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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 LAW PROJECT FOR PSYCHIATRIC)
5 RIGHTS, an Alaskan non-profit corporation,)
6 Plaintiff,)

7 vs.)

8 STATE OF ALASKA, SARAH PALIN,)
9 Governor of the State of Alaska,)
10 ALASKA DEPARTMENT OF HEALTH AND)
11 SOCIAL SERVICES, WILLIAM HOGAN,)
12 Commissioner, Department of Health and)
13 Social Services, TAMMY SANDOVAL,)
14 Director of the Office of Children's)
15 Services, STEVE McCOMB, Director of the)
16 Division of Juvenile Justice, MELISSA)
17 WITZLER STONE, Director of the Division of)
18 Behavioral Health, RON ADLER,)
19 Director/CEO of the Alaska Psychiatric)
20 Institute, WILLIAM STREUER, Deputy)
21 Commissioner and Director of the Division of)
22 Health Care Services,)

23 Defendants)

Case No. 3AN-08-10115 CI

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24 **INITIAL DISCLOSURES**

25 The State of Alaska and the remaining above-named defendants submit
26 the following Initial Disclosures pursuant to Alaska Rule of Civil Procedure 26(1):

A. THE FACTUAL BASIS FOR EACH OF ITS CLAIMS OR DEFENSES

AS 47.10.011 permits a court to determine that a child is a child-in-need-of-aid ("CINA"). Under AS 47.10.080, the Office of Children's Services ("OCS")

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2 takes into Department custody children who have been adjudicated CINA when
3 ordered to do so by a court. Under AS 47.12.120, the Division of Juvenile Justice
4 (“DJJ”) takes into Department custody children who have been adjudicated delinquent.
5 In either case, any psychotropic medication administered to children in Department
6 custody is done on an individual, case-by-case basis either through a court order or
7 upon a release executed by the child’s parent or guardian.
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9 Specifically, when a child is committed to Department custody under
10 AS 47.10.080, the Department then has legal custody of the child and responsibility
11 for placement. But under both AS 47.10.084 (OCS) and AS 47.12.150 (DJJ),
12 parents or guardians of children in Department custody retain certain residual rights to
13 decision-making, including major medical treatment. Under AS 47.10.084, except
14 in cases of emergency or cases arising under AS 25.20.025, “major medical treatment”
15 explicitly includes the administration of medication used to treat a mental health
16 disorder. Regarding these exceptions—emergencies and cases arising under
17 AS 25.20.025—even in an emergency, neither OCS nor DJJ approves the
18 administration of psychotropic medication without a court order or the
19 permission of the child’s parent or guardian. This includes medication administered in
20 secure residential psychiatric treatment centers under AS 47.10.087 (OCS) or
21 AS 47.12.255 (DJJ). Under AS 25.20.025, children themselves may consent
22 to medical treatment under certain circumstances. Where parental rights have been
23 terminated under AS 47.10.088 or relinquished under AS 47.10.089 and the
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2 Department retains legal custody, an OCS social worker may approve administration of
3 psychotropic medication following consultation with the supervisor, the OCS regional
4 psychiatric nurse, and the child's guardian-ad-litem. The consultation and the resulting
5 decision are documented in the case file. The OCS policy regarding the administration
6 of psychotropic medication to children in Department custody is available online at
7 <http://hss.state.ak.us/ocs/Publications/CPS-MANUAL.doc>. p. 557. DJJ policy, though
8 not formalized in a published manual, is to secure parental consent or a court order
9 before administering psychotropic medications to children in custody at any and all DJJ
10 facilities.
11

12 Medicaid is a joint federal and state program run by the individual states
13 that provides medical services to certain eligible individuals. The program is elective.
14 If a state opts to participate, the state must operate the program in compliance with
15 federal statutory and regulatory requirements in order to receive federal financial
16 contributions. Alaska is a Medicaid participant. In the past, the Department has
17 contracted with a fiscal agent, First Health, which ran the Department's Medicaid
18 Management Information System and provided support services to recipients and
19 providers. As of November 1, 2008, First Health will be replaced by Affiliated
20 Computer Services to act in this capacity.
21

22 Medicaid also pays for prescription drugs, and First Health will continue
23 to assist the Department with the pharmacy program. In the case of Medicaid-covered
24 pharmaceuticals of any kind prescribed to a child in Department custody, the process
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2 typically works as follows. The recipient or the recipient's guardian goes to the doctor,
3 the doctor determines what drugs the recipient needs, the recipient takes the
4 prescription to a pharmacy, and the pharmacy records relevant insurance and
5 demographic information from the recipient, inputs the prescription into the computer,
6 pulls up relevant drug information, and transmits this information to a claims processor
7 in Richmond, Virginia.
8

9 At this point, the prescription undergoes a clinical and eligibility review
10 to confirm the recipient's Medicaid eligibility and determine such facts as whether the
11 recipient has previously received the drug, the correct dosage for the recipient, and
12 whether the recipient is pregnant. As a parallel process in filling Medicaid
13 prescriptions, the Department checks to see whether the prescribed drug is on the
14 "preferred drug list." If the prescription passes these "edits," the computer sends a
15 message back to the pharmacy that the prescription claim is payable, at which time the
16 pharmacy computer prints out a label for the prescription bottle and issues a receipt that
17 goes to the recipient or guardian showing that the drug is payable and any required
18 co-pay. Then the patient takes the medication home for use.
19

20 The preferred drug list is a list of medications that contains preferred and
21 non-preferred medications. The preferred medication is the medication that Medicaid
22 believes is the first choice for the prescriber to use. The preferred drug is determined
23 by the Department's Pharmacy and Therapeutics ("P&T") Committee if the particular
24 drug has a clinical advantage over other drugs in the class. The P&T Committee
25

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2 recommends that particular drugs be preferred. The discussions of the P&T Committee
3 are memorialized in minutes and are available to the public on the Department website
4 at: <http://www.hss.state.ak.us/dhcs/PDL/>, near the bottom of the page.

5
6 First Health then determines whether there are any supplemental rebates
7 for the drug and determines the cost effectiveness of the drug, and if there are several
8 cost-effective drugs, the Department determines whether one drug is preferred over the
9 other while keeping in mind the recommendations of the P&T Committee. Drug
10 rebates are required by federal regulations for all drugs covered under the Medicaid
11 program, and these rebates are paid by the manufacturers of the pharmaceuticals. The
12 Department reimburses pharmacies for these drugs and then invoices the manufacturer
13 for each of the drugs reimbursed during the fiscal quarter. The supplemental rebates
14 discussed above are paid in addition to the federal rebates if listed on the preferred drug
15 list as preferred, and if the manufacturer agrees to pay the supplemental rebate.
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18 By way of background, the P&T Committee determines whether a given
19 class of drugs is safe and effective. On November 14, 2008, the committee will be
20 reviewing for the first time 13 different classes, including the Atypical Antipsychotic
21 drugs. In such reviews, generally, the Department works with First Health to determine
22 what drugs to review and in the reviews, relies upon information provided by clinical
23 pharmacists and compiled by Provider Synergies, a sister organization of First Health.

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25 In terms of provider oversight, the Department also has adopted the
26 Behavioral Pharmacy Management System Program ("BPMS"), which reviews

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2 Medicaid pharmacy claims for drugs used for behavior health and pain management
3 conditions. The purpose of BPMS is to improve the quality of mental health
4 medication prescribing practices based on best practices guidelines, and improve
5 patient adherence to medication plans. BPMS profiles prescribers of behavioral drugs
6 for deviations from best practice guidelines and engages outlier prescribers through
7 multiple channels with targeted educational messages intended to improve the
8 appropriate use of behavior drugs based on best practices.
9

10 BPMS tracks patient refilling of prescription and reports medication
11 discontinuation, and identifies patients receiving the same medication from multiple
12 prescribers simultaneously and reports all prescribers involved. BPMS also tracks
13 trend changes in the use and cost of all behavioral drugs, using a steering and
14 stakeholder committee to air ideas and progress reports. Through BPMS, the
15 Department analyzes Medicaid pharmacy claims on a monthly basis to identify
16 opportunities to improve prescribing practices based on patterns of prescribing,
17 individual patient compliance, and patient utilization. The Department tries to use
18 BPMS to stage targeted educational interventions with outlier prescribing providers
19 through clinical practice statements outlining best practices, peer-to-peer consultations
20 using prominent in-state physicians, and holding general education sessions for
21 prescribing providers.
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**B. NAME, ADDRESS AND TELEPHONE NUMBER OF INDIVIDUALS
LIKELY TO HAVE DISCOVERABLE INFORMATION RELEVANT TO
THE DISPUTED FACTS ALLEGED IN THE PLEADINGS**

1. Tammy Sandoval
c/o Alaska Attorney General's Office
P.O. Box 110300
Juneau, AK 99811-0300
(907) 465-3600
2. William Streur
c/o Alaska Attorney General's Office
P.O. Box 110300
Juneau, AK 99811-0300
(907) 465-3600
3. William Hogan
c/o Alaska Attorney General's Office
P.O. Box 110300
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(907) 465-3600
4. Melissa Witzler Stone
c/o Alaska Attorney General's Office
P.O. Box 110300
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(907) 465-3600
5. David Campana
c/o Alaska Attorney General's Office
P.O. Box 110300
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6. Stephen McComb
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7. OCS Staff Social Workers, to be Identified
c/o Alaska Attorney General's Office
P.O. Box 110300
Juneau, AK 99811-0300
(907) 465-3600

8. Employees of the Division of Juvenile Justice, to be Identified
c/o Alaska Attorney General's Office
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Juneau, AK 99811-0300
(907) 465-3600

9. Ron Adler
c/o Alaska Attorney General's Office
P.O. Box 110300
Juneau, AK 99811-0300
(907) 465-3600

The attorney-client privilege applies to each of the above individuals.
Each of these individuals may have knowledge of Department and judicial procedures regarding the administration of psychotropic drugs to children in Department custody, and payment for those drugs. Each will testify to his or her respective job duties and knowledge regarding these subjects.

C. NAME, ADDRESS AND TELEPHONE NUMBER OF INDIVIDUALS WHO HAVE MADE A RECORDED STATEMENT

Upon information and belief, there are no recorded statements in this matter beyond recordings of CINA proceedings maintained by the Alaska Court System.

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2 **D. A DESCRIPTION BY CATEGORY AND LOCATION OF ALL**
3 **DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS**
4 **THAT ARE RELEVANT TO THE DISPUTED FACTS AS ALLEGED IN**
5 **THE PLEADINGS**

6 The following documents are in the possession of the State of Alaska:

7 1. Each child who is in Department custody has a file with OCS and/or DJJ
8 that may include relevant information regarding that child's medical condition.

9 2. The Alaska court system would also have a court file on each child who
10 has been adjudicated a CINA.

11 3. Medicaid eligibility records for each child in Department custody;
12 pharmacy and therapeutic documents in the Department's possession regarding drugs
13 paid for by Medicaid; and Behavioral Pharmacy Management data, provider letters,
14 and reports related to psychotropic drugs.

15 4. OCS Policy and Procedure Manual, available online at
16 <http://hss.state.ak.us/ocs/Publications/CPS-MANUAL.doc> (see p. 557 for applicable
17 policy).

18 **E. PHOTOGRAPHS, DIAGRAMS, AND VIDEOTAPES OF PERSONS**
19 **OBJECTS, SCENES AND OCCURRENCES THAT ARE RELEVANT TO**
20 **THE DISPUTED FACTS AS ALLEGED IN THE PLEADINGS**

21 Upon information and belief, no photographs, diagrams or videotapes
22 exist regarding this action, beyond those that may be in the possession of the Alaska
23 Court System with respect to individual CINA proceedings.

24 **F. INSURANCE AGREEMENTS, IF APPLICABLE**

25 None.

26 INITIAL DISCLOSURES

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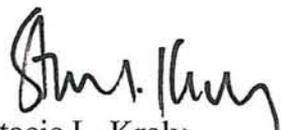
G. CATEGORIES OF DAMAGES CLAIMED BY THE DISCLOSING PARTY

The State of Alaska is not seeking damages.

DATED this 24th day of November, 2008, at Juneau, Alaska.

TALIS J. COLBERG
ATTORNEY GENERAL

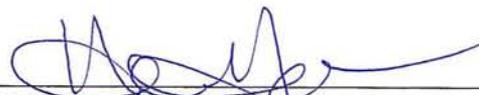
By: 
Elizabeth M. Bakalar
Assistant Attorney General
Alaska Bar No. 0606036

By: 
Stacie L. Kraly
Chief Assistant Attorney General
Alaska Bar No. 9406040

Certificate of Service

I hereby certify that on this day of November 24, 2008,
a true and correct copy of the foregoing INITIAL
DISCLOSURES were served via U.S. mail, first class,
postage prepaid, to the following attorney of record:

James B. Gottstein, Esq.
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406 G Street, Suite 206
Anchorage, AK 99501


H. Raven Haffner, Law Office Assistant II