRP.

5 16. At the YCCRP there exists the same opportunity for defense counsel to have
6 private and meaningful access to their clients as provided at the state hospitals. At WSH, for
7 example, counsel can request access to a patient and be provided with a private room within
8 the Center for Forensic Services to meet with the patient. See the WSH policy governing
9 legal access, attached as Attachment F. If counsel calls a patient, a phone in a private room is
10 offered to the patient for the meeting.

11 17. Visits by family and friends at WSH are monitored and are not confidential or
12 private. Typically, a Security Guard and Psychiatric Security Attendant monitor the visits from
13 friends and family. Periodically, a Social Worker or Psychology staff with a Security Guard
14 monitor the friend and family visit. See the WSH policy governing visiting, attached as
15 Attachment G. At YCCRP, friend and family visits will be monitored by Mental Health
16 Counselor staff.

17 18. The state hospitals have specific policies regarding what clothing is allowable.
18 Patients who do not have access to allowable clothing are provided state issued clothing.

19 19. The contents of envelopes and packages at the state hospitals are screened for
20 contraband. See the WSH policy governing packages and contraband, attached as
21 Attachment H.

22 20. Jail staff transport patients to WSH Center for Forensic Services and enter a
23 secured vehicle sally port area. Upon arrival, the patient exits the transportation vehicle
24 wearing restraints (typically wrist to waist and ankle). The patient and jail staff then enters the
25 secured entrance to the Center for Forensic Services where Center for Forensic Services
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1 Security Guards takes custody of the patient. At that time, the restraints are removed and taken
2 by jail staff. Once in the Center for Forensic Services, the patient is free of restraint unless the
3 use of seclusion and/or restraint is necessary for the safety of the patient. See the WSH policy
4 governing seclusion and restraint, attached as Attachment I. This process will be identical to
5 the process at YCCRP except that the YCCRP will have Mental Health Counselors (not
6 Security Guards like at WSH Center for Forensic Services) taking custody of the patient.
7


8 21. Correctional facilities are designed to contain, as are our forensic units at the
9 state hospitals. All of the Department's restoration facilities, including Western State
10 Hospital, Eastern Hospital, and YCCRP, are secure facilities and contain individuals with
11 active involvement with the criminal justice system where security must be a high priority.
12 The architecture is not the key element, it is the therapeutic program and approach that is
13 important.
14

15 22. Different units within CFS have different policies with regards to ligatures.
16 For example on E1 and S4, patients are allowed to have belts, power cords, shoelaces. *See*
17 Attachment J. The patients that reside on E1 and S4 are part of the Center for Forensic
18 Services Not Guilty by Reason of Insanity (NGRI) Community Program. Patients in this
19 program have been extensively reviewed for clinical issues related to the risk for engaging in
20 endangering behavior and have shown a very low level of risk for suicide, physical
21 aggression towards others, and various other forms of endangering behaviors. In addition to
22 being very low risk, the treatment trajectory for these patients is towards intensive
23 community reintegration. Given their very low risk of endangering behaviors and community
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1 integration, it was deemed appropriate for these patients to have access to items that would
 2 support the purpose of community reintegration.

3 23. As part of my job duties, I worked with other clinicians and employees of the
 4 Department to develop an admissions criteria for YCCRP. The admissions criteria is
 5 designed to ensure that the patients admitted to the program are clinically appropriate for the
 6 environment and setting of YCCRP. The staff that developed the criteria utilized research-
 7 based predictors of future endangering behaviors to develop the criteria and decided to rule
 8 out patients that possess the research-based predictors of future endangering behaviors. This
 9 clinical risk analysis process is similar to the process utilized in decision making with the
 10 NGRI Community Program. The criteria, attached as Attachment K, excludes persons who
 11 are actively self-harming, are at relatively higher risk of suicidal behaviors, or are an active
 12 risk of harm to others. Excluding these populations, among others, from admission to the
 13 YCCRP program mitigates the risk that patients would take advantage of the environment at
 14 YCCRP to engage in self-harm behavior. Patients that meet the admission criteria are at a
 15 very low risk of engaging in endangering behaviors that place themselves and others at risk
 16 of harm.
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19
 20 Signed this 19 day of March, 2016, at Tacoma, Washington.

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 23 DR. BRYAN J. ZOLNIKOV
 24 Clinical Director, Center for Forensic Services
 25 Department of Social and Health Services
 26 Western State Hospital

CERTIFICATE OF SERVICE

Beverly Cox, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 19 day of March 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davide@dr-wa.org

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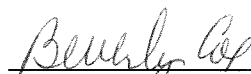
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 19 day of March 2016, at Olympia, Washington.



Beverly Cox
Legal Assistant

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