2007

ALASKA HIGH SCHOOL

MOCK TRIAL

CHAMPIONSHIP COMPETITION

Anchorage, February 16-17, 2007

Boney Courthouse

Wilson v. Happy Mountain Daycare, Inc.

Case No. 5AN-06-9999 CI

OFFICIAL CASE MATERIALS & COMPETITION RULES

TEAM MEMBER'S PACKET

Including all evidence, applicable law, competition rules, and team registration forms.

Sponsored by the Anchorage Bar Association,

Young Lawyers Section

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Author's Introduction

Chris Wilson has epilepsy. S/He also works as a Head Teacher in a daycare center in the small town of Bearclaw, Alaska. Rather, s/he did until on August 24, 2006 s/he had an epileptic seizure at work. For reasons that will be disputed at trial, Chris was first demoted to a position as an Assistant Teacher in a different classroom and then released after sending a letter discussing her/his demotion to parents of children in Chris's classroom. 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 demoted for the sake of the safety of the children and only fired because of insubordination in sending the letter, a 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. 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. Paul(a) Staples, however, is concerned that her/his children can never be safe in a daycare center where a person with epilepsy is employed and was very disturbed by Chris's letter.

Cameron Velasquez, the former Daycare Compliance Officer in the Borough where Bearclaw is located, agrees. Ms./Mr. Velasquez strongly believes there are serious safety issues involved with hiring a person with epilepsy to take care of children. Andy Shoney was working with Chris the day s/he had the seizure and can speak of the details of the event. Kari(m) Hamadi similarly observed Chris having a seizure at another daycare center where Chris formerly worked.

Should Chris Wilson have been demoted and then fired?

****

The problem for this year 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. There are certainly interesting legal issues in this year's problem, but students are encouraged as well to think about and discuss the social implications of arguments made either for the plaintiff or the defendant. In addition, students are encouraged not to stereotype daycare employees as female and to place students in those roles regardless of gender.

As for the problem itself, my goal this year was to draft a problem that would emphasize and reward the students' analytical abilities. It is always the case that students must choose carefully which three out of the possible four witnesses they will choose for the plaintiff and defense. Each witness has strengths and weaknesses. Witnesses should be chosen according to how that witness will fit into the team's theme for that side of the case. This theme should also guide the questions the attorneys ask both of their own witnesses and on cross-examination. A good witness examination, either direct or cross, is not just getting the witness to recite facts but rather knowing what facts to have the witness recite and in what order to best lead the jury to the desired conclusion.

There is a great deal of subtlety in this year's problem, in the sense that not all of the potentially damaging facts are stated directly in the affidavits. Remember that reasonable inferences can be drawn from the affidavits, legal citations, and exhibits provided, but you will still need to convince the jury that your conclusions are justified. I am not above including a few red herrings in the problem materials, but at the same time, most of what is included, either in the affidavits or in the potential exhibits, has a potential use in the problem. Every year I am pleasantly surprised with the twists and turns that teams read into the problem materials, and I expect this year to be no different.

I have revised Rule 7 – Unfair Extrapolations to clarify that reasonable inferences can be drawn from the materials provided and common knowledge. The revised rule should not be seen as an excuse to fabricate factual conclusions that support a particular argument. For example, none of the witnesses discuss the dangers of an unattended child sticking a metal object in an electric outlet and being electrocuted. However, this danger is commonly known and could potentially be introduced in a question to a witness. But, it would be an unfair extrapolation for a witness to claim that twenty-five children are killed in the United States every year from sticking a metal object in an electric outlet. The bottom line is that students are encouraged to conduct creative but well-founded legal analysis. It will still be up to the presiding judge to determine if an extrapolation is unfair.

The other rule change (Rule 17) is to formalize a way for teams that run out of time to request additional time but with a standardized penalty for each extension of time. Teams may during direct or cross examination request an additional two minutes of time, but this extension of time will come with a mandatory four point penalty for each extension. Teams will be given 20 minutes total for direct examination of all three witnesses and 15 minutes combined for cross examination. Time is a precious commodity, so use it wisely – make sure questions and answers are focused and concise. The mock trial competition in this regard is not meant to simulate a real trial, where such examinations could take hours if not days.

The problem materials are adapted from *Jean Jones v. Kids-R-Ours, Inc.* – Case File, Hollace P. Brooks and Paul Chill, National Institute for Trial Advocacy, 1995. The Mock Trial Committee is grateful to the National Institute for Trial Advocacy (NITA) for permission to adapt the problem for its own uses, limited to this year's competition. Copyright for the underlying story line and materials remains with NITA (www.nita.org); copyright for this adaptation is retained by Ryan Fortson, with non-monetary use granted to the Young Lawyers Section of the Anchorage Bar Association for the purpose of conducting the 2007 Alaska High School Mock Trial Championship Competition. For the curious, the daycare regulations provided in the problem are only slightly modified from those in the Anchorage Municipal Code.

In closing, I would like to thank Erin Egan, Krista Schwarting, Christopher Slottee, Maureen Pettibone, Frank Lupo, and Jim Wilkson for their assistance in editing this problem and more generally for their assistance on the Mock Trial Committee. I would also like to thank my secretary Patty Johnson for her work in formatting these materials. If you believe a portion of the problem is erroneous or needs clarification, please contact me at fortson.ryan@dorsey.com.

I hope that students, teachers, and coaches enjoy and benefit from working with this problem. Thank you. Ryan Fortson

I. LEGAL DOCUMENTS

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.	)	
_____	)	

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 demoting her/him because of her/his disability.

20. 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/

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,
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CHRIS WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5AN-06-9999 CI
	)	
HAPPY MOUNTAIN DAYCARE, INC.,	)	
	)	
Defendant.	)	
_____	)	

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.

20. The Defendant denies the allegations of paragraph 20.

AFFIRMATIVE DEFENSES

1. Providing accommodation, other than the reassignment actually offered to and accepted by 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

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.	)	
_____	)	

Order Denying Motion to Dismiss

This Court denies Defendant's Motion to Dismiss. This Court finds that the requirements of the Americans with Disabilities Act are applicable under Alaska law and furthermore that Plaintiff Chris Wilson has a disability covered by this law.

Defendant Happy Mountain Daycare, Inc. previously moved to dismiss the present case on the grounds that 1) Alaska Statute 18.80.220 does not require an employer to offer reasonable accommodations to employ a person with a disability, and 2) Plaintiff's complex partial seizure disorder does not constitute a disability under Alaska law. Plaintiff opposed, and oral argument was held on December 19, 2006.

Alaska Statue 18.80.220(a)(1) provides that an employer may not discriminate in the compensation or terms of employment on the basis, among other things, of an employee's or potential employee's physical or mental disability so long as the person is able to meet "the reasonable demands of the position." The Alaska Supreme Court has previously held that AS 18.80.220 "imposes a duty on an employer to reasonably accommodate a disabled employee." *Moody-Herrera v. State*, 967 P.2d 79, 87 (Alaska 1998). The Court in the same decision further held that the reasonable accommodation analysis under the Americans with Disabilities Act

applies to cases brought under Alaska law.[1] *Id.*, 88. This analysis requires a person claiming disability to show "(1) that he or she is an individual who has a disability within the meaning of the statute; (2) that he or she could perform the essential functions of the position he or she holds (with or without reasonable accommodation); and (3) that he or she has suffered an otherwise adverse employment decision because of the disability." *Id.* (citations omitted). The employer is permitted to offer affirmative defenses to these claims, such as that reasonable accommodation was offered or that it would be impossible to offer reasonable accommodation without imposing an undue hardship on the employer. *Id.*

In the present case, Defendant admits that Plaintiff suffered a negative employment action – namely that Plaintiff was first demoted and then fired. Defendant challenges Plaintiff's claims that s/he could perform the essential functions of the job of Head Teacher in Room 3. Defendant further challenges Plaintiff's assertion that her/his dismissal was a result of Plaintiff's epileptic condition. However, both of these are matters to be decided at trial, in that the answers to these questions are material issues of fact on which the parties disagree. Furthermore, *Moody-Herrera* holds that these are appropriate questions to ask in applying AS 18.20.220(a)(1). As such, this Court cannot grant Defendant's Motion to Dismiss on the argument that Defendant need not offer reasonable accommodations to Plaintiff.

This Court notes that even if the Americans with Disabilities Act did not apply to Alaska law through AS 18.80.220, this would not necessarily defeat Plaintiff's claim of having been

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1 The Court upheld the Superior Court's application of the burden shifting in *McDonnell Douglas Corp. v. Green* (411 U.S. 792 (1973)), which addressed a claim of racial discrimination. The Court in *Moody-Herrera* declined to specify which of the two analyses applied to AS 18.80.220 because both cases required the same initial showing. This Court concurs that much of the analysis is shared between these two tests. However, to the extent a distinction needs to be made, this Court believes the Americans with Disabilities Act analysis to be more applicable to a person with a disability such as epilepsy.

discriminated against in his/her employment. Alaska Statute 18.80.220 still prohibits employment discrimination against a person with a mental or physical disability. In this sense, the Americans with Disabilities Act is most useful for informing how, under AS 18.80.220, the trier of fact is to make a determination of whether discrimination has occurred, but it does not supplant the independent statutory basis under Alaska law for bringing a claim that unlawful discrimination has occurred.

Defendant additionally asserts that Plaintiff does not have a mental or physical disability covered by AS 18.80.220. Defendant admits that Plaintiff has complex partial seizure disorder, which is a form of epilepsy. However, Defendant contends that Plaintiff's condition is not a disability because it is not constantly present. Alaska Statute 18.80.300, which provides the definitions for Alaska's anti-discrimination law, defines a "physical or mental disability" as "a physical or mental impairment that substantially limits one or more major life activities." A "major life activity" is defined as including working. Id. Defendant has not cited any cases to suggest that a disability must be constantly present to garner the protections of the law. The operative consideration is the effect that the disabling condition, however infrequent, has on the Plaintiff's ability to be employed in a particular work environment. Given that Defendant claims to have demoted Plaintiff at least in part because of her/his epileptic condition, Defendant has waived, for the purpose of this case, its argument that Plaintiff is not disabled.[2] Ninth Circuit case law has held that determinations of disability must be made independently for each

[2] If Plaintiff's epilepsy could be completely controlled by the use of medication, this Court might decide this issue differently. However, neither Plaintiff nor Defendant assert that the use of medication virtually eliminates the risk of seizure, only that the risk is thereby reduced. The reduced risk may be a factor in determining whether reasonable accommodations can be made of Plaintiff's condition, but it does not remove Plaintiff's disability.

individual. *Vinson v. Thomas*, 288 F.3d 1145, 1159 (9th Cir. 2002). For the purposes of this case, this Court determines that Plaintiff Chris Wilson has a physical or mental impairment,[3] namely epilepsy, which substantially limits a major life activity and as such qualifies as disabled for the sake of protection under AS 18.80.220.[4]

The Court emphasizes that these findings in no way relieve Plaintiff of her/his burden to prove that Defendant inappropriately used Plaintiff's epilepsy first to demote and then to fire her/him. In making this determination, the jury is to use the *Moody-Herrera* criteria discussed above. The order today is meant only to resolve threshold questions necessary to bring this case before a jury in the first place.

Defendant's Motion to Dismiss is DENIED.

Date: January 9, 2007.

/s/

SUPERIOR COURT JUDGE

3 The Court does not take a position on whether epilepsy is a physical or a mental impairment, nor is it necessary to distinguish between the two for the purpose of this Order.

4 Analogy can be made to other Alaska statutes. Although the Alaska Human Rights Act does not specifically define epilepsy as a physical or mental impairment, other Alaska statutes on mental health define "mental illness" as including epilepsy. AS 47.30.915(12).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,
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	)	
Plaintiff,	)	
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	)	
HAPPY MOUNTAIN DAYCARE, INC.,	)	
	)	
Defendant.	)	
_____	)	

STIPULATIONS

It is stipulated for purposes of this Mock Trial that the following facts have been properly introduced into evidence and may be relied upon by the parties in the presentation of their case:

I.

Bearclaw, Alaska is a city of approximately 7,000 people. It is located in the Northern Lights Borough. Alaskopolis, Alaska is a city of approximately 125,000 people and is also located in the Northern Lights Borough. The two cities are approximately 60 miles apart.

II.

Both Bearclaw and Alaskopolis are located in the Fifth Judicial District of Alaska. Jurisdiction for this trial is properly located in the Fifth Judicial District. The case has been removed from Bearclaw to Alaskopolis.

III.

All pleadings have been properly filed and served to all other parties. Discovery has been conducted pursuant to the applicable Rules of Procedure, and no discovery violations are alleged. All other procedural matters have been properly conducted.

IV.

All affidavits are considered part of the case materials and may be used during trial for impeachment purposes and to refresh the memory of that particular witness. The affidavits have been validly signed and notarized.

V.

All exhibits included in these case materials are authentic and, where appropriate, validly signed. No objections to the authenticity of the exhibits will be entertained. Exhibits may otherwise be challenged for admissibility.

VI.

The witnesses for the Plaintiff are (in no particular order):

1. Chris Wilson
2. Dr. Marc(y) Bartello
3. Paul(a) Staples
4. Toyo Hiroki

VII.

The witnesses for the Defendant are (in no particular order):

1. Madison Smith
2. Andy Shoney
3. Cameron Velasquez
4. Kari(m) Hamadi

Relevant Alaska Statutes

AS 18.80.200. Purpose.

(a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety, and general welfare of the state and its inhabitants.

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood. It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority, or other age restrictions or requirements.

AS 18.80.210. Civil Rights.

The opportunity to obtain employment, credit and financing, public accommodations, housing accommodations, and other property without discrimination because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin is a civil right.

AS 18.80.220. Unlawful Employment Practices; Exception.

(a) Except as provided in (c) of this section, it is unlawful for

(1) an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood; …

Excerpted Northern Lights Borough Daycare Regulations

16.55.020 Purpose.

The purpose of this chapter is to establish and maintain standard levels for services offered to children in child care facilities. The department recognizes the responsibility of parents to select and monitor caregivers for their children in order to ensure a reasonably safe and developmentally appropriate child care environment. The licensing standards and procedures in this chapter are intended to reduce predictable risk of harm to children and to provide support services to those providing child care.

16.55.210 Child care facility operation and management.

A. The administrator shall provide a child care program and building meeting the requirements of this chapter.

B. A child care facility with one or more staff members shall provide each staff member with his or her own copy of the personnel policies at the time they begin employment or volunteer service and shall review the policies with each staff member. The personnel policies shall include, at a minimum and as applicable:

1. Personnel qualifications;
2. The job description, including job duties and essential job functions;
3. Procedures for on-going and annual evaluation;
4. An equal employment statement;
5. A termination policy; and
6. A training plan.

…

G. A child care center shall adopt and compile facility policies, procedures, program descriptions, and forms, as applicable, into an operational manual available to staff and to the licensing representative upon request.

H. A child care facility's practices and the practices of the facility's employees or volunteers shall conform to this chapter, and the facility's policies.

16.55.250 Qualifications and responsibilities of individuals having contact with children in a child care facility.

A. A business owner and an individual having contact with children in a child care facility shall be responsible individuals of reputable character who exercise sound judgment and are truthful and honest.

B. A business owner or any other individual shall not be in contact with children, work, volunteer, or reside in a child care facility or in any other part of the premises housing a child care facility if the individual has the opportunity to gain access to the child care facility; and

…

2. Has a physical, health, mental health, or behavioral problem to the extent the problem may be detrimental to the health, safety, or well-being of children in care;

…

C. A child care facility and the department may require an individual having contact with children in a child care facility to provide an evaluation from a probation, health, or mental health professional affirming the individual is free from problems potentially detrimental to the health, safety, or well-being of a child in the child care facility.

…

H. In a facility, a caregiver shall:

1. Demonstrate respect for a child and the child's family;
2. Support behavior of children with positive guidance, and set clear and consistent limits to promote the children's ability for self discipline;
3. Provide children with a variety of age-appropriate learning and social experiences;
4. Demonstrate a positive attitude toward bottle weaning, diapering, toilet learning, and special needs of children;
5. Respond appropriately to a child's needs, including responding to a baby's cry as promptly and effectively as possible;
6. Meet a child's health and safety needs;
7. Prevent exposure of children to high risk situations, including exposure to physical hazards and encounters with individuals or animals posing a possible danger;
8. Use strategies to prevent aggressive behavior and to deescalate volatile situations;
9. Act as a positive role model for children, especially with regard to respecting the feelings and rights of others; and
10. Provide an environment that respects the gender, culture, ethnicity, family composition, and special emotional, cognitive, and developmental needs of the individual child.

16.55.310 Information for parents.

A. A child care facility shall supply a parent with the following information in writing at or before a child's admission and when subsequent changes are made:

1. Facility's business name, physical and mailing addresses, contact information including telephone number, and fax and electronic mail addresses, if applicable;
2. Enrollment requirements and procedures, including the facility's policy regarding the admittance of children exempt from immunization requirements;
3. Fees and payment requirements;
4. Hours and days of operation, including holidays;
5. Provisions for children with special needs;
6. Provisions for nighttime care, if applicable;
7. In centers, a summary of the plan for supervision;
8. Number and ages of children served;
9. Policy and provisions for ill children, including parent or guardian permission for medication and topical products, if applicable;
10. A typical daily schedule of activities for each age group of children for which the facility is licensed;
11. Nondiscrimination policy as required by state law;
12. Liability insurance coverage, and if applicable, transportation coverage;
13. Rules concerning personal belongings brought to the facility;
14. Informing parents of any smoking at the facility;
15. Outdoor play under various inclement weather conditions;
16. Accessibility of animals, including fish, insects, and reptiles, and the degree of access by children;
17. Child abuse reporting policy, per state law;
18. Television and video cassette viewing, games, and computer use policy;
19. Behavior guidance practices;
20. Meals and snacks served;
21. Parent permission policy for activities away from the facility;

22. Transportation arrangements and policies, including to and from the facility if provided, special trips, and in emergencies;
23. Parent access and visiting policy;
24. Use of volunteer, substitute, and emergency caregivers;
25. Confidentiality statement;
26. Information provided by the department about:
    a. A parent's role to help ensure a reasonably safe and developmentally appropriate environment;
    b. Summarized regulatory requirements applicable to the facility, in order to encourage parents of children in child care facilities to become involved in day-to-day monitoring of the care provided by the facility; and
    c. The investigation role of the department, including the investigation of complaints, department telephone number, and location of the department; and
27. Parent notification policy on changes in programs and policies.

16.55.320 Supervision of children.

A. A child care facility shall ensure the children in its care receive responsible supervision appropriate to their age, developmental needs, and activity. A child care facility shall provide a staffing plan, where applicable, and a plan for supervision of children.

B. A child care facility shall ensure children are always under supervision by a caregiver, except when providing a degree of freedom to a school age child, appropriate to age and developmental level. A child care facility shall ensure:

1. Children are supervised at all times, even when the children are sleeping:
    a. In a center, supervision requires the caregivers are in the same room or group area, in close proximity, focusing on children, and able to directly see, hear and quickly respond to children, except a caregiver is not required to be in the restroom, if the restroom entrance is in the classroom; or
    b. In a home, the caregiver shall stay on the same level of the facility as the children during nighttime care. Children under the age of nine years, who are sleeping or resting, shall be closely monitored through the use of electronic monitoring or physical checking at least every 15 minutes to ensure the caregiver is able to detect when the child is awake or potential emergencies arise.
2. Caregivers in a center shall both see and hear sleeping infants.
3. Caregivers shall be in close proximity to children.
4. In a facility, a child seven years of age and older may participate in activities and visit friends away from the facility's licensed space, if the plan for getting there is:
    a. Safe and developmentally appropriate; and
    b. Approved in writing by the child's parents and by the facility.
5. Caregivers shall know the whereabouts of the children in their care at all times.

…

D. A child care facility shall maintain attendance records reflecting the time caregivers are present and children are in care:

1. Attendance records shall be kept current as children and staff arrive and depart, shall be up-to-date, and shall be available for review at all times.
2. In a center, records shall be kept by room or group.

3. In a home, attendance records shall contain the names of all children present on one form.

…

F. A child care facility shall prevent exposure of children to individuals, animals, and situations posing a possible danger. A child care facility shall not expose a child to high-risk activities or hazards including but not limited to:

1. Using a mobile infant walker;
2. Walking along cliffs or a river edge;
3. Riding an all-terrain vehicle of any type;
4. Riding a snowmobile;
5. Playing near any body of water without constant supervision;
6. Playing with propelled objects without constant supervision;
7. Boating without a personal flotation device or in dangerous water conditions;
8. Using a standard or large trampoline; or
9. Riding a motorized, child-sized vehicle.

16.55.330 Child-to-caregiver ratios in child care facilities.

A. Except as provided otherwise, a child care center shall maintain, during all hours of operation, the following child-to-caregiver ratios and the following group size ratios:

1. Age of Children	2. Term for Child's Age Group	3. Number of Caregivers	4. Number of Children	5. Maximum Group Size (Children to Caregivers)
A. 6 weeks through 10 months, or older if not walking independently.	Infants	1	4	8:2
B. 11 through 18 months	Babies	1	5	10:2
C. 19 through 36 months	Toddler	1	6	12:2
D. 3 through 5 years (if not in school)	Preschoolers	1	10	20:2
E. 5 through 12 years	Elementary Schoolers	1	10	20:2
F. 13 through 17 years	Teenagers	1	20	40:2

B. In a center, in groups where age ranges are mixed, the child-to-caregiver ratio for the youngest child shall apply.

16.55.340 Maximum group size in child care centers.

A. A child care center shall organize a learning environment so children may participate in activities individually and in small groups, and the development of each child is supported.

B. A child care center shall provide environmental cues to children indicating an interest or activity center and facilitate a limited number of children at the interest or activity center. Environmental cues include the use of visible barriers, partitions, colored rugs, and tables with a limited number of chairs.

C. A caregiver shall be assigned to and be primarily responsible for the caregiver's own ratio of children. The child care center shall provide each primary caregiver information

about the child's habits, interests, progress, and special problems, if any, and shall assign the primary caregiver responsibility for knowing that information.

…

H. More than one group may be assigned to a room.

I. Groups may be combined or divided during outside play, naptime, field trips and for other special events, including but not limited to a holiday party or a visit from a special guest.

16.55.350 Program in child care facilities.

A. A child care facility shall provide structure and daily activities designed to promote a child's individual physical, social, intellectual, and emotional development and positive identity. In a center, program philosophy and curriculum content shall be at the direction and implementation of the center. Satisfactory compliance with this subsection requires:

1. Except for a drop-in center, a facility generally follows a schedule and daily plan of activities for each age group providing a balance of quiet and active, group and individual activities, and including time for meals, snacks, sleep, rest, fresh air, toileting according to individual needs, and indoor and outdoor play; for purposes of this paragraph:

2. Opportunities shall be provided for individual self-expression in conversation, imaginative play, and creative expression;

3. Opportunities shall be provided for a minimum of 20 minutes of vigorous physical activity indoor or outdoor, for every three hours the facility is open between the hours of 7:00 a.m. and 7:00 p.m.;

4. Except for a drop-in center, a facility shall meet the following requirements for outdoor activity when weather and the individual child's tolerance permit:

   a. Children in full day center programs shall be provided with supervised activity outdoors twice daily;

   b. Preschool children in half day programs, children younger than school age in child care homes, and children younger than 12 months and not yet walking, shall be provided opportunities for supervised activities outdoors daily; and

   c. School age children shall be provided opportunities to go outside daily.

5. Opportunities shall be provided for each child to foster independence, such as but not limited to taking out and putting away materials, dressing and undressing, feeding solid foods, and caring for the child's own clothing and bedding;

6. Opportunities shall be provided for intellectual and social development through use of a variety of:

   a. Activities and materials such as but not limited to games, toys, books, crafts, puzzles, and blocks;

   b. Props for pretend play;

   c. Sensory materials, such as but not limited to sand;

   d. Art and language materials, such as but not limited to crayons and paint; and

   e. Specific age-appropriate materials.

7. Opportunities shall be provided for language development, including reading to children and encouraging children to talk and read books;

8. Television, digital video display, video cassette viewing, and computer/video game use shall not exceed one and one half hours in a 24 hour period, with exceptions made for special occasions. Such use shall be limited to programs

and games specifically designed for the interest and benefit of the child. Computer learning activities may not exceed two hours a day.

B. In addition to the requirements in subsection A., a facility providing care for infants, babies, or toddlers shall:

1. Not leave a child awake in a crib, swing, or similar device for more than 15 minutes without direct adult contact;

2. Provide opportunities for a child to develop a caring and nurturing relationship with and attachment to one or a small number of consistent caregivers, rather than by a series of caregivers, whose care for and responsiveness to the child ensure relief of distress, experiences of stimulation, comfort, and satisfaction of the need for a connection with the child's caregiver;

3. Provide frequent verbal communication throughout the day, especially during feeding, changing, and cuddle times;

4. Provide physical contact through holding, rocking and play, as well as bathing, dressing, and carrying a child;

5. Allow infants, babies and toddlers, under supervision, to explore and learn on their own outside of a playpen or other restraining device; and

6. Ensure children through 18 months are placed on their backs to go to sleep, unless otherwise ordered by a physician.

16.55.440 Environmental health and safety.

…

F. Hazards. A child care facility shall take the necessary precautions to make the child care facility free of hazards that may cause injury or disease to children, both inside and outside of the building, including:

1. Maintaining the child care facility in a clean and sanitary condition;

2. Maintaining sanitary facilities for proper care, storage, refrigeration, and preparation of food;

…

5. A child care facility shall install safety outlets or child proof cover caps in all electrical outlets not in use and accessible to children under age five.

6. Safety gates or other approved effective methods shall be used to prevent access by infants and toddlers to stairs.

7. Plastic bags posing a suffocation or choking risk, including bags used for storage, trash, diaper disposal, or any other purpose, shall be stored out of reach of children.

8. Strings and cords, including but not limited to parts of clothing and pacifiers, shall not be accessible to children:

a. If they are more than six inches in length;

b. Unless they are used during a supervised activity; or

c. If they are part of window shades or blinds.

9. Buildings and premises shall be free of hazards, including splintered surfaces, sharp edges, protruding corners, steep stairways, and ice and snow on walkways and roof overhangs.

10. Outdoor areas shall be well drained and free from deep depressions which may collect standing water.

11. Germicides and insecticides shall not be used in the presence of children and shall be used according to label directions.

12. Poisonous or dangerous substances and compounds, including but not limited to cleansers and medicines, shall be identified, kept in storage areas which are inaccessible to children, and used according to label directions.

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.	)	
_____	)	

JURY INSTRUCTIONS

FOUNDATIONAL INSTRUCTIONS

Introduction

Members of the jury, you have now heard and seen all of the evidence in the case and you have heard argument about the meaning of the evidence. We have reached the stage of the trial where I instruct you about the law to be applied.

It is important that each of you listen carefully to the instructions. Your duty as jurors does not end with your fair and impartial consideration of the evidence. Your duty also includes paying careful attention to the instructions so that the law will properly and justly be applied to the parties in this case. You will have a copy of my instructions with you when you go in to the jury room to deliberate and to reach your verdict. But it is still absolutely necessary for you to pay careful attention to the instructions now. Sometimes the spoken word is clearer than the written word, and you should not miss the chance to hear the instructions. I will give them to you as clearly as I can in order to assist you as much as possible.

The order in which the instructions are given has no relation to their importance. The length of instructions also has no relation to importance. Some concepts require more explanation than others, but this does not make longer instructions more important than shorter ones. All of the instructions are important and all should be carefully considered. You should understand each instruction and see how it relates to the others given.

Preponderance of the Evidence – Burden of Proof

I will now discuss the burden of proof. Some of the instructions that follow ask you to decide whether something is more likely true than not true. Something is more likely true than not true if you believe that the chance that it is true is even the slightest bit greater than the chance that it is not true. In more familiar language, something is more likely true than not true if you believe that there is a greater than 50 percent chance that it is true. Fifty-one percent

probability is enough; no more is required for you to decide that something is more likely true than not true. If you believe that the chance that something is true is 50/50 or less, you must decide that it is not true.

For this case, every time I say that something must be proven, either by the Plaintiff or by the Defendant, the burden of proof will be the preponderance of evidence standard I just described. Thus, when I discuss the law specific to this case please keep in mind that you will be determining whether any particular element of the claim is more likely true than not true.

Direct and Circumstantial Evidence

Evidence is either direct or circumstantial. Direct evidence, if you accept it as true, proves a fact. Circumstantial evidence, if you accept it as true, proves a fact from which you may infer that another fact is also true.

Let me give you an example. Let us pretend that as a juror you are asked to decide the following question: Did snow fall during a particular night? Direct evidence would be a witness testifying that the witness awoke during that night, went to the window, and saw the snow falling. From this evidence you could conclude that snow fell during the night.

Circumstantial evidence would be a witness testifying that the ground was bare when the witness went to sleep at 10:00 p.m., but the next morning when the witness awoke and looked out the window, the witness saw that the ground was covered with snow. From this evidence you could also conclude that snow fell during the night.

Facts may be proved by either direct or circumstantial evidence. The law accepts each as a reasonable method of proof.

Witness Credibility

You have heard a number of witnesses testify in this case. You must decide how much weight to give the testimony of each witness.

In deciding whether to believe a witness and how much weight to give a witness's testimony, you may consider anything that reasonably helps you to evaluate the testimony. Among the things that you should consider are the following:

(1) the witness's appearance, attitude, and behavior on the stand and the way the witness testified;
(2) the witness's age, intelligence, and experience;
(3) the witness's opportunity and ability to see or hear the things the witness testified about;
(4) the accuracy of the witness's memory;
(5) any motive of the witness not to tell the truth;
(6) any interest that the witness has in the outcome of the case;
(7) any bias of the witness;

(8) any opinion or reputation evidence about the witness's truthfulness;
(9) any prior criminal convictions of the witness which relate to honesty or veracity; and/or
(10) the consistency of the witness's testimony and whether it was supported or contradicted by other evidence.

You should bear in mind that inconsistencies and contradictions in a witness' testimony, or between a witness's testimony and that of others, do not necessarily mean that you should disbelieve the witness. It is not uncommon for people to forget or to remember things incorrectly and this may explain some inconsistencies and contradictions. It is also not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

If you believe that part of a witness's testimony is false, you may also choose to distrust other parts of that witness's testimony, but you are not required to do so. You may believe all, part, or none of the testimony of any witness. You need not believe a witness even if the witness's testimony is uncontradicted. However, you should act reasonably in deciding whether you believe a witness and how much weight to give to the witness's testimony.

You are not required to accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. However, you should act reasonably in deciding whether to reject uncontradicted testimony. When witnesses are in conflict, you need not accept the testimony of a majority of witnesses. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

Credibility of Expert Witnesses

Expert witnesses will testify in this case. Experts have special training, education, skills or knowledge that may be helpful to you. In deciding whether to believe an expert and how much weight to give expert testimony, you should consider the same things that you would when any other witness testifies. In addition, you should consider the following things:

(1) the special qualifications of the expert;
(2) the expert's knowledge of the subject matter involved in the case;
(3) the source of the information considered by the expert; and
(4) the reasons given for the expert's opinion.

As with other witnesses, you must decide whether or not to believe an expert and how much weight to give to expert testimony. You may believe all, part, or none of the testimony of an expert witness. You need not believe an expert even if the testimony is uncontradicted. However, you should act reasonably in deciding whether you believe an expert witness and how much weight to give expert testimony.

Evaluation of Evidence

The weight to be given the evidence is for you to determine. You must examine the evidence carefully and decide how to evaluate it in light of the law that I have given you in these instructions. In your deliberations, you must not be governed by mere sentiment, unsupported conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should consider the evidence in light of your own common sense and observations and experiences in everyday life. But you may not consider other sources of information not presented to you in this court.

Your consideration of this case should be based solely on the evidence presented and the instructions I have given. The parties to this action are entitled to have a calm, careful, conscientious appraisal of the issues presented to you. Sympathy, bias or prejudice should not have the slightest influence upon you in reaching your verdict.

CASE-SPECIFIC 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. This court ruled prior to the start of trial that the Alaska law relied upon by the Plaintiff is analogous to federal civil rights law known as the Americans with Disabilities Act, or ADA. Therefore, I will at times during these instructions refer to the Americans with Disabilities Act. You should understand that the same federal burdens of proof also apply under Alaska law. The relevant portion of the federal law states that an employer covered by the ADA 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. The same is true under Alaska law. This court has also ruled that the Plaintiff's epileptic disorder is covered by the Alaska anti-discrimination law.

The Plaintiff claims that the Defendant violated his/her rights in two different ways. First, the Plaintiff claims that the Defendant discriminated against him/her by demoting or reassigning him/her to the position of assistant teacher in the preschool classroom. Second, the Plaintiff claims that the Defendant discriminated by firing him/her because of his/her disability.

You have heard conflicting testimony about whether or not the Plaintiff disclosed his/her disability to Madison Smith at his/her job interview. You should know that the ADA 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.

Demotion/Reassignment Claim

Let us first turn to the Plaintiff's claim that the Defendant discriminated against her/him by demoting or reassigning her/him to the position of Assistant Teacher in the preschool classroom. In order to prevail on this claim, the Plaintiff must prove that s/he was capable of

performing the essential functions of her/his job as Head Teacher in the toddler classroom either with reasonable accommodation or that no accommodation was necessary.

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.

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 on this particular claim. If, however, the Plaintiff did prove this to you, you must go on to consider the two affirmative defenses that the Defendant has raised with regard to this claim.

The Defendant's first affirmative defense is that to accommodate the Plaintiffs disability in the toddler classroom would have imposed an "undue hardship" on the Defendant. The ADA and Alaska law do not require that an employer make an accommodation that would impose an undue hardship on it. An undue hardship means significant difficulty or expense given an employer's financial, administrative, and staff resources.

The Defendant's second affirmative defense is that the Plaintiffs disability posed a direct threat to the health or safety of other individuals in the toddler classroom. The term "direct threat" means a significant risk of harm to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation. Factors you may consider in determining whether the Plaintiff posed a direct threat 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.

Remember, when it comes to affirmative defenses, the burden of proof is on the Defendant. If you decide that the Defendant proved either of these two affirmative defenses, your verdict should be in favor of the Defendant on this claim. If, however, you decide that the Defendant did not prove either of these affirmative defenses, your verdict should be for the Plaintiff. (This assumes, of course, that you previously decided that the Plaintiff proved 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.)

Dismissal Claim

Now let's turn to the Plaintiff's claim that the Defendant discriminated against him/her by firing him/her. The issue here is not whether the Plaintiff was capable of performing the essential functions of the job as an Assistant Teacher in the preschool classroom with or without reasonable accommodation. The Defendant basically conceded this by reassigning the Plaintiff to that position in the first place. Rather, the issue here is the Defendant's motivation for firing the Plaintiff from that position.

In order to prevail on this claim, the Plaintiff must prove that his/her disability was at least one motivating factor in the Defendant's decision to fire him/her. To do this, the Plaintiff must demonstrate that the Defendant's stated reason for firing him/her – insubordination – was not the real reason, or at least, not the whole reason, that s/he was fired. If the Plaintiff proves this by a preponderance of the evidence, then the law allows you to infer that his/her disability was a motivating factor in the Defendant's actions. You do not have to infer this but you may.

If you decide that the Plaintiff did not prove that his/her disability was a motivating factor in the Defendant's decision to fire him/her, your verdict must be for the Defendant on this claim. By "motivating factor" I mean that but for the Plaintiff's disability the Defendant would not have fired him/her. The Plaintiff's disability need not be the only reason why s/he was fired. If, however, you find that the Plaintiff did prove that her disability was a motivating factor, you must go on to consider the affirmative defense that the Defendant has raised on this claim.

The Defendant's affirmative defense to this claim is that it would have made the same decision to fire the Plaintiff even if s/he did not have a disability. In other words, the Plaintiffs disability did not affect the outcome because the Defendant would have fired a person without a disability under the same or similar circumstances.

If you decide that the Defendant did prove that it would have made the same decision to fire the plaintiff even if she did not have a disability, your verdict should be in favor of the Defendant on this claim. If you decide that the defendant did not prove this affirmative defense, your verdict should be in favor of the Plaintiff 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, 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.

Bifurcation

In this trial, you will only be deciding whether the Defendant violated Alaska's anti-discrimination law. If you decide that the Defendant <u>did</u> violate the law, there will be a second trial to determine the Plaintiffs damages, if any. In your deliberations today, you must disregard the monetary amount of any harm Chris Wilson may have suffered.

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.	)	
_____	)	

GENERAL JURY VERDICT

We, the jury, unanimously decide as follows:

The Defendant **DID / DID NOT** [please circle one] discriminate against the Plaintiff, in violation of Alaska Statute 18.80.220(a), by demoting or reassigning her/him to the position of Assistant Teacher in the preschool classroom.

The Defendant **DID / DID NOT** [please circle one] discriminate against the Plaintiff, in violation of Alaska Statute 18.80.220(a), by firing him/her.

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

_____
[Foreperson please sign here]

II. AFFIDAVITS

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.	)	
_____	)	

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 1998 to spring 2004 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 1998 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. These internships are detailed on my resumé. During the summer of 2003, I worked as a camp counselor. That is also on my resumé. 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 2004.

3. After graduation I took a summer job in a childcare center at Sprucewood Community School in Alaskopolis. I worked there from June 2004, 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 2004 through May 2005. 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. I take both Dilantin, 100 milligrams twice a day, and Depakote, 250 milligrams four times each day. 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 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 2005, after moving back home, I applied for a position at Happy Mountain Daycare. They are the only formal daycare center in Bearclaw, so I was really hopeful they would have an opening for me. There are a few people who run private daycare centers out of their home, but I didn't feel I was ready to do that, nor would my parents be too happy about it.

9. 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.

10. 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. I think my first day of work was July 18, 2005. There were seventeen children in Room 3, ranging in age from nineteen to thirty-six months. 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.

11. 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 nineteen to thirty-six month age group.

12. My normal work day began at 8:00 a.m., though the daycare center opens at 6:00 a.m. I think Madison and maybe one or two other people would be at Happy Mountain when it opened. The morning Assistant Teacher in my room would start at 7:00 a.m., which is about the time most of the children would start to trickle in. Things of course depended on the parent's work schedule, but most of the children would arrive by 9:00 a.m., which is when shops started opening up around town. 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, dressup, 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. We ate lunch around noon, though I was usually on lunch break myself, so the Assistant Teachers took care of this. 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. The children got to play outside in the yard at least once a day, usually for around forty-five minutes, when the weather permits. There is a door that opens directly into the yard from Room 3; it is kept unlocked because it's a fire exit too. I worked until 5:00 p.m. The center stays open until 7:00 p.m. because some of the parents commute back and forth to Alaskopolis, but most of the kids were generally picked up fairly close to 5:00. 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 pick up their kids. I got an hour lunch break during the overlap of the two Assistant Teachers in my room and one 15 minute break each in the morning and afternoon. I'd usually walk to a nearby restaurant for lunch, since I couldn't drive anywhere.

13. 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.

14. I really enjoyed my job. Bearclaw is a fairly small community, and a lot of residents have kids, grandkids, or nieces or nephews at Happy Mountain Daycare. Working there gave me a sense of importance in the community. I mean, most of the residents of Bearclaw already knew me or my parents – my dad's a cop – but it was nice that they associated me with being a caregiver. The year or so I worked at Happy Mountain was one of the best times of my life.

15. Everything was going well with my job until August 24, 2006, 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. After I got home on August 24, 2006, 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.

17. 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 on 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.

18. The next day, August 30, 2006, I brought the letter to Madison. Madison seemed much calmer than s/he had been on the 24th. After reading the letter, s/he reiterated his/her opinion that I could not work with toddlers with my condition. Madison said s/he would try to find a position for me in Room 4, the preschool room, with the three- to five-year-old children, but that it would be as an Assistant Teacher at a lower hourly pay rate, $10/hour instead of $12/hour, and would entail fewer hours per day (six instead of eight). Furthermore, because they are not full-time employees, Assistant Teachers do not get the two weeks of paid vacation that Head Teachers get. Madison said s/he would shift one of the Assistant Teachers in Room 4 to Room 3, and that I could have the afternoon shift. I told her I would think about it and get back to him/her in a couple of days.

19. That evening, I discussed the pros and cons of Madison's offer with my parents. 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 with the younger children. Not only do I prefer working with toddlers, but the new job Madison had offered me represented a substantial cut in pay. It was also humiliating to be told that I "couldn't safely work with young children." My parents, on the other hand, encouraged me to take the job. They know how much I love working with children, and Happy Mountain is the only daycare center in Bearclaw. I thought about maybe trying to get a job with someone who offers daycare from his or her home, but I knew this would be a fairly informal job and would not have the career-advancing possibilities of working for an

established daycare center like Happy Mountain. It also might not have health care insurance, which is of course very important for me.

20. So, the next morning (August 31) I called Madison and told him/her I would reluctantly accept the offer. My family and I had already planned on taking a vacation Labor Day week to visit my grandparents down in California. I asked Madison if I could start work on September 11, the day after I returned from my vacation. S/He said that would be fine and that when I returned I should report to Room 4. I then wrote a farewell letter to all the parents of my toddler class. I mailed the letters the next day and went on vacation on September 2.

21. My parents and I returned to Bearclaw on Sunday, September 10, 2006. Despite all that had gone on, I was really looking forward to getting back to work the next day. I was dressing to get ready for work the next morning when Madison called. Madison had never called me before work before, so when my mom handed me the phone I knew something was up. Madison said that I had violated a company policy by sending a letter directly to the parents. Madison said that s/he considered this to be insubordination and that my employment was being terminated effective immediately. I protested that I had not even considered the policy when I wrote the letter. 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 that all new employees are given on their first day of work and that it is posted outside her/his office.

22. After I got off the phone, 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.

24. I've been unable to find work since Madison fired me. At first I was too traumatized to even look for another job. Plus, Happy Mountain Daycare is the only daycare center in Bearclaw. None of the home providers would want to hire me because they don't want to deal with salaries and taxes and all that. I suppose I could move back to Alaskopolis to work in a daycare there, but I really want to be close to my parents. Also, since I can't drive due to my epilepsy, I had to take the bus everywhere in Alaskopolis, which is very inconvenient.

25. Basically, my parents have been supporting me and paying my medical bills, which would have been covered under the insurance I lost when Madison fired me. I wasn't able to

afford to continue my health insurance under COBRA. Being without medical insurance is very stressful for me since I take so much medication for epilepsy. This is on top of the feelings I've had of anger, hopelessness and humiliation over the way Madison treated me. I've had difficulty sleeping, loss of appetite, frequent crying episodes, and strained relationships with my family and friends. I have been seeing a therapist since my firing to help with my feelings of worthlessness. I'm determined to move on and become independent again, but that is hard to do when you feel like there are no good options.

26. All I have ever wanted to do with my life is take care of children. That is why I majored in childhood education in college. I wanted to gain some experience in working at a daycare and then eventually try to open up one of my own, either in Bearclaw or Alaskopolis or somewhere else in Alaska. I knew with my epilepsy I could work in an administrative capacity and not have to worry as much about having a seizure when I was around the kids. I could get a job doing something else, though my options are limited because of my epilepsy, but I feel I would be giving up on my dream. This shouldn't be necessary when I have proven myself to be such a good caregiver.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 26th day of January, 2007 at Alaskopolis, Alaska.

_____/s/_____
CHRIS WILSON

SUBSCRIBED AND SWORN TO before me this 26th day of January, 2007.

_____/s/_____
Notary Pubic in and for Alaska
My Commission Expires: ____/x/_____

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.	)	
_____	)	

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. Chris's current treatment consists of two medications, Dilantin and Depakote. S/He is prescribed 100 milligrams of Dilantin twice a day, and 250 milligrams of Depakote four times a day. This medication regimen has reduced the number of Chris's 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. Both Dilantin and Depakote have certain side effects that patients should take into account. Dilantin can cause acne, skin rashes, and sometimes an enlargement of facial features; some patients also report dizziness, decreased coordination, a loss of short-term memory, and an inability to concentrate. Depakote can lead to hair loss, nausea, diarrhea, stomach cramps, and weight gain; some patients also experience moodiness, loss of balance, and headaches as a result of taking the drug. Both drugs may also cause drowsiness after they are taken. Though I do not advise it, some patients choose not to take their Dilanti or Depakote medications because of the side effects.

7. 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 don't 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, 2006. 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, 2006 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 and David Trent had discussed with Chris what happened during the seizure and Chris relayed to me what they 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 Room 2. 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.

13. Chris did not tell me about his/her subsequent demotion. I feel that Chris should have been able to continue in the toddler classroom, as there was no reason to reduce his/her job responsibilities. I also feel that Chris would have succeeded in the preschool classroom had Madison Smith not given in to public pressure to fire Chris. Normally I charge my patients for my time, at my usual hourly rate, if I have to draft an affidavit or testify at trial. However, in this instance I feel so strongly that Chris has been wronged that I am participating in this case for free.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 1st day of February, 2007 at Alaskopolis, Alaska.

_____/s/_____
MARC(Y) BARTELLO, M.D.

SUBSCRIBED AND SWORN TO before me this 1st day of February, 2007.

_____/s/_____
Notary Pubic in and for Alaska
My Commission Expires: ____/x/_____

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.	)	
_____	)	

AFFIDAVIT OF PAUL(A) STAPLES

1. My name is Paul(a) Staples; I am thirty-two years old. I am the parent of Carolyn Staples, age four, and Claire Staples, age eight months. I work as a store manager for Store 24, a twenty-four hour convenience store in Bearclaw. Carolyn and Claire both attend daycare at Happy Mountain Daycare. Claire started when she was seven weeks old.

2. In early September, 2006, I received a phone call from my friend Mary Stovell, whose child was in the two year old class at Happy Mountain Daycare. I can't remember the exact date, but I know I was off work that day. Mary was upset about a letter she had just received from Chris Wilson, her daughter's head teacher. The letter said that Madison Smith, the owner of Happy Mountain Daycare, had demoted Chris to the position of assistant teacher in the preschool classroom because Chris had had an epileptic seizure at work. Although Mary thought that Chris was a good teacher, she had not known that Chris was an epileptic and was very upset that Madison would have made someone with such a handicap responsible for small children.

3. Mary thought that I might want to know that Chris would now be working in Carolyn's class. I asked Mary to drop off a copy of the letter, which she did later that day. I've known the Wilson family for as long as I can remember and known Chris almost all of his/her life. I knew that Chris had epilepsy, but I thought it was totally controlled by medication. I was thus very disturbed to learn about Chris's seizure. Mary was new to town within the past couple of years, which is probably why she did not know about Chris's epilepsy.

4. After I received the letter, I called the parents of two other children in Carolyn's class. They were also shocked to learn that somebody with epileptic seizures would be caring for their children. I mean, what if Chris were accidentally to strike one of the children while having a seizure? Or what if the children are getting into a fight and Chris were not able to break them apart? What if a child were choking on a toy and Chris couldn't stop it? We agreed that I would call Madison Smith and express our concerns.

5. I called Madison Smith the next day and told her/him about Chris's letter. Madison didn't seem to know anything about the letter. I explained that I did not understand how an

epileptic could work with young children. I told her/him there was no way I would allow my child to be exposed to such a risk, and that I and others would definitely remove our children from the day care center if Chris were not fired. I didn't feel like I had any choice. Any good parent would have done what I did to protect his or her child.

6. Madison seemed surprisingly calm under the circumstances. S/He mostly asked me a lot of questions; I don't remember most of them now. I know s/he asked me whom I'd spoken to about this, and how many other parents knew about Chris's letter. I only knew about Mary and the other parents I had talked to, but since the letter looked like it was sent to Chris's entire Room 3 class, there were probably many more parents who received it. By the end of the conversation, I had the impression that Madison was going to fire Chris in response to the concerns of the parents. I distinctly remember Madison saying that Chris probably would not be going to work in the preschool classroom that Carolyn attended. This made me quite relieved. I don't remember saying I would leave Carolyn and Claire at Happy Mountain Daycare, but I guess it was sort of implied.

7. Madison said s/he wanted to see a copy of the letter before making any final decision, and I agreed to drop it off with him/her, which I did while picking up my children. I don't think Madison looked at the letter immediately. Madison thanked me for letting him/her know about Chris's letter; Madison said it was important that s/he be made aware of whether any of his/her employees were breaking company policy.

8. It wasn't until after Chris filed her/his lawsuit that I found out that the official reason that Madison fired Chris was insubordination for writing the letter. To be honest, I'm glad in a way that Chris sent the letter. It is important to know who is going to be taking care of our children at the daycare. I mean, we especially need to know if the news is disturbing like this. I agree with the policy in general – I don't want to receive random letters about things that don't have anything to do with the daycare, but this letter was clearly related to the well-being of our children. Besides, I don't believe that the letter was the real reason that Chris was fired. I think the real reason was that Madison was scared that a lot of parents would pull kids out of the day care center if Chris remained employed there. I know I would have done this. I do feel sorry for Chris – I think s/he's a nice person and all – but the safety of the children has to come first.

9. One of the reasons why I'm so confident Madison fired Chris because s/he was afraid parents would pull their children from Happy Mountain Daycare is because I heard the business is barely making it financially. Bearclaw is still a pretty small, close-knit community, so you hear these kinds of things through the grapevine. I can't remember who told me about it, but I doubt Happy Mountain Daycare could survive if a dozen or so parents pulled their children from the daycare. Bearclaw just doesn't have a big enough population that there would be enough replacement kids for those that were pulled. I know Happy Mountain Daycare is the only independent daycare in town, but there are several people who offer daycare out of their homes. And with the strong social network in Bearclaw, there is a lot of trust of these home-based daycare options. Plus, they tend to be cheaper. I think some of them will even provide daycare for $25 or $30 a day.

10. I heard Madison Smith is in financial trouble not only because the population of Bearclaw is barely enough to support a daycare center the size of Happy Mountain, but also

because of a settlement s/he reach with Garrett Griswold after firing him. Garrett used to be a janitor at Happy Mountain. Garrett's employment options were limited because Garrett had some mental retardation due to being born with a mild form of Down's Syndrome. But no one ever questioned Garrett's heart. All the kids loved Garrett because he was always so happy around them.

11. Anyway, for some unknown reason, Madison fired Garrett suddenly. There was a rumor one of the parents complained about Garrett because of his mental disability. I don't know who it would be, though. Garrett and his mom had lived in Bearclaw for almost a decade and were well-known and liked throughout town. Garrett's dad died a few years ago, and his mom didn't have too much money because she had to take care of him, so the town sort of adopted the two of them. Maybe it was one of those new commuters who complained about Garrett.

12. Garrett's mom convinced him to file a complaint against Madison with the Alaska Human Rights Commission. I don't think Garrett or his mom was doing it for the money, but it did seem like they had a good case. Madison must have thought so too, because not too long after Garrett filed his complaint some sort of settlement was reached. Now, the terms of the settlement are supposed to be confidential, but Bearclaw is a small town, and I heard Madison agreed to pay Garrett $100,000 to withdraw the complaint, though I imagine some of it was covered by insurance. All I know is that soon after that Garrett and his mom moved down to his mom's brother's farm in Wyoming.

13. So why do I send my children to Happy Mountain Daycare? I do think the structured learning environment is worth the extra money. Mostly the home daycare is offered by parents who have kids of their own to take care of or whose kids are now in school. These parents may have learned a fair bit from experience, but they do not have the formal education in child development that I'd hope for from a place like Happy Mountain Daycare. Additionally, I expect Happy Mountain Daycare to be safer. These home daycare places – well, there can be lots of hazards for children in ordinary homes. The home daycare places say they give the children a lot of individualized attention because they can only take in a few kids at a time, but I just don't trust them to have the proper education and safety training.

14. I hear rumors that Bright Horizons Daycare Center is thinking about opening up a branch in Bearclaw. It would be great to have more daycare options. I think Madison Smith runs a fine daycare, but s/he is not always all that nice a person to run into around town. I mean, Madison is always nice to me because I have two kids at Happy Mountain, but it always seems a bit fake. I think Madison knows that s/he is an outsider and that it will be a while before the longtime residents of Bearclaw really come to trust him/her. I'm not sure Bearclaw can support two big daycare centers, though.

15. I was convicted of a crime in 1999. I was in my last year of college at the time, and my boy/girlfriend was a heroin user. I started using drugs to be part of his/her crowd. The police busted a party we were attending, and I was arrested for possession of heroin. This was my first offense. After successfully completing a rehabilitation program, I pled guilty and was sentenced to two years' probation. I still attend Narcotics Anonymous meetings and, although I still consider myself a recovering addict, I haven't used any drugs at all ever since.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 25th day of January, 2007 at Bearclaw, Alaska.

_____/s/_____
PAUL(A) STAPLES

SUBSCRIBED AND SWORN TO before me this 25th day of January, 2007.

_____/s/_____
Notary Pubic in and for Alaska
My Commission Expires: ____/x/_____

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.	)	
_____	)	

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 a room with children eighteen to thirty-six months. I resigned from Happy Mountain Daycare on December 16, 2005.

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 one 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. 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. I did occasionally lift lighter children like those in Room 3, as I've already stated. However, 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 Room 3, starting in the summer of 2005. 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 Room 3 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 the "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 don't know anything about why Garrett Griswold was terminated. He was a nice fellow and seemed to keep the place clean. I understand he brought some kind of complaint against Madison, but I don't really know anything about it.

13. I do know that Happy Mountain Daycare has a policy about written communications from staff members to parents. My understanding of the policy is as follows: Teachers can 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.

14. 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.

15. I've never seen the letter from Chris Wilson to the parents of Room 3. To be perfectly honest, it does seem to be inappropriate at first glance. I got mad at Madison plenty of times, but I never would have sent a letter like that. I can't tell you whether it violates the policy or not, that is not my call to make, but I can certainly understand why Madison thought it was insubordinate. Even so, it sounds to me like Madison overreacted by firing Chris. That's so typical of Madison!

16. On the whole, I am happy to be back in Alaskopolis. I miss the small town feel of Bearclaw, but I just couldn't stand to work any longer for Madison. I don't see how anyone can for too long. I am very happy with my new job at Bright Horizons Daycare. I get all the teaching freedom I always wanted, and the management completely understands and accepts my physical limitations.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 18th day of January, 2007 at Alaskopolis, Alaska.

_____/s/_____
TOYO HIROKI

SUBSCRIBED AND SWORN TO before me this 18th day of January, 2007.

_____/s/_____
Notary Pubic in and for Alaska
My Commission Expires: ____/x/_____

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.	)	
_____	)	

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 in 2001 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 7,000 residents.

2. I opened Happy Mountain Daycare in May 2001. I timed the opening date to provide a safe place for parents to leave their children during the summer when school let out. I had bought some land in Bearclaw next to one of the two elementary schools in 1999 and contracted to have a building constructed there for the new daycare center. The construction took about a year. Then a few more months to obtain all of the necessary permits. It took me another couple months or so after opening to work out all of the kinks with hiring staff and drafting personnel policies and teaching manuals, but I believe it was time well spent. I am proud to say that Happy Mountain Daycare is a model for daycare centers around Alaska. In fact, we have even won a couple of awards. In 2003, we won the award for Best Educational Environment from the Alaska Association of Daycare Providers; in 2005, we won the award for Safest Daycare from the Alaska Healthy Families Council. Needless to say, these awards are excellent marketing tools.

3. 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.

4. I do feel I offer a superior service, but still, the budget of Happy Mountain Daycare, Inc. is very tight. Our annual income currently approaches $1,000,000. I believe our expenses last year were about $980,000. All our income comes from payments made by families of our children. Our biggest expenditure is, of course, personnel costs, including the cost of providing health care and other benefits to my employees. For accounting purposes, I consider myself a salaried employee, the "Director" of the daycare center, paid at $20 per hour; my yearly salary is booked at $60,000. Of course, I also get to keep any profit the center makes. I feel this profit is a bonus for all the hard work I put in. I do, however, distribute a share of the profits as year-end bonuses to all employees. Last year I gave an automatic $500 bonus to each Head Teacher and $250 to each Assistant Teacher. Furthermore, I distributed an additional $2,500 in "discretionary" bonuses to my best employees. My hope is that this can serve as an incentive to get my employees to work hard during the year. I don't have a set formula for these discretionary bonuses, but just play it by ear depending on how much money I have left over after the books are closed.

5. Happy Mountain Daycare is open from 6:00 a.m. to 7:00 p.m., Monday through Friday, except for major holidays. We charge tuition on a daily basis of $40/day for children up to the age of 5, regardless of the number of hours the child is at Happy Mountain. For children over five, we charge $30 for a full day and $20 for a half-day, such as if the child stays with us after school. I think our tuition is quite reasonable. With holidays and all, I figure on each child being at the daycare center for 50 weeks. This is not always actually true, but with random children I get for a day here and there it is a workable approximation. The real money is in caring for the older children because the teacher-to-child ratios allow you to have fewer salaried employees per child. This is balanced by the fact that older children are less likely to stay at a daycare center as opposed to going home with a friend whose mom or dad perhaps has a flexible work schedule.

6. 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 Rooms 1, 2, 3 and 4 are divided roughly in half by movable partitions four feet high to separate the two groups in each Room. We don't partition Room 5 right now because we currently don't have enough kids in that room to require it. In those rooms that are partitioned, where there are two groups per room, each group stays primarily on one side of the partition. In Room 1, which has children aged six weeks to ten months – we call it the "infant" room – the maximum ratio is 1:4, meaning there must be one teacher for each four children. But, you can combine two sets of teachers and students into one larger group. Thus, in our infant room, we have one group of two teachers and eight children on one side of the partition and a another group of two and eight on the other side of the partition. A 1:5 ratio applies in Room 2, the "baby" classroom, which has children aged eleven to eighteen months. In the "toddler" room, Room 3, with children ages

nineteen to thirty-six months, the maximum ratio is 1:6. 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. Room 4, the "preschool" room, with children three to five years old has a ratio of 1:10, mostly because by that age children are better able to take care of themselves. This ratio stays the same in Room 5 (the "elementary school" room), where we have children from five to ten years old, basically once they start first grade. By the age of ten, children tend just to go home after school or over to a friend's place, which is fine with me because mixing older and younger kids would be too stressful for our staff. It is bad enough trying to combine ten-year-old children with six-year-old children – usually we separate them out into different groups and try to provide completely different activities for them. During the school year, the older children are of course in school for the first part of the day and come to Happy Mountain after school lets out. Because of these Borough-mandated ratios and the limited number of rooms in our building, Happy Mountain Daycare can only care for a certain number of children at any given age group. Our total capacity is 140 kids. Right now we have 103 children; we are full in our infant room and preschool room, close to full in our baby and toddler rooms, and a fair bit undersubscribed in the elementary school room. I am hoping to increase the enrollment at Happy Mountain through aggressive marketing.

7. The building I had constructed for Happy Mountain Daycare is a one-story, free-standing building located in a quiet, mostly residential area of Bearclaw. We are within walking distance of one of the two elementary schools in Bearclaw so that children can walk to the center after school lets out. I have a van that retrieves kids from the other elementary school. There are five classrooms, an entry-way and hallway, a small office for myself, a kitchen, and a couple of storage rooms in the building. Rooms 1 and 2 share a children's bathroom, as do Rooms 3 and 4. Kids in Room 5 use the staff bathroom that is located just outside the office. Each classroom has two exits, one to the interior and one to the play yard outside. The yard is surrounded by a chain-link fence to protect the children from running out into the street.

8. 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 two assistants arrive at 7:00 a.m., after which the first children generally begin to arrive, and leave at 1:00 p.m. The two head teachers arrive at 8:00 a.m. and work until 5:00 p.m. Two different assistants arrive at noon and work until 6:00 p.m., by which time most of the children have left. The Head Teacher gets a one-hour lunch break from noon to 1:00 p.m. during the overlap between the two Assistant Teachers. This way, there are always enough staff in each classroom to satisfy the Borough teacher-to-child ratios. 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. I myself usually work the entire 13-hour period when the center is open. It is hard work, but I care greatly for the children I am entrusted with, and that is its own reward. During the school year I don't employ a

morning Assistant Teacher in Room 5 because there are no children there. The Room 5 Head Teachers work a reduced schedule during this time of year.

9. At the end of June 2005, one of the Head Teachers in the toddler classroom resigned, effective July 15. After I received her resignation, I placed an ad in the Bearclaw Weekly Tattler seeking another Head Teacher. I received about nine or so resumes and interviewed three people for the job. Chris Wilson 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, even before making a hiring decision. Indeed, I am required by Borough regulations to do this. I was impressed enough by Chris's educational background, experience and personal qualities to contact a couple of the references s/he provided me. Peter Goldman, the one reference that I was able to reach, raved about Chris, so I offered Chris the position. Chris started work on Monday, July 18, 2005.

10. On August 24, 2006, Andy Shoney, one of Chris's Assistant Teachers, came into my office at about 6:00 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. I felt bad for Chris, however, and wanted to make some kind of accommodation. I figured I could probably just shift around some of the personnel at Happy Mountain so as to provide Chris with a job s/he would be more capable of performing safely. I had been impressed with my observations of Andy Shoney, even before Chris's seizure, and figured I would promote Andy into Chris's Head Teacher position in Room 3. I could then shift Tom Wong, another one of my Assistant Teachers, from Room 4, the preschool classroom, to Room 3. Tom already worked the afternoon shift, so it would not be that big a deal. I could then offer Tom's position as an Assistant Teacher in Room 4 to Chris. I felt that Chris could work safely with children aged three to five years since they generally don't need to be lifted and carried. Also, children that age generally don't require the same kind of intensive supervision and oversight as their younger counterparts. They generally know how to take care of themselves and avoid dangerous situations. I did think that Room 5 might be too much for Chris because the elementary school children can be quite rambunctious and might be too physical for Chris. Chris wanted to know how much this position paid, and I told him/her it paid $10.00 per hour but that it was also for only six hours per day, as opposed to the eight hours a day Chris was currently working. Chris said s/he would have to think about it. The next day Chris called and said s/he would accept. Because Chris had already planned a family vacation for the following week, we agreed that s/he would return to work in his/her new position on Monday morning, September 11.

17. I did consider several other possible accommodations for Chris, including switching her/him and one of the Head Teachers in the preschool classroom. I went so far as to discuss this possibility with each of those Head Teachers. Both of them felt that it would be inappropriate to make this switch for a number of reasons. For one thing, both of them had been with me since I opened Happy Mountain Daycare and were very experienced working with that particular age group and strongly preferred it. Neither of them was willing to make the switch, and I was afraid they might quit if I forced a switch. Also, it would have been unfair to the children to put them

with an inexperienced Head Teacher. The children in the preschool room have much more advanced language and other cognitive skills than children in the toddler room. This correspondingly requires the Head Teacher to have different teaching abilities and styles. Although the job of Head Teacher has a generic job description for all levels, the jobs are really quite different. It would have been like switching a sixth grade elementary school teacher with a third grade teacher.

18. On Wednesday, September 6, sometime in the morning, I received a call from Paul(a) Staples, the parent of a child in the elementary school classroom. S/He was very upset. Apparently Chris had written a letter to the parents of the children in her toddler class and Paul(a) had gotten a copy of it from a friend. Paul(a) read the letter to me over the phone. The letter said that I had reassigned Chris to the preschool classroom because of her/his seizure condition. Chris further stated that s/he was not happy with this decision. Paul(a) was upset because she did not believe her daughter Carolyn would be safe in Chris's care. Paul(a) made it very plain that s/he would pull his/her daughter out of the day care center if Chris went to work in the preschool classroom. Paul(a) said s/he had spoken to two other parents who shared the same concern and would also pull their children from Happy Mountain.

19. I tried to calm Paul(a) down a bit. I explained to him/her that s/he did not have all the facts. I told Paul(a) that Chris probably would not be going to work in the preschool classroom and that I would call him/her back later in the day. I wanted to see the letter itself before making any final decision, and Paul(a) was kind enough to offer to bring me in a copy when s/he came in to pick up Carolyn and Claire. I did not tell Paul(a) why Chris would not be coming back to work; I saw no reason to do this, and frankly it seemed like better customer relations to leave Paul(a) with the impression that Chris had never been offered a job in the elementary school classroom in the first place.

20. 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, which is titled "Written Communications," 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. Parents don't need to be bothered with that kind of information, and I am still a bit of an outsider to Bearclaw and need to do all I can to maintain positive relations in the community. 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.

21. In fact, 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 Paul(a) Staples, and had probably upset other parents as well. When Paul(a) brought the letter to my office it confirmed my suspicion that I would have to fire Chris. I knew Chris was on vacation, so I didn't feel I had any choice but to wait until s/he returned to break the bad news.

22. 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. I have, however, involuntarily terminated two other employees over the years. One of them, Garrett Griswold, was a janitor who worked at Happy Mountain Daycare for about six months and whose job performance was unsatisfactory. I was always having to pick up messes even after Garrett supposedly cleaned the room. This is not my job. Garrett did file a complaint against me with the Alaska Human Rights Commission. Garrett and I were able to reach a settlement whereby he would withdraw his complaint. By agreement, neither of us is allowed to talk about the terms of the settlement. The other terminated employee, Sarah Patterson, was an assistant teacher who had a problem with tardiness. This employee failed to correct the problem despite my repeated warnings and had to be terminated. I need reliable employees so that I can know I will meet the Borough-required teacher-to-child ratios.

23. I don't have any formal education in child development or education. I was a political science major in college. However, I worked in various daycare jobs between college and opening up Happy Mountain Daycare. Most recently, I managed a daycare center in Alaskopolis (Kids-R-Ours) that had the capacity to handle 250 kids at any given time. Alaskopolis is in the same borough as Bearclaw, so it has the same teacher-to-child ratio requirements. Needless to say, the staffing requirements at Kids-R-Ours were much larger than at my center in Bearclaw. As part of my job managing Kids-R-Ours, I went to several seminars on child development and teaching methods in daycare centers. I also have two daughters, aged ten and twelve, so I've learned by experience.

24. 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.

25. 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 safely work with preschool children but not with toddlers. Also, there are more situations where the teacher might have to go out of the room with a child – for instance, to take him or her to the bathroom – in the toddler classroom.

26. I am somewhat familiar with the Americans with Disabilities Act and the obligations it places on employers. I was not specifically aware of an Alaska equivalent, but this does not surprise me. 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.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 3rd day of February, 2007 at Alaskopolis, Alaska.

/s/
MADISON SMITH

SUBSCRIBED AND SWORN TO before me this 3rd day of February, 2007.

/s/
Notary Pubic in and for Alaska
My Commission Expires: /x/

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.	)	
_____	)	

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. I have been working at Happy Mountain Daycare since October, 2005. This is the first full-time job I have had since I graduated from Alaskopolis Central High School in June of 2005. After fooling around a bit, 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 in December 2005, 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 on the other side of the partition. Chris and I were responsible for a group of approximately eight to twelve children, depending on how many parents needed daycare, in Room 3. I worked from 12:00 to 6:00 p.m. 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. 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. 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, 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 step up my responsibilities. Plus, it meant an increase in pay, which is never a bad thing. Turns out it also meant a better year-end bonus. Madison gave me a $1,000 year-end bonus just last week, and my Assistant Teacher only got $250.

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 Room 3 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.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 8th day of February, 2007 at Bearclaw, Alaska.

/s/
ANDY SHONEY

SUBSCRIBED AND SWORN TO before me this 8th day of February, 2007.

/s/
Notary Pubic in and for Alaska
My Commission Expires: /x/

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.	)	
_____	)	

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 in major cities across the United States. I have been the General Manager at Bright Horizons for approximately the last year. I took over the job when the former General Manager, Peter Goldman, died.

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. Peter Goldman was the Assistant Manager in charge of educational development for children three years and older. I got along fine with Peter. However, when the General Manager of the Alaskopolis location decided to move back to the Lower 48, Peter was promoted to General Manager by the head office over me. I guess perhaps I was being a little petty, but I didn't like being passed over, so 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. I have to say that I learned a fair bit about daycare safety myself while I was the Compliance

Officer. 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 my capacity as Daycare Compliance Officer I visited all of the formal commercial daycare centers in the Northern Lights Borough. I also visited several of the informal daycare centers, you know, those someone would run out of his or her house. It was sometimes hard to keep track of these home daycare centers. All centers serving five are more children are required by law to be licensed, but many of these smaller daycare centers would circumvent this requirement. If I heard through the grapevine that someone was offering unlicensed daycare in their home, I'd stop by and gently inform them of the licensing requirement. One of my other tasks was running background checks on daycare center employees. People who have been convicted of certain felonies are not permitted to work in a daycare center. So, when a daycare center registered a new employee with the Daycare Compliance Department, I ran a background check to make sure the person could work there legally. I found that generally speaking the daycare centers were themselves careful to look into the criminal histories of their employees.

5. 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. Most daycare employees are happy to receive my suggestions, though a few are stubborn and want to do things their way. 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!

6. 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.

7. 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.

8. 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, 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.

9. 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.

10. 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.

11. I do not believe it would be possible to accommodate Mr./Ms. Wilson's epilepsy in a way that removed the danger to children. The Americans with Disabilities Act only requires that

reasonable accommodations be made to enable a person with a disability to obtain or continue employment. 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 Americans with Disabilities Act 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.

12. 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.

13. 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.

14. I am being paid $200 per hour to serve as a witness in this case. This is the first time I have ever been called upon as an expert. I did testify in several administrative hearings while working for the Borough, but that was always in my capacity as a Compliance Officer.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 5th day of February, 2007 at Alaskopolis, Alaska.

_____/s/_____
CAMERON VELASQUEZ

SUBSCRIBED AND SWORN TO before me this 5th day of February, 2007.

_____/s/_____
Notary Pubic in and for Alaska
My Commission Expires: ____/x/_____

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.	)	
_____	)	

AFFIDAVIT OF KARI(M) HAMADI

1. My name is Kari(m) Hamadi. I am Director of the Summer Program at Sprucewood Community School in Alaskopolis, Alaska. Sprucewood Community School is a private educational institution that runs enrichment programs for children during the summer. I have been Director of the Summer Program there since 1995. I teach a third-grade class during the school year at a public elementary school in Alaskopolis.

2. Chris Wilson worked under my supervision in the Sprucewood summer program from June to August, 2004. S/He was a counselor working mostly with two groups of children – one group consisted of three- to five-year-olds, whereas the other consisted of six- to nine-year-old children. The Sprucewood summer program also gives its counselors a few hours off from watching kids to do more administrative tasks. For example, one of Chris's responsibilities was planning and supervising field trips for the two age groups that Chris worked with. You know, mostly going to local parks, especially trips involving the three- to five-year-old children, but also sometimes to a museum or a tour of a local business. These field trips usually involved driving the children to various places around Alaskopolis. Chris always came up with some excuse for why s/he couldn't drive. This worked because there were so many kids on the field trips that Chris would need to have parents or other summer program staff serve as chaperones. I didn't know at the time why Chris was making these excuses.

3. When I hired Chris Wilson, s/he did not tell me that s/he had epilepsy. I remember this because I was very surprised and shocked when s/he had a seizure at work one day. Also, I always ask new hires whether or not they have any disabilities that may interfere with their work or the children's safety. This is only common sense when running a program for young children. In fact, I consider it very irresponsible of Chris not to volunteer the information.

4. Chris's work with the children was generally good. S/He seemed to have a nice way with the kids, although s/he did let things get a bit wild at times. I hired Chris mostly because of her/his stellar academic record. I remember talking to Chris from time to time about various child development and educational theories. Chris certainly seemed knowledgeable about these topics and could talk about them for a wide variety of age ranges. However, I also thought that

Chris's attitude toward child development was a bit utopian. S/He emphasized letting even toddlers be self-motivated in educational development. Now, don't get me wrong, time for free play is very important to early childhood development, but the children also need structure during parts of the day if they are to have any hope of flourishing educationally. I attribute Chris's attitude to her/his inexperience and overall immaturity. I tried several times to talk to Chris about how to improve her/his teaching skills, but Chris was very stubborn and didn't want my advice.

5. Late in August 2004 – it was the very last day of the summer program, in fact – Chris had an epileptic seizure. I personally witnessed this. It was during a kickball game involving the six- to nine-year-old children. The way we play kickball is that the rules are more or less like baseball but the kids kick the ball instead of swinging a bat. Chris was pitching, which really just meant rolling the ball on the ground toward the children. I was half-watching the game from about twenty yards away while also monitoring what other children were doing. All of a sudden I noticed that the game had stopped. Chris was just standing there, with the big red rubber kickball in his/her hands, not moving. The children that had been playing kickball were all standing around staring at Chris intently. As I started walking over toward Chris, I remember one of the children tugging on Chris's shirt and saying, "What's wrong, Ms./Mr. Wilson, what's wrong?"

6. When I got closer to Chris, I noticed s/he was mumbling incoherently. Then s/he dropped the ball. Chris looked blank, almost like s/he was hypnotized. I asked him/her several times if something was the matter. When s/he didn't respond, I sent one of the kids inside to tell my assistant to call 911. I didn't know what was going on. It was all very weird to me, and I can only imagine what the kids were thinking. Most of them just stood there, obviously distressed but saying nothing.

7. After what seemed like an eternity, Chris seemed to snap to. I guided her/him over to a bench where s/he sat down. Although groggy and seemingly stunned, Chris explained to me that s/he had had an epileptic seizure and that it was nothing to worry about. Chris was very apologetic about having the seizure and said they were rare. Chris also said that with how busy s/he had been looking for a job for after the summer program at Sprucewood end, s/he had forgotten to take her medicine a few times the past couple of days. S/He said this would never happen again, which I though was an odd thing to say on the last day of work. When the ambulance came a few minutes later, Chris refused treatment. Chris explained to the paramedics about her/his type of epilepsy, and they assured me there was no immediate risk of another seizure.

8. I don't know how long exactly this whole episode lasted. The seizure obviously was already in progress by the time I noticed that the game had stopped. Given that, I would assume that the seizure itself lasted a good five minutes. It was lucky that no one was hurt during Chris's seizure. These were older kids, so they can for the most part manage to play kickball without any major injuries. However, we do have some jungle gym equipment that some of the younger children play on. They need to be constantly supervised to make sure they don't climb too high on the equipment or otherwise endanger themselves. If Chris had had a seizure while watching the three- to five-year-olds, one of them could very easily have climbed up on the jungle gym and fallen off and broken an arm or a leg or worse.

9. As I said, the kids were very upset by the whole episode. They didn't know what was going on. I made Chris call all of the children together from the kickball game and explain what had happened. This made Chris very uncomfortable, but I felt it was necessary to keep the kids from being traumatized. And frankly, Chris's feelings were not what I was concerned about at that point.

10. Fortunately, Chris's seizure happened on the last day of the summer program. I say "fortunately" because I definitely would have had to fire Chris had it not been the last day anyway. I personally don't see how you can have an epileptic working anywhere near children. To me that would be like having a blind bus driver. There are just too many risks with leaving young children unsupervised.

11. When Peter Goldman over at Bright Horizons called me to ask for a recommendation for Chris, I told Peter that I wouldn't hire Chris because of her/his epilepsy. I told Peter about Chris's seizure on the playground and asked Peter to imagine what might have happened if one of the kids had run out into the street while Chris was having a seizure. Peter said that he wasn't worried too much about it and that he could make things work with Chris at Bright Horizons, even if this meant making certain compromises to accommodate Chris's condition. I didn't see why the safety of the children should be compromised, but it was of course ultimately Peter's decision. Hey, it's not me who would be on the other end of the lawsuit! Peter closed the call by saying that he would check with a doctor about whether Chris could work safely in a daycare center with the proper protections, but that he was so impressed with Chris's resumé and personality that he hoped it would be possible to bring Chris on board. Peter was always kind and tried whenever he could to help those who had been dealt a bad hand in life. Still, I thought that hiring Chris was going too far. Unfortunately, Peter died of a heart attack about a year ago.

12. Ultimately, I feel betrayed by Chris Wilson. Parents need to know they can trust the safety of a daycare when they send their children there. In order for me to run a child care program safely, I need to be able to trust that my employees will be able to maintain the safety of the children. Chris could not do this and did not warn me that s/he was a walking time bomb.

I have reviewed this affidavit, and I have nothing of significance to change or add. The material facts are true and correct to the best of my knowledge.

Signed this 10th day of February, 2007 at Alaskopolis, Alaska.

/s/
KARI(M) HAMADI

SUBSCRIBED AND SWORN TO before me this 10th day of February, 2007

/s/
Notary Pubic in and for Alaska
My Commission Expires: /x/

III. EXHIBITS

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.

Adopted July, 2001.

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.

Adopted July, 2001

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.

Adopted April, 2001

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.

Adopted February, 2003

HAPPY MOUNTAIN DAYCARE, INC.

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

August 31, 2006

Dear Parents,

I am writing to tell you that I will no longer be the Head Teacher in the toddler classroom (Room 3) at Happy Mountain Daycare. Madison Smith has demoted me to Assistant Teacher in the preschool classroom (Room 4).

As some of you may know, I have a mild form of epilepsy. Madison feels it would be safer if I worked with the older children since I have a seizure disorder. I disagree with this. I would never jeopardize the safety of the children. However, I have no choice but to accept Madison's decision.

I wanted you to know that I have really enjoyed working with your children, and I will miss them a lot. I look forward to working with them in the near future when they reach the preschool classroom.

Sincerely,

/s/

Chris Wilson

HAPPY MOUNTAIN DAYCARE, INC.
2006 BUDGET

INCOME

1.	Payments from families (infant to 5 yrs)	$	850,000.00
2.	Payments from families (over 5 yrs)	$	150,000.00
	TOTAL	$	1,000,000.00

EXPENDITURES

1.	Salaries	$	630,000.00
2.	Benefits (health care)	$	150,000.00
3.	Mortgage and property taxes	$	45,000.00
4.	Equipment and supplies, including van	$	30,000.00
5.	Food	$	65,000.00
6.	Utilities	$	25,000.00
7.	Insurance	$	40,000.00
	TOTAL	$	985,000.00

ALASKOPOLIS NEUROLOGICAL GROUP, INC.

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

August 29, 2006

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.

DR. MARC(Y) M. BARTELLO
ALASKOPOLIS NEUROLOGICAL GROUP, INC.
750 Monroe Avenue
Alaskopolis, Alaska 99876
(907) 555-6789

Education:

- Amherst College, B.S. in Chemistry, 1973.
- Columbia University School of Medicine, M.D., 1979.
- Peace Corps, Nigeria, medical services, 1979-1981.
- Residency, neurological disorders, Chicago Central Medical Center, 1981-1984.

Employment:

- Salt Lake City General Hospital, Department of Neurology, 1984-1993.
- Alaskopolis Northern Hospital and Clinic, Neurology Department, 1993-1996.
- Alaskopolis Neurological Group, 1996-present.

Certifications:

- American Board of Psychology and Neurology (neurology), 1984.

Professional Memberships:

- American Psychiatric Association, 1982-present.
- Association of American Neurologists, 1983-present.
- American Neurological Association, 1983-present.
- American Academy of Neurology, 1987-present.
- International Child Neurology Association, 1993-present.
- American Association of Neurological Surgeons, 1998-present.

Recent Papers Presented:

- "Early Signs of Epileptic Disorders," International Child Neurology Association Annual Conference, July 2004.
- "Drug Interactions and Seizure Disorders," American Neurology Association Spring Conference, April 2002.
- "Diagnosis of Adult-Onset Dementia," American Neurological Association Western Regional Conference, October 1999.

CAMERON F. VELASQUEZ
General Manager
Bright Horizons Daycare Center
8089 Shadow Lane
Alaskopolis, Alaska 99892
907-555-7946

Education

University of Michigan, B.S., Psychology – Cum Laude, 1983.

University of Washington, Masters in Child Development, 1988.

Workshops and Seminars:	Common Childhood Hazards	10/2001
	Daycare Safety – New Developments	5/2002
	Emergency Medical Care for Infants	8/2002
	Child Behavior Maintenance	3/2003
	Daycare Safety – New Developments	5/2004
	What You Need To Know About Dangerous Toys	1/2005
	Unforeseen Daycare Dangers	11/2005

Job Experience (all in Alaskopolis, Alaska)

Kinderplotz Day Care
8/1988-6/1993
Head Teacher: Supervised toddler classroom; developed educational and play activities for children; supervised and instructed two Assistant Teachers.

Bright Horizons Daycare Center
9/1993-4/2001
Assistant Manager: In charge of educational development for children three years of age and older; created and taught lesson plans to other teachers in the Center; supervised implementation of lesson plans; administered standardized tests to children.

Northern Lights Borough
7/2001-3/2006
Daycare Compliance Officer: Oversaw safety and regulatory compliance of all daycare operations in the Northern Lights Borough; made site visits to daycare operations in Borough; instruct daycare operators on proper regulatory compliance.

Bright Horizons Daycare Center
3/2006-present
General Manager: Responsible for all operations of 300-child daycare center with over 50 employees; manage $2,500,000 budget; market daycare center to community; supervise and approve safety and educational programs.

CHRIS L. WILSON
112 Runner Road
Bearclaw, Alaska 99999
(907) 555-4162

Experience

Happy Mountain Daycare — Bearclaw, Alaska
Head Teacher — 7/2005 to 9/2006
- Drafted lesson plans for educational activities. Supervised Assistant Teachers. Read to children, played games, oversaw play time.

Bright Horizons Day Care Center — Alaskopolis, Alaska
Assistant Teacher — 11/2004 to 5/2005
- Supervised and led children's activities, both inside and outside. Read to children and organized snack time.

Sprucewood Community School — Alaskopolis, Alaska
Assistant Teacher — 6/2004 to 8/2004
- Supervised planned activities, indoor and outdoor play, and field trips. Read to children and set out snacks.

Alaskopolis Summer of Friendship Day Camp — Alaskopolis, Alaska
Camp Counselor — 6/2003 to 8/2003
- Supervised camp activities, swimming, crafts, and lunch.

Education

University of Alaska – Moose Valley — Moose Valley, Alaska
Bachelor's Degree — 9/1998 to 5/2004
Early Childhood Education

Internships

Children's House Daycare — Moose Valley, Alaska
Teacher's Aide — 9/2003 to 5/2004
- Helped supervise play activities and lunch.

Moose Valley Day Care — Moose Valley, Alaska
Teacher's Aide — 1/2003 to 5/2003
- Helped supervise play activities and lunch.

University Daycare — Moose Valley, Alaska
Teacher's Aide — 9/2002 to 12/2002
- Played games with children, read books, and helped with snacks.

ALASKA HUMAN RIGHTS COMMISSION

AFFIDAVIT OF ILLEGAL DISCRIMINATORY PRACTICE

Date: July 14, 2004 Case No.: 9122365

My name is Garrett Griswold

and I reside 229 Robbins Street, Bearclaw, Alaska 99999

The respondent is Happy Mountain Daycare, Inc.

who business address is 433 Main Street, Bearclaw, Alaska 99999

I was notified on June 3, 2004, and

(x) discharged
( ) suspended
( ) demoted
( ) retaliated against
( ) placed on probation
( ) earning a different rate of pay
( ) denied union representation
( ) less trained
( ) harassed
( ) not hired/not promoted
( ) not rented a dwelling
( ) denied sale of a dwelling
( ) constructively discharged
( ) warned
( ) given a poor evaluation
( ) denied a raise
( ) denied an office

on June 3, 2004, and believe that my

( ) race
( ) color
( ) sex
( ) pregnancy
( ) ancestry
( ) age
( ) religion
( ) national origin
(x) mental retardation
( ) religious creed
( ) familial status
( ) sexual orientation
(x) mental disorder
( ) alienage
( ) learning disability
( ) marital status

was in part a factor in this action.

I provide the following particulars:

1. My name is Garrett Griswold and I reside at 22 Robbins Road, Bearclaw, Alaska 99999.

2. The respondent is Happy Mountain Daycare, Inc., whose business address is 433 Main Street, Bearclaw, Alaska 99999.

3. The respondent employs more than 25 people.

4. I have mental retardation (borderline) caused by Down Syndrome.

5. On or about January 12, 2004, I began employment with the respondent as a janitor at an hourly wage of $7.50. My work schedule was Mondays through Fridays, 12:00 through 5:00 p.m.

6. On or about June 4, 2004, the respondent's Director, Madison Smith, fired me without warning.

7. I believe that the respondent fired me because of my mental retardation because:

a. When I asked Ms./Mr. Smith why s/he was firing me, s/he said s/he had received complaints from parents that I was "upsetting" their children.

b. Ms./Mr. Smith also said my janitorial work had been poor; however, neither s/he nor anyone else at Happy Mountain Daycare, Inc. had ever said anything negative to me about my job performance before.

c. Upon information and belief, I was the only employee of the respondent with any type of mental or physical disability.

I therefore request that the Alaska Human Rights Commission investigate my complaint, secure for me my rights as guaranteed by state and federal law, and secure for me any remedy to which I may be entitled.

__Garrett Griswold_____, being duly sworn, states that he is the complainant herein; that he has read the foregoing complaint and knows the content hereof; and that the same is true of his own knowledge or belief.

Dated at ____Bearclaw, Alaska_____, this _14th_ day of ___July_, 2004___.

_____/s/_____
Complainant's signature

Subscribed and sworn to before me this _14th_ day of _July, 2004_.

_____/s/_____
Notary Public
My commission expires: 12/14/YR-0

ALASKA HUMAN RIGHTS COMMISSION

1294 Cedar Street
Alaskopolis, Alaska 99888

February 25, 2005

Madison Smith, Director
Happy Mountain Daycare, Inc.
433 Main Street
Bearclaw, Alaska 99999

Re: Garrett Griswold vs. Happy Mountain Daycare, Inc.
Case No. 9122365

Dear Mr./Ms. Smith:

This will confirm that, following the Commission's finding of probable cause to believe that discrimination had occurred, a conciliation conference was held on January 21, 2005, at which the parties agreed to a voluntary resolution of this matter. Accordingly, the above-referenced complaint has been withdrawn by the complainant.

The Commission's files in this matter will now be closed.

Please contact the undersigned if any further information is needed.

Very truly yours,

/s/
J. Ring
Investigator

/s/
B. Spork
Regional Manager

cc: Garrett Griswold

STATE OF ALASKA	:	ALASKA SUPERIOR COURT
v.	:	FIFTH JUDICIAL DISTRICT
PAUL(A) STAPLES	:	AT ALASKOPOLIS
	:	JANUARY 29, 2007

CERTIFIED RECORD OF JUDGMENT

Notice is hereby given that on September 23, 1999, the above-named defendant, Paul(a) Staples, was convicted of the crime of possession of heroin in violation of AS 11.71.040 (Misconduct Involving a Controlled Substance in the Fourth Degree) and sentenced to two years probation. Possession of heroin is a Class C felony punishable by not more than 5 years imprisonment.

I hereby certify accordingly under seal.

/s/
Deputy Clerk

OFFICIAL SEAL

ALASKOPOLIS NEUROLOGICAL GROUP, INC.

750 Monroe Avenue
Nita City, Nita 99876
(907) 555-6789

January 11, 2007

Statement: Chris Wilson

Period: January 1, 2006 to January 1, 2007

Date	Service	Fee
01/14/2006	Office visit (scheduled) with Dr. Bartello Neurological examination	$500.00
02/23/2006	Office visit (following seizure) with Dr. Bartello Neurological examination	$500.00
04/28/2006	Office visit (scheduled) with Dr. Bartello Neurological examination	$500.00
06/21/2006	Office visit (following seizure) with Dr. Bartello Neurological examination	$500.00
08/29/2006	Office visit (following seizure) with Dr. Bartello Neurological examination	$500.00
11/07/2006	Office visit (scheduled) with Dr. Bartello Neurological examination	$500.00
	TOTAL	$3,000.00

The fees listed reflect the fees charged by Alaskopolis Neurological Group, Inc. and do not reflect responsibility between patient and insurance, if any, for the fees.

OLIVER HENRY, PH.D.

Licensed Psychologist
1256 Prospect Street
Alaskopolis, Alaska
(907) 555-3250

February 6, 2007

Statement: Chris Wilson

For professional services from September 14, 2006, through February 1, 2007.

20 sessions @ $100 ea. $2,000

DOWNTOWN PHARMACY

264 Fortson Road
Bearclaw, Alaskopolis 99999
(907) 555-4321

RECORD OF PURCHASES 1/01/06 TO 1/01/07

PREPARED FOR:

Chris Wilson
112 Runner Road
Bearclaw, Alaska 99999

Prescription record is prepared at the request of the patient and reports only those records on file at Downtown Pharmacy. Downtown Pharmacy makes no assurances as to the diagnosis of the conditions for which the prescriptions were filled. Prescription prices do not reflect insurance coverage for patient.

Date	Medication	Amount	Dosage	Cost
1/17/06	Dilantin	60	100 mg.	$ 75.00
	Depakote	120	250 mg.	100.00
2/13/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
3/17/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
4/19/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
5/17/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
6/19/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
7/18/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
8/17/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00

9/19/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
10/16/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
11/17/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
12/20/06	Dilantin	60	100 mg.	75.00
	Depakote	120	250 mg.	100.00
		TOTAL		$ 2,100.00

IV. COMPETITION RULES AND FORMS

RULES GOVERNING THE ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP COMPETITION

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B. *Beginning the Trial*
- Rule 40. Jury Trial
- Rule 41. Standing During Trial
- Rule 42. Objection During Opening Statement/Closing Argument

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- Rule 43. Argumentative Questions
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I. RULES OF COMPETITION

A. GOVERNING RULES

Rule 1. Competition Coordinators

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All correspondence with the competition coordinators should be addressed to:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
P.O. BOX 100844
ANCHORAGE, AK 99510-0844
Attn: MOCK TRIAL

Rule 2. Interpretation of the Rules

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing.

Rule 3. Code of Conduct

The Competition rules, as well as proper rules of courthouse and courtroom decorum and security must be followed. The Competition Coordinators will have discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 4. Emergencies

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators shall have the discretion to determine how to proceed.

Rule 4.5. Food and Beverages in the Courtrooms

Food and beverages – other than water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Water will be available during the trial for the participating lawyers and witnesses.

B. THE PROBLEM

Rule 5. Case Materials

The problem will be an original fact pattern which may contain any or all of the following: statement of facts, indictment or complaint, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing prior to the start of the competition. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Participants are not allowed to introduce at trial cases or exhibits not included in the case materials. Reasonable extrapolation will be allowed as explained in Rule 7.

Rule 6. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement or as explicitly allowed by the case materials. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 7, outside the scope of the problem.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

A witness is not bound by the facts contained in other witness statements.

Rule 7. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. An unfair extrapolation is a statement by a witness at trial that creates a sense of bias for or against a party and which is not supported by the materials provided. A fair extrapolation is one that is neutral toward the outcome of the trial and either based on common knowledge or reasonably inferred from the witness's statement and pertinent exhibits.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. If a witness is asked for information not contained in the witness's affidavit, the answer must be consistent with the statement and may not materially affect the witness's testimony or any substantive issue of the case.

Consistent with the obligation to attack unfair extrapolations through impeachment and closing arguments, attorneys for the opposing team may refer to Rule 7 in a special objection, such as "unfair extrapolation" or "information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

a. No extrapolation has occurred;
b. An unfair extrapolation has occurred;
c. The extrapolation was fair; or
d. Ruling is taken under advisement.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness of either gender. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness is not permitted. Expert witnesses may be challenged on their qualifications as an expert.

C. THE TRIAL

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska, may assemble one or more teams and become eligible to compete in the Competition. Alaska high schools wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a "first" team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the "first" team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. Registration will only be limited if the number of teams registered exceeds the capacity of the facilities where the competition is held.

The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and is eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students who participated on the Alaska State Mock Trial Championship team. A team intending to compete in the National High School Mock Trial Championship *must* bring at least seven members to the National Championship. Teams eligible for the National Championship may decline to participate, in which case eligibility will pass to the next highest finishing team in the

Alaska Competition. The Alaska State Mock Trial Championship Team is responsible for its own expenses in attending the National High School Mock Trial Championship Competition. Registration fees (estimated at $300) incurred by the Alaska State Mock Trial Championship Team in conjunction with participation in the National High School Mock Trial Championship Competition may be paid by the competition sponsors to the extent that budgetary constraints will permit. The Anchorage Bar Association, Young Lawyers Section, may be prohibited from contributing any funds for travel and related expenses.

Rule 11. Team Competition

Teams consist of no less than **six** members and no more than **nine** members, including alternates. Team members are assigned to attorney and witness roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. For each match, a team is required to provide three attorneys and three witnesses, as described below in Rule 12. Teams may rotate participants between rounds at their discretion.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be caused to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators and are solely at their discretion. If a coach knows his or her team might not be able to field the required six members for a given round, the coach should notify the competition coordinators as soon as possible.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statement and another will present a closing argument. The principal attorney duties for each team will be as follows:

1. Pre-Trial Motion (if required by case)
2. Opening Statement
3. Direct Examination of Witness #1
4. Direct Examination of Witness #2
5. Direct Examination of Witness #3
6. Cross Examination of Opposing Witness #1
7. Cross Examination of Opposing Witness #2
8. Cross Examination of Opposing Witness #3
9. Closing Argument

Opening Statements must be given by both sides at the beginning of the trial.

The attorney who will examine a particular witness on direct examination is the only person who may make objections to the opposing attorney's questions of that witness's cross-

examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus, once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted. A presiding judge may elect not to allow recross examination.

Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

> "Do you promise that the testimony you are about to give faithfully and truthfully conforms to the facts and rules of the mock trial competition?"

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are to be sworn in collectively at the start of the competition, or the above oath will be conducted by the presiding judge upon the calling of each witness. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses must stand during the oath unless physically unable to do so.

Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and (optional) Redirect Exam (20 minutes total per side)
3. Cross and (optional) Recross Exam (15 minutes total per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side's argument. The Defendant shall not be permitted rebuttal during closing argument.

The time allotted for examination of the witnesses is the combined time for all three witnesses. Teams may allocate their available time between each witness and between direct/redirect or cross/recross examination as they choose. Extensions of time may be granted as set forth in Rule 17. If a team fails to present direct examination of a witness, that team will receive zero (0) points for that round for both the attorney and the witness; the cross-examining attorney will receive the average score of the other cross-examining attorneys. If a team fails to present a cross-examination, that team will receive zero (0) points for that attorney.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Where possible, teams will be permitted to have one additional student at the table with the attorneys. This student must be a team member but need not be a witness in that particular match. This person may serve as a student timekeeper, but may not consult with the student attorneys other than to convey available time.

Student timekeepers are not considered "official timekeepers" in the tournament. In criminal trials, the timekeeper may be the Defendant if the team so chooses, but teams will not be allowed an additional timekeeper at the table in addition to the Defendant. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. Teams will not be given additional time during opening or closing arguments for failure to budget time properly, though the attorney will be allowed to conclude his or her argument. A team that runs out of time during either direct or cross examination of witnesses may request a two minute extension of time. Extensions of time will be granted only in two-minute increments and are at the discretion of the presiding judge. A team requesting an extension of time will be assessed a penalty of four (4) points against that team's overall score for each extension of time granted; the penalty will be recorded in the "penalty" section of each judge's score sheet.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution's case, for example, may not be used.) A motion for a recess may be used in the event of an emergency (i.e., health emergency). To the greatest extent possible, team members are to remain in place. Should a recess by called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not invoke the rule of sequestration.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrative Aids

Teams may refer to and use as exhibits only the materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted, except for personal use by team members. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during the course of the trial. Team attorneys may, among themselves, communicate during the trial;

however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Witnesses must remain outside the bar except when called to the stand. Only team attorneys participating in a round and a designated timekeeper may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, parents, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school insignias. School-owned equipment should have all identifying marks covered.

Viewing of the competition by members of the public shall be allowed so long as it does not disrupt the conduct of the trial. All persons in the courtroom shall show respect for the conduct of the proceedings.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited, and may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment that might be seen by a judge.

Media coverage will be allowed in accordance with the policies of the competition coordinators. Competition coordinators will be permitted to photograph or otherwise record the competition for promotional purposes.

D. JUDGING

Rule 25. Decisions

All decisions of the judges are FINAL.

Rule 26. Composition of the Judging Panel

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary (including law clerks) or attorneys practicing in Alaska. Qualified educators, paralegals, and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and two additional

scoring judge will be appointed by the competition coordinators to judge the round. The final (championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied. These materials will not be available to the team members.

Rule 27. Score Sheets

The presiding judge and each additional scoring judge shall complete a "score sheet" for each trial conducted in each round of the competition. Judges' score sheets will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Score sheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores.

There will be a space on the score sheet for judges to deduct points at their discretion if a team exhibits poor courtroom etiquette or makes excessive unwarranted objections. At the option of the competition coordinators, there may be a mechanism for awarding certificates of recognition based on individual performance.

Rule 28. Completion of Score Sheets

Score sheets are completed by the judges as follows:

1. Trial Points:
   Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 9, with 9 being the highest. Judges are required to complete the ballots in their entirety.
2. Final Point Total:
   A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition coordinators shall consider the judges' determinations of tiebreaker points, as provided in the tiebreaker box on each scoresheet.

A forfeiting team will receive a loss for purposes of ranking. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges. The non-forfeiting team will be awarded the average number of points from its remaining rounds.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. The two teams emerging with the strongest record from the preliminary rounds will advance to the final round. In the event of a tie, the advancing team will be determined by the overall win-loss

record in the preliminary rounds, then if necessary by head-to-head competition (if any) between the tied teams, and finally by the total number of highest scores (9 out of 9) on all score sheets combined.

Score sheets from only the championship round will determine the current Alaska State Mock Trial Championship Team.

Rule 30. Selection of Opponents for Each Round

A random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once. Individual teams will be sent their schedule by the Tuesday before the competition. Coaches should immediately notify the competition coordinators of any scheduling conflicts.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial, after deliberating. This determination shall be made independent of the scores awarded to each team. During the debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of score sheet results.

Rule 32. Effect of Bye

A "bye" becomes necessary when an odd number of teams are present for the tournament. If an odd number of teams are competing, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

E. DISPUTE SETTLEMENT

Rule 33. Reporting a Rules Violation Inside the Bar

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial. If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The presiding judge will instruct the student attorney to prepare a notice of dispute, in which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure permitted under this Rule.

Rule 34. Dispute Resolution Procedure

Upon receipt of a Rule 33 notice of dispute, the presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied,

the judge will record the reasons for this, announce his/her decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a representative. After the designated representatives have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's designated representative three minutes for a presentation. The judge may question the designated representatives. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider his/her ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 35. Effect of Violation on Score

If any judge, whether presiding or scoring, observes independently that a substantial rules violation has occurred, or if the presiding judge makes such a determination in accordance with Rule 34, the judge will inform each of the other judges for that trial. The presiding judge shall inform all other judges who score a trial in which a notice of dispute is submitted of the nature and existence of the dispute, and in the event that some or all of the scoring judges are not present for resolution of the dispute, the presiding judge shall provide a summary of each team's argument and any decision rendered as to the dispute. Each scoring judge will consider the dispute before reaching his or her final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

Rule 36. Reporting of Rules Violation Outside the Bar

Disputes which arise from matters not governed by Rule 33 may be brought exclusively by a team's official faculty advisor or attorney-coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will select and appoint a dispute resolution panel which will (a) notify all pertinent parties; (b) allow time for a response, if deemed by the dispute resolution panel to be appropriate; (c) investigate, if deemed by the dispute resolution panel to be appropriate; (d) conduct an informal hearing, if deemed by the dispute resolution panel to be appropriate; and (e) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge.

F. BEFORE THE TRIAL

Rule 37. Team Roster

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round.

Rule 38. Stipulations

When the Court asks the Prosecution/Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

Rule 39. The Record

The stipulations, indictment, and jury instructions, if any, will not be read into the record at trial. However, all such documents will be considered as part of the record and as governing the legal framework of the case. Students should assume that the judges are familiar with these documents.

G. BEGINNING THE TRIAL

Rule 40. Jury Trial

The case will be tried to a jury consisting of the scoring judge(s), who shall serve as the official timekeeper(s). Arguments are to be made to the judge and jury. Teams may address the scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury.

Rule 41. Standing During Trial

Unless excused by the presiding judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 42. Objection During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been necessary during the opposing team's closing argument, a student attorney, following the arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge need not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

H. PRESENTING EVIDENCE

Rule 43. Argumentative Questions

An attorney shall not ask argumentative questions, except that the Court, may, in its discretion, allow limited use of argumentative questions on cross-examination.

Rule 44. Admission of Evidence

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds. Objections not made upon an attempt to admit evidence as an exhibit will be considered waived.

Rule 45. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will be pre-marked as exhibits.

2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ____ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence.
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. ____ is/is not admitted."

Rule 46. Admission of Expert Witnesses

If a team wishes to admit a witness as an expert in a particular area of knowledge, the attorney performing the direct examination must establish foundation to the satisfaction of the presiding judge for admission as an expert. Voir dire by the opposing attorney will not be allowed, but the opposing attorney may object that insufficient foundation has been laid.

Rule 47. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

Rule 48. Redirect/Recross

Redirect and recross examinations are permitted to use exhibits introduced by the other party, provided that any examinations conform to the restrictions in Rule 611(d) in the Modified Rules of Evidence (Mock Trial Version).

I. CLOSING ARGUMENTS

Rule 49. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial. Attorneys may not cite to affidavits of witnesses not called at trial.

J. CRITIQUE

Rule 50. The Critique

The judging panel is allowed time for debriefing at their option and time permitting. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the winner of the round on the score sheets. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

II. MODIFIED RULES OF EVIDENCE
(Alaska Mock Trial Version)

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Rules of Evidence (Alaska Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Alaska and Federal Rules of Evidence and their (shared) numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics represents simplified or modified language from the Alaska and Federal Rules of Evidence. Departures from the actual Federal Rules of Evidence are for informational purposes only. These Rules of Evidence are to be interpreted as written.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The Mock Trial Rules of Competition and these Rules of Evidence (Alaska Mock Trial Version) govern the Alaska High School Mock Trial Championship.

Article I. General Provisions

Rule 101. Scope

These Rules of Evidence (Alaska Mock Trial Version) govern the trial proceedings of the National Mock Trial Championship.

Rule 102. Purpose and Construction

The Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

ARTICLE II. Judicial Notice

Rule 201. Judicial Notice of Fact

(a) Scope of Rule. This rule governs only judicial notice of facts. Judicial notice of a fact as used in this rule means a court's on-the-record declaration of the existence of a fact normally decided by the trier of fact, without requiring proof of that fact.

(b) General Rule. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within this state or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice as specified in subdivision (b), whether requested or not.

Rule 202. Judicial Notice of Law

(a) Scope of Rule. This rule governs only judicial notice of law.

(b) Without request by a party, the court shall take judicial notice of the common law, the Constitution of the United States and of this state, the public statutes of the United States and this state, the provisions of the Alaska Administrative Code, and all rules adopted by the Alaska Supreme Court.

ARTICLE III. Presumptions

Rule 301. Presumptions in General in Civil Actions and Proceedings

(a) *Effect*. In all civil actions and proceedings when not otherwise provided for by statute, by judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. The burden of going forward is satisfied by the introduction of evidence sufficient to permit reasonable minds to conclude that the presumed fact does not exist. If the party against whom a presumption operates fails to meet the burden of producing evidence, the presumed fact shall be deemed proved, and the court shall instruct the jury accordingly. When the burden of producing evidence to meet a presumption is satisfied, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word "presumption" may be made to the jury.

(b) *Prima Facie Evidence*. A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumption*. If two presumptions arise which conflict with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

ARTICLE IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided *in these Rules. Irrelevant evidence is not admissible.*

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, *if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.*

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence – Evidence of a person's character or a *character trait*, is not admissible to prove *action regarding* a particular occasion, except:

(1) Character of Accused – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of Victim – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) Character of witness – Evidence of the character of a witness as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

(a) Reputation or opinion – In all cases in which evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, *questions may be asked regarding* relevant specific instances of conduct.

(b) Specific instances of conduct – In cases in which character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose; such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

Except as provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of *nolo contendere*;

(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in presence of counsel.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias, or prejudice of a witness.

Article V. Privileges

Rule 501. Privileges Recognized Only as Provided

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

(1) refuse to be a witness; or

(2) refuse to disclose any matter; or

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 504. Physician and Psychotherapist-Patient Privilege

(a) Definitions. As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient so to be, while similarly engaged, (C) a person licensed as a marital or family therapist under the laws of a state or nation or reasonably believed by the patient so to be, while similarly engaged, or (D) a person licensed as a professional counselor under the laws of a state or nation, or reasonably believed by the patient so to be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation,

examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional conditions, including alcohol or drug addiction, between or among the patient, the patient's physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, by the patient's guardian, guardian ad litem or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless *the witness has personal knowledge of the matter*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

Rule 607. Who may Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions)

(a) General Rule – For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused had been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit – Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation – Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

(d) *Not applicable*.

(e) *Not applicable*.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court – The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination – *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any*

omissions from the witness statement that are otherwise material and admissible.

(c) Leading Questions – Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) Redirect/Recross – *After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.*

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the opposing party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

Rule 613. Prior Statement of Witnesses

Examining witness concerning prior statement – In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of prior inconsistent statement of witness – Extrinsic evidence of prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. *A witness shall not be permitted to testify as an expert until designated by the presiding judge as an expert. An expert witness shall only be considered an expert in the fields designated by the presiding judge, as requested by the party seeking expert designation.*

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

(a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or date, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement – A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant – A "declarant" is a person who makes a statement.

(c) Hearsay – "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay – A statement is not hearsay if:

(1) Prior statement by witness – The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by a party-opponent – The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by *these rules*.

Rule 803. Hearsay Exceptions – Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression – A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance – A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical conditions – A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purpose of medical diagnosis or treatment – Statements made for the purpose of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded Recollection – A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Business Records – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(18) Learned treatises – To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

(21) Reputation as to character – Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction – Evidence of a judgment *finding* a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

(23) Other exceptions – A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

Rule 804. Hearsay Exceptions–Declarant Unavailable.

(a) Definition of Unavailability. Unavailability as a witness includes situations in which the declarant

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) establishes a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to

criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History. (A) A statement concerning the declarant's own birth, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions that are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

ATTORNEYS: **DEMONSTRATED SPONTANEITY:**

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

DEMONSTRATED COMMAND OF THE FACTS AND ISSUES in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

WITNESSES: Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits and character descriptions**. PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

TEAMS: Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2007 ALASKA HIGH SCHOOL
MOCK TRIAL CHAMPIONSHIP COMPETITION
(Anchorage, February 16-17, 2007)

TEAM REGISTRATION FORM
(Please CLEARLY print name and contact information)

School (Organization) Name: _____

Team Mailing Address: _____

_____

Teacher or other School Advisor: _____ T-Shirt Size: _____

Advisor Contact Phone: _____ Message Phone: _____

Advisor FAX Number: _____ **E-Mail: _____**

Attorney Coach: _____ T-Shirt Size: _____

Coach Contact Phone: _____ Message Phone: _____

Coach FAX Number: _____ **E-Mail: _____**

Student Team Members (Please print names in block lettering)

	(T-Shirt Size)		(T-Shirt Size)
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	_____	( )
_____	( )	THIS IS TEAM NUMBER _____	

Each team must have a minimum of six student members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. A different registration form must be submitted for each team. Any school wising to register multiple teams MUST indicate which team is the "First Team," "Second Team," etc. **All teams must be registered *no later than February 1, 2007.***

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF $150 PER TEAM TO:

ANCHORAGE BAR ASSOCIATION
YOUNG LAWYERS SECTION
P.O. BOX 100844
ANCHORAGE, ALASKA 99510-0844

2007 ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP

2007 SCHOLARSHIPS

In an effort to provide financial aid to teams participating in the 2007 Alaska High School Mock Trial Championship, the Mock Trial Committee of the Young Lawyers Section of the Anchorage Bar Association has set aside $1500 for three **$500** scholarships. Additional $500 scholarships may be awarded as the Committee budget allows.

All teams from outside the Municipality of Anchorage that are participating in the 2007 Anchorage Bar Association Mock Trial Competition are eligible to apply for a scholarship. Schools bringing multiple teams are only allowed to apply for one scholarship. The total number of students and teams from a particular school, however, is a factor that will be considered in evaluating that school's application for a scholarship.

The scholarships will be awarded based on financial need, taking into account the necessary mode of travel for a team and associated travel expenses, the distance a team must travel to participate in the competition (if traveling via the road system), past participation in the mock trial competition, and the number of teams and students participating. The scholarships are intended to defray some of the costs incurred by teams participating in the competition and to encourage new teams to participate in the competition. The financial cost to individual teams, however, is not the only factor that will be considered. All applications that are submitted will be considered. The decisions of the Mock Trial Committee are final.

If you are interested in applying for a $500 scholarship, complete the attached application and submit it no later than **November 30, 2006** to:

Christopher Slottee
ATTN: 2007 Mock Trial Championship
Atkinson, Conway & Gagnon
420 L Street, Suite 500
Anchorage, Alaska 99501

Recipients of the three $500 scholarships will be announced on **December 15, 2006**. If a team receives a scholarship and is unable to attend the competition, they will be required to refund the money as soon as they are aware they will not be attending the competition.

If you have any questions about this scholarship, please contact **Christopher Slottee** at 907-276-1700 or cjs@acglaw.com.

APPLICATION FOR FINANCIAL AID
2007 ALASKA HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP

School: _____

Coach: _____

Address: _____

_____

_____

Phone: _____

E-mail: _____

Anticipated Team Members:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Total Number of Anticipated Team Members: _____ Total Number of Teams: ____

Please list the prior years in which your school participated in the Mock Trial Championship in Anchorage: _____

Please indicate how you intend to travel to the Mock Trial Competition:

( ) Plane ( ) Bus ( ) Personal vehicles/Van

Approximately how many miles must your team travel to attend the Mock Trial Championship in Anchorage? _____

Do you need to arrange for lodging in Anchorage for the Mock Trial Championship?

( ) Yes ( ) No

Please estimate the costs you will incur in bringing a team to participate in the Mock Trial Championship (you may attach a narrative description if helpful):

Food $_____ Lodging $_____ Transportation $_____