

# Wilson v. Happy Mountain Daycare, Inc.

Case No. 5AN-06-9999 CI

**Problem Overview:** This is the civil law teaching problem for use in a teaching unit on the American trials, culminating in a mock trial involving the students on the last day of the unit. The problem is adapted from the 2007 Alaska High School Mock Trial Competition problem, but has been shortened and simplified to accommodate the purposes of a short teaching unit. The Alaska High School Mock Trial Competition is sponsored by the Anchorage Bar Association, Young Lawyers Section. The 2007 problem was itself adapted from Jean Jones v. Kids-R-Ours, Inc. – Case File, Hollace P. Brooks and Paul Chill, National Institute for Trial Advocacy, 1995. If you are interested in seeing the complete 2007 Mock Trial problem, go to [www.anchoragebarassociation.org](http://www.anchoragebarassociation.org), click on the link for Mock Trial, then look under archives.

The problem centers on Chris Wilson, who is fired from his/her position as a Head Teacher at Happy Mountain Daycare after having an epileptic seizure. Chris contends that because of her/his epileptic condition s/he was discriminated against by Madison Smith, the owner of Happy Mountain Daycare. Madison denies this by asserting that Chris was fired for the sake of the safety of the children and because of insubordination for sending a letter in violation of company policies. Chris's doctor, Marc(y) Bartello, believes that with the proper precautions, Chris can continue working at Happy Mountain Daycare without being a safety hazard to the children under his/her care. And, Toyo Hiroki, who used to work at Happy Mountain Daycare, has been able to be a child care provider while making a similar accommodation to the one Chris would need to make for his/her epilepsy. Cameron Velasquez, the former Daycare Compliance Officer in the Borough, however, is concerned that children can never be safe in a daycare center where a person with epilepsy is employed and was very disturbed by Chris's letter. And Andy Shoney, who was working with Chris the day s/he had the seizure, can provide details about the seizure and the reaction of the children. Was Happy Mountain Daycare justified in firing Chris Wilson? That is what this case will determine.

The problem involves issues which some may find a bit sensitive, namely what accommodations, if any, should be made for a person with a disability in his or her place of employment. Part of being an attorney is sometimes taking positions with which you do not entirely agree. Students are encouraged as well to think about and discuss the social implications of arguments made either for the plaintiff or the defendant.

In a mock trial, students play the roles of both attorneys and witnesses. Students who are selected to be witnesses should become familiar with the affidavit for their witness, but it is not necessary to memorize it. Witnesses are allowed to refer to their affidavit during the trial to refresh their memory. (Note: This is not allowed in the state competition.) Attorneys should familiarize themselves with the affidavits for the witness(es) they are examining or cross-examining. All affidavits are written to be gender neutral. Also, the time references are adapted so that "Year-1" means one year ago. This way, any student can play any role, and the problem can be used in any year. The important thing about mock trials is that they are not only a great learning experience, but they are also great fun! So, be creative, and enjoy the problem.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

CHRIS WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5AN-06-9999 CI
	)	
HAPPY MOUNTAIN DAYCARE, INC.,	)	
	)	
Defendant.	)	
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**COMPLAINT**

**Introduction**

1. The Plaintiff, Chris Wilson, brings this action under Alaska Statute 18.80.220(a)(1), to redress her/his unlawful demotion and dismissal from employment by the defendant because of a physical disability.

**Jurisdiction**

2. The court's jurisdiction over this matter is conferred by Alaska Statute 09.05.015.

**Parties**

3. The Plaintiff, Chris Wilson, is a resident of Bearclaw, Alaska. Plaintiff is a person with a physical disability in that s/he has a physical impairment, epilepsy, that substantially limits one or more of her/his major life activities.

4. The Defendant, Happy Mountain Daycare, Inc., is a corporation registered and existing under the laws of the State of Alaska.

## **Facts**

5. In July 2005, the Defendant hired Plaintiff to work as the head teacher in the toddler classroom at the Defendant's Bearclaw, Alaska, day-care center, at a salary of \$480 per week.

6. At all times after being hired, Plaintiff was able to perform, and did perform, the essential functions of his/her job.

7. Plaintiff has complex partial seizure disorder, a form of epilepsy.

8. Plaintiff had a seizure on August 24, 2006, while at work.

9. On August 24, after Plaintiff's seizure, Madison Smith, the Defendant's owner and manager, suspended Plaintiff without pay.

10. On that same date, August 24, 2006, Madison Smith told Plaintiff that s/he could return to work if s/he provided a doctor's note stating that s/he would never have another seizure at work.

11. On August 30, 2006, Plaintiff gave Madison Smith a letter from her/his physician stating that s/he could safely perform the essential functions of the job.

12. Upon reading this note, Madison Smith offered Plaintiff a demotion to the position of Assistant Teacher in the preschool classroom at a substantially reduced salary.

13. Plaintiff reluctantly agreed to accept this demotion on August 31, 2006.

14. On September 1, 2006, Plaintiff sent a brief farewell letter to the parents of children in his/her classroom.

15. On the morning of September 11, 2006, the day Plaintiff was scheduled to report to work in his/her new position, Madison Smith called Plaintiff at home and fired him/her.

16. Madison Smith's stated reason for firing the plaintiff was insubordination for sending the farewell letter.

17. Madison Smith's stated reason for firing the plaintiff was a pretext for disability discrimination.

18. As a result of the Defendant's actions, Plaintiff has lost wages and fringe benefits and has suffered humiliation, embarrassment, and emotional pain and anguish.

**Causes of Action**

19. The Defendant discriminated against Plaintiff in violation of Alaska Statute 18.80.220(a)(1) by terminating his/her employment because of his/her disability.

**Demand for Relief**

WHEREFORE, the Plaintiff claims:

- (a) A declaratory judgment holding that the Defendant's demotion and dismissal of Chris Wilson is unlawful discrimination in violation of Statute 18.80.220(a)(1);
- (b) Reinstatement with full back pay and benefits;
- (c) Compensatory damages;
- (d) Punitive damages;
- (e) Reasonable attorney's fees, including litigation expenses and costs; and
- (f) Such other relief as the interests of justice require.

THE PLAINTIFF, CHRIS WILSON

By: \_\_\_\_\_ /s/

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Plaintiff,	)	
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v.	)	Case No. 5AN-06-9999 CI
	)	
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	)	
Defendant.	)	
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**ANSWER**

1. The Defendant admits that Plaintiff has brought this action under AS 18.80.220(a)(1). The Defendant denies the remaining allegations of paragraph 1.
2. The Defendant admits the allegations of paragraph 2.
3. The Defendant admits that Plaintiff is a resident of Bearclaw, Alaska. The Defendant denies the remaining allegations of paragraph 3.
4. The Defendant admits the allegations of paragraph 4.
5. The Defendant admits the allegations of paragraph 5.
6. The Defendant denies the allegations of paragraph 6.
7. The Defendant admits the allegations of paragraph 7.
8. The Defendant admits the allegations of paragraph 8.
9. The Defendant admits the allegations of paragraph 9.
10. The Defendant denies the allegations of paragraph 10.
11. The Defendant admits that on August 30, 2006, Plaintiff gave Madison Smith a letter from his/her physician. The Defendant denies the remaining allegations of paragraph 11.
12. The Defendant admits that Madison Smith offered Plaintiff a position as Assistant Teacher in the preschool classroom at a salary of \$300 per week. The Defendant denies the

remaining allegations of paragraph 12.

13. The Defendant admits that the Plaintiff accepted the new position on August 31, 2006. The Defendant lacks sufficient knowledge to admit or deny the remaining allegations of paragraph 13.

14. The Defendant admits that Plaintiff sent a letter to parents on or about September 1, 2006. The Defendant denies the remaining allegations of paragraph 14.

15. The Defendant admits the allegations of paragraph 15.

16. The Defendant admits that the reason for firing the plaintiff was insubordination. The Defendant denies the remaining allegations of paragraph 16.

17. The Defendant denies the allegations of paragraph 17.

18. The Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph 18.

19. The Defendant denies the allegations of paragraph 19.

#### **AFFIRMATIVE DEFENSES**

1. Providing accommodation to the Plaintiff would impose an undue hardship on the Defendant's business operations.

2. Plaintiff posed a direct threat to the health or safety of other individuals in the toddler classroom.

3. The Defendant would have discharged Plaintiff even if s/he did not have a disability.

THE DEFENDANT, HAPPY MOUNTAIN  
DAYCARE, INC.

By: \_\_\_\_\_ /s/ (Madison Smith)  
its Owner

## **JURY INSTRUCTIONS**

### **The Plaintiff's Claims**

The Plaintiff in this case, Chris Wilson, claims that the Defendant, Happy Mountain Daycare, Inc., violated an Alaska law prohibiting discrimination against persons with mental or physical disabilities. The law states that an employer may not discriminate against a person with a disability who is able to perform the essential functions of the job with or without reasonable accommodation. This Court has ruled that the Plaintiff's epileptic disorder is covered by the Alaska anti-discrimination law.

The Plaintiff claims that the Defendant violated his/her by firing him/her because of his/her disability. The law does not require that a job applicant disclose her or his disability to a prospective employer. At the same time, an employer may not ask a job application whether she or he in fact has a disability. The employer may only ask the applicant about her or his ability to perform the specific tasks required in the job.

Disability law requires an employer to make "reasonable accommodations" to an employee with a disability. As long as the disabled employee can perform the "essential functions" of the job by means of a reasonable accommodation, the employer cannot terminate the employee because of the disability.

The term "essential functions" means fundamental job duties. It does not include marginal or peripheral duties. It is up to you as the jury to determine what activities constitute the "essential functions" of the Plaintiff's job as Head Teacher at Happy Mountain Daycare. Factors you may consider in determining whether a function is essential include, but are not limited to, the written job description, the employer's judgment as to which functions are essential, and the work experience of other employees in that job.

The term "reasonable accommodation" means reasonable adjustments to the way in which a job is usually performed that enable a person with a disability to perform the essential functions of a job. Examples of accommodations include, but are not limited to, job restructuring, a modified work schedule, reassignment to a vacant position for which the Plaintiff is qualified, and physical modification of the workplace. Reasonable accommodations do not require the employer to change or eliminate any essential function of employment, shift any essential function of employment to other employees, create a new position for an employee, promote an employee, or reduce productivity standards.

An employer is not required as part of making a reasonable accommodation for a disabled employee to put the health and safety of others at risk. In the present case, this means that if Chris Wilson, because of her/his epileptic condition, posed an unacceptable and unavoidable risk to the children at Happy Mountain Daycare, then the Defendant would not be required to, and indeed would not be able to make a reasonable accommodation for Chris Wilson's disability. Factors you may consider in determining whether the Plaintiff posed a direct threat to the children under his/her include, but are not limited to, the duration of the risk, the nature and severity of the potential harm, and the likelihood that the potential harm would have occurred. These factors should be considered as applied to the toddler classroom.

You must decide, then, whether the Plaintiff satisfied her/his burden of proving that s/he was capable of performing the essential functions of her/his job as Head Teacher in the toddler classroom with or without reasonable accommodation. If s/he failed to prove this, your verdict must be for the Defendant.

The Defendant has also offered an “affirmative defense” to explain the termination of Chris Wilson. An affirmative defense is an interpretation of the facts for which the Defendant bears the burden of proof. However, if the Defendant proves the existence of an affirmative defense, this may justify what would otherwise be illegal behavior. In the present case, Happy Mountain Daycare claims that Chris Wilson was fired for sending parents an inflammatory and insubordinate letter. If you believe that Happy Mountain Daycare fired Chris Wilson for sending this letter, as opposed to her/his disability, you must find for the Defendant. In other words, if you decide that the Defendant proved that it would have made the same decision to fire the Plaintiff even if s/he did not have a disability, your verdict should be in favor of the Defendant on this claim.

One thing you must keep in mind is that the Plaintiff was a so-called “at-will” employee. This means that the Defendant was entitled to fire him/her for any reason whatsoever, so long as it was not an illegal reason such as disability discrimination. The issue for the Defendant’s affirmative defense, then, is not whether the Defendant acted fairly or unfairly in discharging the plaintiff, it is whether the Defendant fired him/her because of his/her disability.

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CHRIS WILSON, )  
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 Plaintiff, )  
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 HAPPY MOUNTAIN DAYCARE, INC., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**GENERAL JURY VERDICT**

We, the jury, unanimously decide as follows:

The Defendant **DID / DID NOT** [please circle one] discriminate against the Plaintiff,  
Chris Wilson, by firing him/her.

This is our verdict, and we all agree on it.

\_\_\_\_\_  
[Foreperson please sign here]

## **PLAINTIFF'S WITNESSES**

### **AFFIDAVIT OF CHRIS WILSON**

1. My name is Chris Wilson. I am twenty-six years old. I reside with my parents, Harold and Catherine Wilson, at 112 Runner Road, Bearclaw, Alaska. I've lived there my entire life other than while I was attending college from fall Year-6 to spring Year-2 and for the following year while I worked in Alaskopolis. I am not married. The only other "person" who lives in the house is our dog, Grover.
2. I graduated in May Year-6 from Bearclaw Regional High School. The following September, I began attending the University of Alaska – Moose Valley, where I majored in Early Childhood Education. The program included a classwork component as well as three separate field placements, or internships, at local child care centers. During the summer of Year-3, I worked as a camp counselor. I never had a seizure at work in any of these positions. I graduated from University of Alaska – Moose Valley with a bachelor's degree in June Year-2.
3. After graduation I took a summer job in a childcare center at Sprucewood Community School in Alaskopolis. I worked there from June Year-2, until the summer program ended in August. I did have one seizure there. I don't remember anything about the seizure except that it happened while the children were eating lunch. It didn't seem to be a problem for my employer, although someone called an ambulance, which isn't necessary when I have a seizure.
4. My next job was at Bright Horizons Daycare Center, also in Alaskopolis. I worked there from November Year-2 through May Year-1. I didn't have any seizures at Bright Horizons and I think that my boss, Peter Goldman, was quite pleased with my work there. The reason I left was to move back to Bearclaw to be closer to my parents. Bearclaw is only a little over an hour's drive from Alaskopolis, but because of my epilepsy I can't drive. And I felt guilty about my parents always having to drive to Bearclaw to retrieve me on weekends.
5. I have had a seizure disorder since I was six years old. I have complex partial seizure disorder. It is largely controlled by medications. Still, even taking my medications regularly, I have three or four seizures a year. The longest I have ever been seizure-free is nine months, when I was in college. I used to have many more before I started taking Depakote when I was a teenager. About half of my seizures are preceded by an aura. In my case, this is a kind of funny feeling in my stomach – it's hard to describe, but it's an unmistakable premonition that a seizure is coming in a few minutes.
6. I've been told that my seizures last two or three minutes. During that time I am in a trance-like state, unaware of my surroundings but not unconscious. I do not fall down. I've been told that I babble occasionally. In an emergency, I could be guided out of the room under my own power. After two or three minutes of this trance-like state, I become aware of my surroundings but then need about five more minutes to fully get my bearings. It's kind of like waking up in the morning when you are not quite fully ready to get up. After readjusting, I am fine. There are no lasting after-effects following the seizure, and I do not need immediate medical treatment.

7. The neurologist who treats my epilepsy is Marc(y) Bartello, M.D., who practices in Alaskopolis. I have been seeing Dr. Bartello since I was eighteen years old. Before that I had a pediatric neurologist. Dr. Bartello has told me not to engage in dangerous activities, drive, or swim alone. Not being able to drive is really inconvenient; I can't get to work or to the store unless someone gives me a ride. Fortunately my parents are able to arrange their work schedules to take me to work and bring me back home at the end of the day.

8. In July Year-1, after moving back home, I applied for a position at Happy Mountain Daycare. They are the only formal daycare center in Bearclaw. I was interviewed by Madison Smith, owner and manager of the day care center. I am sure I told Madison about my seizure condition. I must have, because I always give this information to prospective employers to avoid any surprises. Madison told me generally about the job but did not show me any written job description. I don't recall Madison saying anything about lifting children being a requirement for the job. Madison didn't ask me if I had a driver's license.

9. I was hired to work as Head Teacher in Room 3, the toddler classroom. I worked eight hours a day, not including my lunch break, at \$12/hour. I also received health insurance. There were seventeen children in Room 3, ranging in age from two- to four-years-old. The room was divided by movable partitions with one group of ten children on my side and nine children on the other. All the adults could easily see over the partitions. Each group was supervised at all times by at least two adults.

10. I worked with two Assistant Teachers, one in the morning and one in the afternoon, who did basically the same things that I did except that I was responsible for planning the activities and reporting to parents. In the classroom, both of us worked with the children in the same ways. To my understanding, the reason that there were two of us in the room is that Borough regulations require that there is one adult present for every six children in the two- to four-year-old age group.

11. My normal work day began at 8:00 a.m. As the children came in, we helped them take off their coats and sweaters and hung them up in their cubby-holes. Then the children were free to do different activities in various parts of the room such as blocks, dolls, trucks, dress-up, art, etc. The Assistant Teachers and I always tried to be creative in the different activities we would plan for the kids. Of course, they're so young that at this age you can repeat a lot of things. After a while we had "circle time," where we might read a story or do a musical activity, for example. The children got a snack of juice and cookies at 10:00 a.m. After that they went back to activities. If the weather permitted, we might go outside for a bit. We ate lunch around noon, though I was usually on lunch break myself, so the Assistant Teachers took care of this. I'd usually walk to a nearby restaurant for lunch, since I couldn't drive anywhere because of my epilepsy. After clean-up, we pulled out mats and the children napped for about an hour. The afternoon was basically the same as the morning, with another snack around 3:00 p.m. I worked until 5:00 p.m. Even though I don't get paid for it, I often stayed an extra half-hour or so to say hello to the parents as they picked up their kids.

12. I can't think of too many situations where I would be left alone with the children. The only times I can think of are when the Assistant Teacher had to take an older child to the bathroom. Most of the kids are still in diapers, though, and we changed them in the classroom.

Another time I might be alone with the children is if one child was sick and had to go to the office. Even then, however, the teachers on the other side of the partition would probably be in the room, unless they were outside playing with their group. The teachers were all friendly with each other, and we often chatted over the partition about various things when we weren't attending to the kids.

15. Everything was going well with my job until August 24, which was a Thursday, when I had a seizure at work. It happened sometime in the afternoon. It wasn't a big deal, and I continued working until the end of the day. This seizure was pretty typical, like I described earlier. I think I was sitting on the floor reading to some of the kids when the seizure took place. I could feel it coming on, but there was nothing I could do to stop it. The kids were all sitting on the floor with me, so I knew they wouldn't be in any danger. I of course wish I had not had my seizure in front of the kids, but I felt this would probably happen eventually and that everything would be fine. And it was. No one got hurt, and my Assistant Teacher, Andy Shoney, took care of the children.

16. I knew the children would wonder what had happened and that some of the older children would probably talk to their parents about it. Of course, these are small children, and they don't yet know how fully to express themselves. So, I thought that it would be helpful if I wrote a short letter to the parents explaining about my epileptic seizure and that it was nothing to worry about. I figured this would clear up any confusion and hopefully alleviate any concerns the parents might have about me taking care of their children. I wrote the note over my break and made sure to stay late so that I could personally hand a copy of the letter to each parent.

17. After I got home that day, I received a call from Madison Smith. S/He said s/he had learned that I had had a seizure that day and was worried about the children. S/He asked me why I had never told her about my condition. I said that I had mentioned it at the job interview. Madison denied this. S/He got very angry and started asking me a lot of questions about my seizure disorder, which I answered truthfully. Madison then told me s/he was suspending me without pay until I brought him/her a doctor's note stating that I would never have another seizure at work. S/He said there was no way I could safely work with such young children in my condition.

18. I was really shocked and hurt after Madison suspended me. I couldn't believe that Madison had reacted so angrily and unfairly. The next day I felt emotionally numb but nevertheless was able to call Dr. Bartello to explain what had happened. Dr. Bartello said that Madison's action seemed outrageous and promised to write a letter to Madison. Dr. Bartello has me come in for an examination following each seizure. So, it seemed simplest if Dr. Bartello could give me the letter for Madison following my examination. My father drove me to Alaskopolis to see Dr. Bartello the following Tuesday (August 29). The examination was routine, as these things go. I do not generally have any lasting effects after a seizure, and this one was no different. I told Dr. Bartello how important it was for me to keep my job and urged her/him to write as positive a letter as s/he felt comfortable with. Dr. Bartello wrote the letter and put it in a sealed envelope. I did not open the letter before giving it to Madison. After seeing it, I felt good about the letter that Dr. Bartello wrote, that it was fair, and that it should have been enough to get me my job back as a Head Teacher in the toddler classroom.

19. The next day, August 30, I brought the letter to Madison. Madison seemed much calmer than s/he had been on the 24th. However, even after reading the letter, s/he reiterated his/her opinion that I could not work with toddlers with my condition. I was pretty upset. I thought that Madison was being unreasonable and unfair, and that there was no reason why I couldn't continue working at a day care. It was also humiliating to be told that I "couldn't safely work with young children."

20. Madison also said that I had violated a company policy by giving my letter to all of the parents in my room. Madison said that s/he considered this to be insubordination and that my employment was being terminated effective immediately. I certainly didn't mean to be insubordinate. Madison said s/he was sorry, but that her/his mind was made up. S/He said that the policy is contained in the packet of materials given to all new employees and that it is posted outside her/his office.

22. When, I looked through all my papers I had received from Happy Mountain Daycare and could not find this written policy. I am sure that I never received a copy of it, as I am very good about keeping records of everything important I receive. I don't know if it is posted on the bulletin board. I certainly had no idea that you could be fired for violating this policy, especially unintentionally. Although I was aware of a policy against making generic announcements to parents, I knew that the parents would want to know who was taking care of their children. That is why I wrote them.

23. I still don't understand why Madison thought I couldn't safely care for the toddlers. Dr. Bartello only put two limitations on what I could do – lifting and carrying children and staying alone with children for more than a few minutes. As far as the latter is concerned, I was never alone with-the kids for more than a few minutes. As far as lifting and carrying, I had already worked out ways of caring for the children without lifting them. For example, I would try to change diapers on a mat on the floor. If a child needed a hug, I would sit on the floor to hug her. Believe me, I wish I didn't have epilepsy, but I am very aware that I do and know what accommodations I need to make to function with my condition.

## AFFIDAVIT OF DR. MARC(Y) BARTELLO

1. My name is Marc(y) Bartello, age fifty-six. I am a physician specializing in neurology, and am board certified in neurology and psychiatry. Neurologists treat diseases of the nervous system, especially those of the brain. Epilepsy is one of the many neurological disorders that I commonly see in my practice. I have been a neurologist now for close to twenty-five years. I chose to specialize in neurology when my oldest daughter was diagnosed at an early age with a mild form of epilepsy. I currently practice with several other neurologists in Alaskopolis, Alaska in a group called the Alaskopolis Neurological Group, Inc.

2. I have been treating Chris Wilson for approximately the last eight years. Chris has complex partial seizure disorder that results in psychomotor attacks, which are less severe than grand mal seizures. Let me explain. Psychomotor attacks are focal seizures characterized by a one to five minute loss of contact with surroundings. The patient is mentally confused, may stagger if standing when the seizure occurs, perform small but purposeless movements, and make unintelligible sounds. Sometimes the patient simply goes into an extended trance-like state. The patient will not understand what is said and likely will not react to any attempts at conversation. These attacks can develop at any age and are associated with structural lesions in the temporal lobe. Grand mal seizures are characterized by loss of consciousness, falling down, loss of bowel or bladder control, and rhythmic convulsions. This latter type of seizure is what the public typically associates with epilepsy. Both types of seizures are caused by unusual electric behavior in the brain.

3. Patients experiencing complex partial seizures generally are not in any immediate danger either of harming themselves or of causing harm to others. This is mostly because the patient is effectively paralyzed. Some patients report experiencing hallucinations during the seizure but are unable to act on them. There may be limited movement, but it is often very slow, small movements. Still, because of the loss of awareness of one's surroundings and inability to control one's motion, patients with complex partial seizure disorder cannot be allowed to drive, out of fear of being unable to control the wheel if a seizure occurs while driving. Similarly, an epileptic patient should not be allowed to lift heavy objects that might be dropped.

4. Some patients suffering from complex partial seizure disorder experience an "aura" between a few seconds and several minutes prior to a seizure. An aura is a subjective sensation such as a peculiar smell, vision, taste, or feeling that precedes a seizure. While it is impossible to predict when a seizure will occur very far in advance, the presence of an aura may give the patient up to ten or so minutes to prepare for the oncoming seizure.

5. In Chris's case, s/he has had on average two or three seizures a year during the time I have been treating him/her. During the seizures, s/he becomes unaware of his/her surroundings but does not fall to the ground as happens in grand mal seizures. S/He may also mumble. Chris and his/her parents also report that Chris is somewhat dazed when s/he comes out of a seizure, and that it may take as long as four or five minutes for his/her to be ready to resume normal activity. Chris describes this period as similar to waking up in the morning. This is not at all uncommon for patients with complex partial seizure disorder, though I would characterize the sense of detachment and disorientation in coming out of the seizure to be more serious than when waking up. A person waking up is generally more responsive to external stimuli than an

epileptic recovering from a seizure in the sense that an alarm or other unexpected stimuli can speed up the process of gaining clarity, whereas there is no way to speed up the process of recovering from a seizure. Prior to a seizure, Chris sometimes experiences a distinctive feeling in his/her stomach that tells him/her a seizure is about to occur; this is his/her “aura.”

6. The medication I have prescribed for Chris has reduced the frequency of his/her seizures but has not eliminated them entirely. Without the proper medication, Chris would probably have close to ten times more seizures than s/he currently experiences. Over the years, I have treated hundreds if not thousands of adult patients with one form or another of epilepsy. Most of these patients have been able to live seizure-free with appropriate medication. Among those patients who still have seizures, some have been able to work in highly demanding jobs, while others have been unable to work at all. Much depends upon the frequency and severity of the particular patient’s seizures. My own daughter suffers from complex partial seizure disorder, though her condition is less serious than Chris’s. My daughter, Jill, can effectively control her seizures to the point where she only experiences one every eighteen months or so. I am proud to say that she is currently a successful lawyer down in Seattle.

8. I am obviously not an expert on daycare centers. However, I generally try to keep up on the basic literature on child psychiatry, and have read many articles on behavior dynamics in daycare centers. Things such as proper teaching and behavioral techniques to encourage mental development in children. I have never been to Happy Mountain Daycare. Given the relative infrequency of Chris Wilson’s seizures and their relative lack of severity, I do not believe that his/her seizures posed any real risk to the children. After all, anyone can become suddenly ill or distracted. Furthermore, any theoretical risk that Chris’s seizures posed to the children could have been eliminated by having him/her not lift the children and not remain alone with them. Thus, it is important that Chris work in a daycare center large enough that there will be other employees around to assist in case Chris has a seizure. Chris has always struck me as being very aware of his/her disease and willing to take whatever steps are necessary to accommodate the risks s/he lives with on a daily basis. I certainly would feel comfortable leaving my own children and grandchildren at a daycare center where Chris worked.

9. Chris called me on August 25. I could tell immediately that Chris was very distraught. Chris told me about her/his seizure the previous day at work and the subsequent phone call from Madison Smith. In my work I frequently encounter people who are prejudiced against those with epilepsy. Madison Smith seemed no different. These people just need to be educated to understand that most of the dangers of epilepsy can be controlled with proper medication and a few cautionary changes in behavior. As such, I was more than happy to write a letter on behalf of Chris.

10. As part of her/his course of treatment, I require Chris to tell me about every seizure s/he has. Since becoming my patient at the age of eighteen, Chris has always, to my belief, been very diligent about this, even while away at college. There does not appear to be a pattern to her/his seizures; they are truly random. Often they occur while Chris is at home, but only because Chris spends a lot of time at home. This is the second time Chris has had a seizure while working at a daycare center. No one has ever been hurt due to one of Chris’s seizures.

11. Additionally, assuming s/he is nearby, I like to have Chris come in for an examination after each seizure so that we can discuss what happened and so that I can make sure there are no lingering effects from the seizure. It is possible following epileptic seizures for the patient to have lasting brain damage or for the epileptic condition to worsen. This has never happened with any of Chris's seizures since s/he has been a patient of mine, but it is always necessary to confirm this with each new seizure. Chris came in for an examination on August 29, following the seizure that occurred at Happy Mountain Daycare. Chris told me what s/he knew about the seizure. Of course, Chris is always unaware of what is happening at the time of the seizure and has to be filled in afterwards by others. If Chris is at home alone during a seizure, it is possible that no one will observe it. Andy Shoney had discussed with Chris what happened during the seizure and Chris relayed to me what s/he had told him/her. I also examined Chris with a few simple vision tests and blood work and found no lasting effects of the seizure. It seemed like a routine seizure.

12. Based on my assessment of Chris on August 29 and my general knowledge of complex partial seizure disorder, I felt confident in recommending that Chris be allowed to return to work at Happy Mountain Daycare as a Head Teacher in the toddler room. Chris initially asked me to write a letter saying that s/he would never have another seizure at work. I told Chris that s/he knew I couldn't do that. What I could say with complete confidence is that Chris's condition could be minimized with the proper medication. I further believed that it would be best if Chris not lift any children. This doesn't mean that Chris couldn't lift a child in an emergency. But, just as Chris can't drive because of the chance that a seizure could occur while driving, there is a small risk that Chris could have a seizure while lifting a child and not be able to put the child down safely. To the extent that the children need constant monitoring to avoid getting themselves into trouble that might result in harm, I also advised that Chris not be left alone with children for an extended period of time. You never know when a young child is going to put something in her mouth she shouldn't or play with something he shouldn't. Again, there is only a small risk that Chris would have a seizure at any particular time while alone with a child or group of children, but this is a risk that is easily countered. I consider these to be minor restrictions on Chris's ability to be an effective daycare center teacher. Furthermore, I trust that Chris will have an aura before a seizure and prepare accordingly, which also reduces the risk that Chris will put any children in danger of harm. I would not have signed the letter to Happy Mountain Daycare if I thought Chris would be a danger to the children there.

## **AFFIDAVIT OF TOYO HIROKI**

1. My name is Toyo Hiroki. I am fifty-three years old. I do not have any children of my own, but I love working with them. I currently work at Bright Horizons Daycare Center in Alaskopolis, Alaska. I am a Head Teacher in a room with three to five year olds. Previously, I was a Head Teacher at Happy Mountain Daycare, for four years, in the toddler room. I resigned from Happy Mountain Daycare in December a couple of years ago.

2. At both Bright Horizons and Happy Mountain, a Head Teacher supervises one or more assistant teachers. A Head Teacher is also responsible for planning and implementing the children's activities and reporting to parents. The Assistant Teachers are usually quite helpful, but the ultimate responsibility for how the classroom is run lies with the Head Teacher. That is why it is important that the Head Teacher have significant education or experience in child development. There were no courses on child development when I was in college, but I have worked in daycare centers for over twenty years. I take great pride in my work.

3. At Happy Mountain Daycare, I worked in Room 3 with the toddlers. I worked at Happy Mountain Daycare since it was founded. In fact, Madison Smith recruited me to move to Bearclaw to start her/his new daycare. You see, I was working at the time with Madison at Kids-R-Ours. I thought it would be fun to start something new, and Madison promised me a lot of freedom in how I planned classes. Little did I know how unreasonable and controlling Madison would become when s/he owned the daycare center.

4. Madison always seemed overly sensitive about what parents thought of Happy Mountain Daycare. I mean, of course it is important to keep parents satisfied with the quality of our daycare service, but Madison took it too far. I remember one year we were planning a big Halloween party. All of the kids old enough to understand what was going on were really excited about it. For weeks they couldn't talk about anything other than what kind of costume they were going to wear. But then a small group of parents complained on religious grounds and Madison shut the whole party down. One of the parents who complained only had a child in the infant room who would have slept through the whole thing. I mean, come on! All of the kids, even the ones whose parents had complained, were extremely disappointed. It is important to be respectful of people's religious beliefs, but I believed the better solution would have been just to send to another room the kids whose parents didn't want them to participate in the Halloween party.

5. I seldom lifted children in the toddler classroom at Happy Mountain. In fact, I consciously avoided lifting them because I have a bad back. A couple of times I have pulled a muscle in my back lifting children; my doctor has told me to avoid straining it. If my back was feeling well occasionally I'd lift children. Sometimes my feeling of being able to lift children would last for several months. But sooner or later I always tweak my back again. I think I am trying to deny getting older. I suppose I should learn my lesson.

6. My inability to lift children has never been a problem at any of the daycare centers where I have worked. When a child had to be lifted for any reason and I didn't feel able to do it, I would often ask the assistant teacher to do it, or I would just try to improvise so that I wouldn't have to lift. For example, if I wanted to hug a youngster, I would often sit or kneel down on the

floor. Madison Smith knew of my bad back when s/he recruited me to Happy Mountain Daycare and did not have any problem with it. I was fully capable of performing my job. In an emergency, I could certainly lift a child. I agree it would be better, more convenient if I could lift children. And I guess someone or even most of the employees at the daycare center need to be able to lift children, so I can understand why Madison would put this requirement in the job description. However, I can say from experience that it is not absolutely necessary that every employee be able to lift children.

7. I've never before seen the job descriptions for Head Teacher and Assistant Teacher that are currently in place at Happy Mountain Daycare. They were drawn up after I started, so I never bothered to look at them. I think the lifting requirements listed under "Physical Demands" are a joke. I never had a child in the toddler class who weighed fifty pounds! Maybe some of the older children weighed that much. Plus, there was almost always somebody else nearby who could do the lifting if it was necessary.

8. I remember Chris Wilson well, even though we only overlapped by about six months. Chris worked as the Head Teacher on the other side of the partition from me in the toddler room. I could tell immediately Chris's enthusiasm for working with young children. It was very refreshing for someone like me moving toward the latter part of my career.

9. It wasn't too long before I learned about Chris's epilepsy. There was this one time when a couple of the kids were fighting over a toy and one of them started crying. Chris's Assistant Teacher had taken another child to the bathroom, so Chris called over to me to ask if I could come over to her/his side of the room and help separate the kids. I of course did. My back was feeling fine at the time, so I didn't mind carrying the crying child to another part of the room. Chris thanked me, and, out of curiosity, given my own occasional problems with lifting children, I asked Chris why s/he couldn't have just separated the kids herself/himself. That was when Chris explained that s/he could not lift children because of her/his epilepsy. I thought it was very conscientious of Chris to be so careful. I explained that I too sometimes could not lift children. The two of us became fast friends.

10. There were four teachers assigned to the toddler room from 8:00 a.m. to 5:00 p.m. It would have been rare that a teacher would have been entirely alone with the children. For example, even if my Assistant Teacher was out of the room, there would have been one or two teachers in the other part of the room. The room was separated roughly in half by a movable partition approximately five feet high. One could always call over to the other side of the room for assistance. When someone went on break, we'd arrange for a "floating" Assistant Teacher to fill for those fifteen minutes. This was how Madison structured the schedules, and it really wasn't a problem.

11. I left Happy Mountain Daycare for a variety of reasons. My current job is higher paying, and after a few years away I realized I missed my friends in Alaskopolis more than I thought I would. Also, over the course of five years I really had grown tired of working for Madison Smith. I don't think Madison is a bad person, deep down, but s/he is a compulsive neatnick, controlling, a busybody, and has absolutely no interpersonal skills. In short, s/he's a real pain in the neck to work for. I agreed to move to Bearclaw and help start Happy Mountain Daycare because I wanted the freedom to design and teach my own lessons to the children, but Madison

was always second guessing his/her teachers and being nosy into what kinds of lesson plans we were teaching. The stupid thing is that many of the teachers have more formal training and/or experience in child development than Madison. And, I thought I kept Room 3 fairly neat, but Madison was always complaining that things were out of place and this and that. I mean, it's a room full of toddlers – not only is the room impossible to keep completely tidy but the children don't even care. Also, Madison liked to have a lot of the children's art on the walls because it impressed the parents, but I felt educational posters would be more appropriate. When I left, Madison joked, "I hope I can train the next head teacher better than I trained you." Can you believe it? The thought that Madison had anything to teach me is ridiculous. I was an excellent Head Teacher before Madison relied on me to start her/his new daycare center. The wo/man didn't even have the decency or grace to say a few kind words after I moved from Alaskopolis to Bearclaw for her/him and after all the time I had worked there.

12. I was aware that Happy Mountain Daycare has a policy about written communications from staff members to parents. My understanding of the policy was as follows: Teachers could send home handwritten notes about individual children without approval. In fact, we were encouraged to do so. You know, so that parents would be kept current on how their children were doing and if there were any disciplinary problems. More formal communications, like announcements, had to be cleared with Madison. I never understood the policy to require that every communication sent to all parents had to be cleared. For example, I and other head teachers usually sent holiday greetings to parents of children in our classes. Madison knew of this practice and never said anything about it.

13. I do remember one teacher who sent home an announcement about some class activity without getting Madison's approval. I think it was about a fundraiser. This was three or four years ago. In any event, Madison got upset about this and drafted written policy against sending the same letter to multiple parents. This is the same policy Madison claims Chris violated. I was aware of the basic policy before Madison circulated the written version. Most teachers felt that the written policy was a joke, another one of Madison's overbearing rules, and that common sense would be a better guide on what it was appropriate to send to parents.

## **DEFENSE WITNESSES**

### **AFFIDAVIT OF MADISON SMITH**

1. My name is Madison Smith. I am 42 years old. I am the owner and manager of Happy Mountain Daycare, Inc., a daycare center located at 433 Main Street in Bearclaw, Alaska. I am solely responsible for the day-to-day management of the center, including all personnel decisions such as hiring and firing. I moved from Alaskopolis to Bearclaw about five years ago to open a daycare center because I felt there was a need for a commercial daycare center in the town. When I moved to Bearclaw, there were about 6,000 residents. Furthermore, I felt that the population of Bearclaw would grow rapidly, as, despite being a little over an hour's drive away, Bearclaw is becoming an increasingly popular residential area for commuters to Alaskopolis. I think the population of Bearclaw is now up to about 9,000 residents.

2. Although it is the only formal commercial daycare center in Bearclaw, Happy Mountain Daycare faces a lot of "unofficial" competition from parents and family friends who offer daycare services out of their homes. Bearclaw is still a very tightly knit community, the type of place where everyone knows and trusts everyone else. Or at least almost everyone else. Anyway, most town residents know someone who for a little bit of money would take care of their children while they are at work. I try to distinguish Happy Mountain Daycare from these other options by offering a quality staff that is trained to provide children with a nurturing, educational, and safe environment. Most parents understand the vital importance of early childhood development and are willing to pay the little bit extra that I charge so that they can send their children to Happy Mountain. Also, new residents often do not have the social network for informal daycare, and many of them commute and like the extended hours of operation of Happy Mountain Daycare. I try to run a very professional operation, and I think the people of Bearclaw appreciate it.

3. Borough regulations control teacher-student ratios in each classroom. There are two "groups" of children in each classroom, though both "groups" are always the same age. This is just a way to keep too many kids from being in the same area at the same time and making sure that the kids are properly supervised. There are solid walls between the different classrooms, but each individual room is divided roughly in half by movable partitions four feet high. Each group stays primarily on one side of the partition. In the "toddler" room, Room 3, with children ages two- to four-years-old, the maximum ratio is 1 instructor for each 6 children. This is the room in which Chris Wilson was working when s/he had his/her seizure. If I remember correctly, when Chris had his/her seizure, there were ten children in his/her group and nine children in the other group in Room 3.

4. Two Head Teachers and four Assistant Teachers are assigned to each classroom. However, they don't all work the same hours. Basically, I set up the schedule so that there are always at least four teachers in each classroom. I also have a couple "floating" Assistant Teachers who fill in when the other teachers are on breaks or during the first and last hours of operation of Happy Mountain, when there are only a few kids at the center. A "floating" Assistant Teacher also is the one who takes the van to the other elementary school in town to retrieve those kids after school lets out. We probably don't quite meet the Borough ratios during

the first and last hours of operation, especially with mixing the different age groups, but it is unrealistic for a small daycare center such as mine to maintain a full staff for these fringe hours, and I need to do something to accommodate the commuters from Bearclaw to Alaskopolis.

5. I remember Chris Wilson applying in Year-2 for an opening I had as a Head Teacher in the toddler room. I received about nine or so resumes and interviewed three people for the job. Chris was the third person I interviewed. Because of his/her experience and education, Chris was clearly the best candidate. I don't remember too many specific details about the interview, but I don't think Chris said anything about having epilepsy. I'm sure I would have remembered that. I also know I gave her/him a copy of the written job description because I always give that to prospective employees during the interview.

6. Just this past August 24, Andy Shoney, one of Chris's Assistant Teachers, came into my office at about 7:00 p.m. after finishing his/her shift. I knew something was up because s/he closed the door behind him/her. Andy seemed very upset. S/He told me that s/he thought Chris had suffered a seizure earlier that afternoon during the middle of class. Andy said that Chris had been non-responsive, glassy-eyed and mumbled incoherently. I think Andy said it lasted four or five minutes. After that it took Chris several more minutes to collect himself/herself and join the children and Andy in a game. Andy said s/he was really thankful that Chris had told him/her about the seizure condition ahead of time, or else s/he (Andy) would not have known what was happening.

7. I asked Andy what s/he knew about Chris's seizure condition and a few other questions. I do remember that my reaction was one of surprise, since Chris had never told me about any seizure condition. I was very concerned, obviously, about the safety and welfare of the children. I'm not sure I would have hired Chris if I'd known s/he had a seizure condition. At a minimum, I would have wanted to know a lot more about the nature, frequency, and severity of his/her seizures. I probably would have also consulted a doctor to get a medical opinion about whether it was safe for Chris to take care of children.

8. After Andy left my office, I immediately called Chris, who by that time had gone home for the day. I told Chris that I had heard about her/his seizure incident and was worried about the children. I asked her/him why s/he had never disclosed to me that s/he had a seizure condition. Chris claimed that s/he had told me about it at her job interview and generally downplayed the significance of the whole thing. I did get very angry. There is no way that Chris had ever told me this – this is certainly something I would have remembered. In response to my questions, Chris said that s/he had had the condition since early childhood. Chris said that s/he had about two seizures a year, and that the seizures were not severe. When I asked her what "not severe" meant, Chris said that the seizures were short in duration and that s/he didn't fall down or shake violently.

9. Despite Chris's reassurances, I did not feel comfortable having someone who might black out for several minutes at a time supervising small children. Based on this, I told Chris that I did not believe s/he could safely supervise toddlers. I told Chris I had no choice but to suspend him/her. However, I knew this would crush Chris and wanted to give him/her a second opportunity to continue working at Happy Mountain. I said that I would allow Chris to return to work if s/he could provide a letter from a qualified physician stating that it was safe for him/her

to work with toddlers. I do not recall asking for a guarantee that Chris would never have another seizure at work.

10. The very next day, sometime in the morning, I received a call from Paula Staples, the parent of a child in the elementary school classroom. She was very upset about a letter Chris had written to the parents of the children in her/his toddler class. Paula read the letter to me over the phone. Paula was upset because she did not believe her daughter Carolyn would be safe in Chris's care. Paula made it very plain that she would pull her daughter out of the day care center if Chris continued to work in the toddler room. Paula said she had spoken to two other parents who shared the same concern and would also pull their children from Happy Mountain.

11. I tried to calm Paula down a bit. I explained to her that she did not have all the facts. I told Paula that Chris probably would not be going to work in the toddler room and that I would call her back later in the day. I wanted to see the letter itself before making any final decision, and Paula was kind enough to offer to bring me in a copy when she came in to pick up Carolyn later in the day.

12. On Wednesday, August 30, Chris came in with a letter from her/his neurologist, Dr. Marc(y) Bartello. I don't remember now exactly what the letter said, but it certainly did not say that Chris could safely work with toddlers. I think it may have said that any danger posed by Chris could be eliminated if s/he didn't lift or carry children, and if s/he was never left alone with them. I considered this unacceptable and told Chris so. Lifting and carrying children are absolutely essential aspects of working with toddlers. You can see by the job description that I expect Head Teachers to be able to lift and carry children. Chris had been given a copy of the job description, and I assumed Chris had been lifting and carrying children for the past year. It doesn't occur to you to ask during an interview if someone can lift a small child. Chris certainly seemed healthy enough to be able to do this. I told Chris that under no circumstances would I permit her/him to work with toddlers.

13. Happy Mountain Daycare has policies on a variety of subjects. I can think of only two that bear directly or indirectly on this case. One policy prohibits all forms of illegal discrimination. This almost goes without saying. Another policy prohibits employees from sending announcements, bulletins, or newsletters to parents without prior approval of the director. The purpose of that policy is to provide some centralized oversight of official communications sent out by Happy Mountain Daycare. I drafted this policy about four years ago after one of my employees sent a flier to all Happy Mountain parents about a bake sale her church was having. I routinely give copies of these policies to new employees. Also, these two policies and several others are posted on the bulletin board in the corridor outside my office.

16. The reason why I had tentatively decided that Chris would not be coming back to work was that her/his letter was grossly insubordinate. In addition, it violated the company policy regarding written communications to parents. Obviously, it had upset Paula Staples, and had probably upset other parents as well. When Paula brought the letter to my office it confirmed my suspicion that I would have to fire Chris. I never have had occasion to discipline any other employee for violating the policy on written communications. With the employee that sent out the church bake sale flier three years ago, Linda Strong, I didn't feel it would be right to fire her since they policy was not in place at the time.

17. Happy Mountain Daycare has separate job descriptions for the positions of Head Teacher and Assistant Teacher. The job descriptions, which I drafted when I opened Happy Mountain Daycare, are very similar, the main difference being that Head Teachers have responsibility for planning and everything that goes on in the classroom. They also are responsible for communicating with parents about individual children. Other than that, the jobs are basically the same. If you went into a classroom, you probably wouldn't be able to tell who was the Head Teacher and who was the Assistant Teacher.

18. The job descriptions for both Head Teacher and Assistant Teacher are generic. What I mean by this is that they're not specific by age or classroom. Of course, what a teacher would actually have to do in the infant room is very different from what he or she would have to do in the elementary school classroom. I didn't see any benefit to listing expectations by age group, figuring that the teachers would know how to adapt to their particular classroom. Obviously, there would be more lifting and carrying with the younger children, which is part of the reason why I thought that Chris Wilson could not safely work with toddlers. I just didn't see any way to prevent situations where Chris might be alone with children, and given Chris's epilepsy, I couldn't take this risk

19. I am somewhat familiar with employment law for disabled employees. I know that employers have to make reasonable accommodations for handicapped people. I did consider several other accommodations for Chris other than reassigning her/him to the elementary school classroom, but I couldn't think of any that would work without hiring additional staff. With a daycare center our size and on our tight budget, unfortunately, that is not possible.

## AFFIDAVIT OF ANDY SHONEY

1. My name is Andrew/Andrea Shoney, but my friends call me "Andy." I just turned twenty years old. In fact, yesterday was my birthday. This is the first full-time job I've had since graduating from Alaskopolis Central High School two years ago. I decided to move to Bearclaw because I wanted to be closer to nature and good places to hike.
2. I am currently a Head Teacher at Happy Mountain Daycare in the toddler classroom. I was promoted to this job last September after Chris Wilson had to be released. I had been Chris's Assistant Teacher before that. An Assistant Teacher, as the name suggests, assists the Head Teachers in supervising and caring for the children. The main difference between the two jobs is that the Head Teachers are responsible for planning the day's lessons and reporting to parents.
3. For my first couple months at Happy Mountain Daycare, I worked as an Assistant Teacher to Toyo Hiroki in Room 3, the toddler classroom. Toyo was an excellent Head Teacher, very good with the kids. I don't know why really, but the kids just seemed drawn to Toyo. I don't remember anything about Toyo having a bad back. We both lifted children. I definitely would have remembered if Toyo wasn't able to lift children and I had to do all the lifting. Unfortunately, Toyo quit not too long after I started working with him/her. I think Toyo had some sort of dispute with Madison Smith, the owner of Happy Mountain Daycare.
4. After Toyo quit, I started working with Chris Wilson, who was the Head Teacher on the other side of the partition in the toddler room. Chris and I were responsible for a group of approximately eight to twelve children, depending on how many parents needed daycare. I worked from 12:00 to 7:00 p.m. Most of the toddlers are picked up by 6:00, so I spend my last hour cleaning up the daycare. I really liked Chris and don't want to say anything bad about her/him. Chris was very good with the kids, and they responded well to her/him. As far as being a supervisor, Chris was excellent. S/He really let me do my own thing and gave me a lot of autonomy with the children. I'd say I learned a great deal from Chris, and those lessons have served me well now that I have taken her/his place. It is too bad Chris couldn't have stayed at Happy Mountain, but everyone knows the rules, and Chris broke them.
5. Early on, I remember Chris telling me that s/he had some kind of seizures. I didn't really make anything of this at the time; it only became significant in light of what happened later. I think Chris told me that s/he occasionally had seizures but that they mostly happened at home and that they weren't the really bad kind. You know, the kind where the person falls down and flops all around and possibly bites their tongue and all that. I can't remember why Chris told me this. Oh yeah, it came up when I asked Chris why his/her parents picked him/her up from work all the time. Chris said s/he couldn't get a driver's license, etc., and one thing led to another.
6. On what turned out to be Chris's last day of work, s/he had a seizure right in the middle of class. I believe it was August 24. The two of us were in the classroom with the ten children that were in our group at the time. Chris was sitting at a small table in the northeast area of the room, not far from the door to the bathroom, reading to some children. I think there were six children s/he was reading to. A couple of the kids, those closer to three years old, were sitting on tiny kids chairs, but the others were sitting on the floor. As usual with kids this age they weren't

really paying attention to the story – I think it was Goldilocks and the Three Bears – and were always interrupting and asking questions. I was playing with the other four children in the block corner. At first, I didn't realize what was going on. Then I noticed that all the kids had become quiet and were staring at Chris. Like I said, being quiet was pretty unusual for kids this age. It was obvious they were frightened. Chris had a glassy look in her/his eyes and appeared to be mumbling something. I walked over to Chris asked her/him if everything was okay, and s/he didn't respond. That's when I realized Chris must be having a seizure.

7. I gathered the children up and moved them to another part of the room to play a game. I called the Assistant Teacher, David Trent, over from the other side of partition to help me with the kids. David came over immediately, saw something was wrong with Chris, and knew I needed help. David basically stood between the children and Chris, so that the children wouldn't try to go over to Chris. David told the kids, "Why don't you go on over play a game with Andy. Chris will be fine." I don't think David knew about Chris's epilepsy before the attack, but I explained things to him afterwards.

8. My main thought at the time was to distract their attention from Chris. I kept one eye on Chris to make sure s/he was okay. S/He just kept sitting there with that blank look and mumbling incoherently. It was hard to keep the children's attention. They kept wanting to know what was wrong with Chris. A couple of them even started to cry. As hard as David and I tried, it was impossible to keep the children from being fixated on Chris. Fortunately, after a few minutes – three or four, I would guess – Chris seemed to snap out of the seizure. I asked Chris again if s/he was okay, and this time s/he said yes, not to worry. Chris sat at the table for a few more minutes, collecting himself/herself and then joined me and the children in the game.

9. Later that day, after Chris had gone home and when my shift ended, I did tell Madison what had happened. I did this because of something that happened with Nina Johnson, the mother of one of our girls. When Nina came to pick her daughter up late that afternoon, her daughter said to her, "There was something wrong with Chris today." Nina asked me what the problem was, and I basically told a white lie. I said that Chris hadn't felt well. Afterwards, I got nervous and decided that I'd better say something to Madison.

10. I went into Madison's office and told him/her what had happened with Chris and also about Mrs. Johnson. Madison listened intently to what I said and asked me a lot of questions about what had happened. Madison told me that if anyone else asked me about what had happened to Chris, to refer the person to him/her. S/He also said not to say anything about our conversation to Chris. The whole conversation with Madison lasted maybe five minutes. Oddly, Madison never asked me how the children reacted. At the end of the conversation, Madison thanked me and told me I had done the right thing by coming to him/her.

11. The next day, around lunchtime, Madison told all the staff that Chris had a medical problem and would be out of work until it was resolved. I felt bad – I mean, I hadn't wanted to get Chris in trouble or anything. But with how frightened the children were, I didn't want to risk Chris having another seizure. One of the "floating" Assistant Teachers came in for Chris that day and for the next week or so.

12. The following week, I don't remember exactly which day, Madison told me that s/he had been forced to terminate Chris and asked if I wanted to become a Head Teacher. Madison said it would be inappropriate to discuss her/his reasons with me, but s/he assured me it had nothing to do with Chris's seizure or anything that I had done. Madison told me to continue to refer parents to her/him if they had questions. I felt really bad for Chris, but this was a great opportunity for me. I felt I had learned a lot, much of it from Chris, and was ready to accept more responsibility. Plus, it meant an increase in pay, which is never a bad thing.

13. I do think that lifting is an important part of a daycare job, especially when you're caring for toddlers. There are lots of situations where you have to lift kids: when you're changing their diapers, when they need a hug, if they get hurt, sometimes when you are playing with them, etc. I lift the children under my care all the time. I don't really remember anything about Chris not being able to lift children. Come to think of it, I don't think I ever saw Chris lift a child. Sometimes Chris would call me over and ask me to carry a kid to the bathroom or something, but I never really thought anything about it and certainly never connected it with his/her epilepsy. It would be possible for one of the teachers to do most, if not all, of the lifting, but this would be very inconvenient. Of course, this wouldn't work if one of the teachers was out of the room, which does happen from time to time.

14. I know that Happy Mountain Daycare has a policy about written communications to parents. It didn't really affect me though since the Head Teachers were responsible for writing to parents. I remember Madison giving me a copy of all the Happy Mountain Daycare policies at my initial interview. I rarely go to Madison's office, so I don't know whether or not the Happy Mountain Daycare's policies are posted in the hallway there.

15. I've never seen the letter Chris sent to the parents of our toddler room group. Some of the parents mentioned it to me later, and a few of them seemed very unhappy that Chris would seemingly expect them to ignore his/her epilepsy. This sort of surprised me because I figured a lot of people in Bearclaw knew about Chris's epilepsy. When Chris was telling me about his/her epilepsy, s/he didn't sound ashamed of it or anything, I guess it just wasn't something s/he talked about much unless someone else brought it up. And, I guess I can understand where the parents are coming from.

16. I don't know whether writing a letter like Chris did is a good enough reason to fire her/him. I take that back; I don't really think I should get into that. I really love my job and do not want to lose it. I did talk to Madison last week about this affidavit. All s/he told me was to tell the truth and not to volunteer any information.

## **AFFIDAVIT OF CAMERON VELASQUEZ**

1. My name is Cameron Velasquez. I am forty-seven years old and currently work as the general manager of the Alaskopolis location of Bright Horizons Daycare Center. Bright Horizons is a national chain of daycare centers, with over 200 different locations. I have been the General Manager at the Alaskopolis Bright Horizons for approximately the last year.
  
2. I received a masters in child development from the University of Washington in 1988. I have worked in some capacity with child care ever since. After graduating, I moved to Alaskopolis with my wife/husband, who had accepted a job as an attorney with a major law firm in town. I worked for the first several years as a head teacher at Kinderplotz, an Alaskopolis daycare center that has since gone out of business. I then spent the next eight or so years helping Bright Horizons Daycare Center establish its Alaskopolis location. I was Assistant Manager in charge of educational development for children up to the age of three. After being passed over for a promotion, I decided to go into public service.
  
3. For the next five years, I have worked as the Daycare Compliance Officer (the only one) for the Northern Lights Borough, which encompasses Alaskopolis and Bearclaw, along with several other smaller towns. My job was to ensure that the daycare centers in the Borough complied with all of the Borough and State regulations regarding the operation of daycare centers. Primarily, I was concerned with monitoring the safety of the daycare centers – everything from whether the center maintained the proper teacher-to-child ratios to the safety of the types of toys at the center to testing the first aid knowledge of the employees of the daycare center. Needless to say, my job required me to spend a fair bit of my time training daycare center employees on the applicable regulations and the best ways to implement them. This included several regulations geared toward ensuring the safety of the children while in daycare. In my masters program I had focused primarily on educational theories, but in my first year or so as Compliance Officer I went to several seminars and workshops in the Lower 48 on daycare safety. This was my job, and I took it seriously.
  
4. In addition to my safety and compliance monitoring, I also enjoyed giving advice on how to ensure the most productive educational environment for the children. This was not really a job requirement, but with my many years of training and experience in this area, I felt it would be a shame if I did not share with others what I had learned. I feel proud to say that I personally have shaped the manner in which daycare is provided in the Northern Lights Borough. I have to say that I am sometimes shocked that many daycare employees in this Borough, and even some of the people who run the daycare centers, are relatively ignorant of child development theory. I guess that is what you get when there is not a strict educational requirement for working in a daycare center. I tried to institute a one-week course requirement for all new daycare teachers in child development theory and daycare safety, but there was too much resistance in the industry for me actually to implement it. I even offered to teach the course!
  
5. I am quite familiar with Happy Mountain Daycare. I visited it when it was first obtaining its license. I visit all new daycare centers as part of their licensing process. I also returned to Happy Mountain Daycare multiple times on compliance visits. I was quite impressed with the way Happy Mountain Daycare was run. Madison Smith always struck me as being very

professional and always ran a very professional operation. I never found any code violations at Happy Mountain Daycare. The proper teacher-to-child ratios were in place. The type of food available to the children was of appropriate nutritional content. There were age-appropriate toys and books for the children. Furthermore, the staff on the whole seemed quite knowledgeable about child development. I will even say that the one time I met Chris Wilson there s/he struck me as being very competent and a good Head Teacher. It appeared that s/he cared a great deal about the children under his/her care.

6. This was before I knew about Chris Wilson's epilepsy and seizure. I would not employ, nor would I recommend that a daycare center employ someone with epilepsy to take care of children. In my view, it is simply too dangerous. The teacher-to-child ratios are in place for two primary purposes: 1) to ensure that children receive the proper individual attention to their educational development; and 2) to ensure that there is sufficient safety monitoring of the children. As children get older, they need less oversight, both for educational and safety purposes. However, that is why the allowable teacher-to-child ratios increase for older children. In other words, the teacher-to-child ratio for any given age is set so as to ensure the proper educational and safety oversight for that age.

7. If a person such as Chris Wilson is unavailable to monitor the children because of an epileptic seizure, that creates an unacceptable risk. This risk is even greater if the other teacher in the classroom is away taking one of the children to the restroom. For kids of a young age, especially when they are potty training, like in the toddler room, this happens quite frequently. If Ms./Mr. Wilson has a seizure while the other teacher is out of the room, the children will be essentially unmonitored. This cannot be allowed to happen.

8. Let me briefly go over some of the risks associated with unmonitored children. Children at young ages frequently fight over toys or over something one of them said. Young children have yet to learn proper boundaries and hence do not know when to stop fighting. An adult needs to be present in the room at all times to prevent fights from escalating out of control. Another risk is from choking if a child puts a toy or other object in his or her mouth. Children can also easily choke on solid food that is not chopped up enough for their small throats. It only takes a matter of a few minutes for a child to suffer serious brain damage or die from choking. The child can lose consciousness in as little as thirty seconds if the child has a serious blockage in his or her throat. After about a minute and a half, the skin color in the child's face can start to turn bluish from a lack of oxygen. After four minutes without oxygen, the child can suffer brain damage and blindness. A loss of oxygen for five minutes or more can result in death. There are various techniques that can be used to dislodge food or a coin or a toy in a child's throat, and all daycare personnel are expected to be trained in these techniques, but they cannot perform them if they are themselves effectively unconscious from an epileptic seizure. A third risk relating to unmonitored children is that one of them will wander off, perhaps go outside, and get into a dangerous situation before the child can be found. This is especially a risk when the children are playing outside or away on a field trip. With the attention that would need to be paid to Chris Wilson while s/he was having a seizure, it is easy to imagine that a child would climb on gym equipment and fall or even run away in fright over what was happening. This might not be noticed for several minutes.

9. Borough regulations do not specifically prohibit someone with epilepsy from working in a daycare center. The regulations are just not that specific. Hence, were I still working as a Daycare Compliance Officer, I could not find Happy Mountain Daycare in violation for employing Chris Wilson. It is up to the individual daycare operator to determine what risks to take with the daycare personnel. However, I do believe that the ability to constantly monitor children and have a backup plan in case one of the teachers has to leave the room is implied in the teacher-to-child ratios set out in the Northern Lights Borough daycare regulations. Thus, I believe that for the sake of the safety of the children under its care, and so as to adhere to the legally required teacher-to-child ratios, that Happy Mountain Daycare would have been justified in releasing Chris Wilson because of her/his epilepsy.

10. I do not believe it would be possible to accommodate Mr./Ms. Wilson's epilepsy in a way that removed the danger to children. A place of employment is not required to accommodate a person with a disability under all conditions, only where the accommodation could lead to the employee fulfilling the requirements of the job. In my view, there is no accommodation that could be made that would remove the safety threat that Chris Wilson poses. Short of hiring an additional teacher for the room, that is. But this goes beyond what the law requires employers to do. As I explained, young children in a daycare center need to be monitored closely. This is why the teacher-to-child ratios are set why they are and why it is permitted and even encouraged to have multiple teachers in the same room. After all, there will be times when one of the teachers needs to be out of the room for one reason or another. During those times, Chris Wilson would be left alone with the children. If Mr./Ms. Wilson has a seizure while left alone with the children, they will be left unmonitored. This is unacceptable.

11. I believe that Madison Smith made a mistake trying to accommodate Chris Wilson by offering her/him an Assistant Teacher position in the preschool room. I attribute this to Mr./Ms. Smith's kind heart. It is never safe to have a person with disabling epilepsy working in a daycare center. I would have released Chris Wilson outright. The risks I have described would still be present in a room of preschool children. Some of the risks may be lessened with older children and others may be increased, but it is never the case that children in a daycare center should be left unmonitored. Chris Wilson's epilepsy is very unfortunate, and I do not want to sound unsympathetic to her/his situation. However, I do not believe that accommodating Mr./Ms. Wilson justifies the risk of employing her/him in a daycare center. The safety of the children must come first.

12. I do believe it is possible to accommodate a daycare employee who is not able to lift children. The Borough daycare regulations on requirements for daycare personnel do not mandate that employees be able to lift a certain amount of weight. I can certainly understand why it would be convenient for daycare employees to be able to lift children, but it is not absolutely necessary. For example, one of my current employees at Bright Horizons Daycare Center, Toyo Hiroki, cannot lift children because of a bad back. In those instances where it is absolutely necessary to lift a child, Toyo calls over the assistant teacher in the room to do this for her/him. Again, this is one of the reasons why the Borough daycare regulations allow for multiple teachers in the same group of children. I believe this is perfectly safe. If I did not, I would not allow Toyo to work at my daycare.

## **HAPPY MOUNTAIN DAYCARE, INC.**

### **Job Description: Head Teacher**

#### **I. Function**

Plans and implements activities designed to promote social, physical, and intellectual growth of the children under his/her care. Responsible for the personal care, hygiene, learning and development activities, specialized programs, and discipline of the children. Maintains classroom records, cleanliness, and orderliness. Child care has special demands in that we care for children who cannot care for themselves. It is critical that all employees holding classroom teaching positions be mentally and physically fit to perform the duties outlined in this job description.

#### **II. Education/Experience Requirements**

- A.** Is at least 20 years old.
- B.** Holds a high school diploma or the equivalent and is appropriately qualified for the assigned group through education, training, experience, and/or personal qualities.
- C.** Maintains state in-service requirements.

#### **III. Physical Demands**

- A.** Required to stand 75% of the work day.
- B.** Must occasionally lift or move children weighing up to 50 pounds, sometimes in awkward positions.
- C.** May occasionally be required to lift children weighing up to 80 pounds in emergency conditions.
- D.** Must be able to exercise with children on the playground and in the classroom.
- E.** Must be able physically and mentally to react immediately to unexpected and emergency circumstances.
- F.** Must be able to stoop and bend to a young child's level.

#### **IV. Job Requirements**

- A.** Must support and implement the Happy Mountain Daycare, Inc. educational philosophy.
- B.** Is responsible for providing a positive, loving, and nurturing environment for children.
- C.** Must display respect for children and adults.
- D.** Is responsible for maintaining classroom environment in a neat and inviting manner.
- E.** Is responsible for maintaining order and discipline in the classroom.
- F.** Is responsible for communicating with parents about the progress of his or her child and any behavioral or disciplinary issues that arise.
- G.** Must follow prescribed administrative procedures.
- H.** Must follow cleanliness procedures.

## **HAPPY MOUNTAIN DAYCARE, INC.**

### **Job Description: Assistant Teacher**

#### **I. Function**

Implements activities designed to promote social, physical, and intellectual growth of the children under his/her care. Assists in the personal care, hygiene, learning and development activities, specialized programs, and discipline of the children. Helps maintain classroom cleanliness and orderliness. Child care has special demands in that we care for children who cannot care for themselves. It is critical that all employees holding classroom teaching positions be mentally and physically fit to perform the duties outlined in this job description.

#### **II. Education/Experience Requirements**

- A.** Is at least 18 years old.
- B.** Is appropriately qualified for the assigned group through education, training, experience, and/or personal qualities.
- C.** Maintains state in-service requirements.

#### **III. Physical Demands**

- A.** Required to stand 75% of the work day.
- B.** Must occasionally lift or move children weighing up to 50 pounds, sometimes in awkward positions.
- C.** May occasionally be required to lift children weighing up to 80 pounds in emergency conditions.
- D.** Must be able to exercise with children on the playground and in the classroom.
- E.** Must be able physically and mentally to react immediately to unexpected and emergency circumstances.
- F.** Must be able to stoop and bend to a young child's level.

#### **IV. Job Requirements**

- A.** Must support and implement the Happy Mountain Daycare, Inc. educational philosophy.
- B.** Must provide a positive, loving, and nurturing environment for children.
- C.** Must display respect for children and adults.
- D.** Must maintain classroom environment in a neat and inviting manner.
- E.** Must maintain order and discipline in the classroom.
- F.** Must follow prescribed administrative procedures.
- G.** Must follow cleanliness procedures.
- H.** Must have a valid Alaska Drivers License.

## **HAPPY MOUNTAIN DAYCARE, INC.**

### **Center Policies**

#### **Non-Discrimination Policy**

It is the policy of Happy Mountain Daycare, Inc., to prohibit discrimination in employment and in the provision of services on the basis of race, religion, sex, age, marital status, national origin, and ancestry. Happy Mountain Daycare, Inc., adheres to all State and Federal laws prohibiting discrimination in the workplace and in places of public accommodation.

#### **Policy on Written Communications To Parents**

All written announcements, bulletins, and newsletters must be approved by the Director before being sent out to parents. This policy does not apply to notes written to individual parents concerning their particular child.

**HAPPY MOUNTAIN DAYCARE, INC.**

433 Main Street  
Bearclaw, Alaska 99999  
(907) 555-1234

August 24, 20xx

Dear Parents,

I am writing to tell you about an incident that happened today in the Toddler Room, where I teach. As some of you may know, I have a mild form of epilepsy. Because of my condition, I have brief seizures two or three times a year. Today I had one of these seizures.

No children were put at risk because of my seizure today. I am well aware of my condition and take steps to ensure that no children are put in danger because of my epilepsy. I love all of the children under my care and would never do anything to put them at risk of harm. You should rest assured that there are always other teachers in the room to take care of the children if I do have a seizure. I want to emphasize, though, that these seizures are very rare.

If your child asks you what happened in class today, I hope that you will be sensitive in explaining my condition to him or her. Epilepsy affects many thousands of Americans, but we are still people able to live long, productive lives. Be sure to tell your child that I am fine, that I love them, and that I look forward to seeing them tomorrow.

Sincerely,

/s/

Chris Wilson

**ALASKOPOLIS NEUROLOGICAL GROUP, INC.**

750 Monroe Avenue  
Alaskopolis, Alaska 99876  
(907) 555-6789

August 29, 20xx

Re: Chris Wilson

To Whom It May Concern:

Chris's seizure condition is substantially controlled with medication. However, it is not possible to say that s/he could expect to be seizure free in the immediate future.

I believe that any possible danger to children resulting from Chris's medical condition could be eliminated if s/he does not lift or carry children or stay alone with them for more than a few minutes at a time.

I hope this letter addresses your concerns. If you have additional questions, please contact me.

/s/

Marc(y) Bartello, M.D.