2010 Wisconsin High School Mock Trial Case Materials

Pat Donovan v. Lindsey Peterson, M.D. & Clearwater Medical Center, Inc.

WITNESSES

Prosecution Witnesses	Defense Witnesses
Pat Donovan, Plaintiff	Lindsey Peterson , M.D. , Defendant
Frances McDonald, M.D.	Robin Johnson, M.D.
Sam Winston, M.D.	Chris Reynolds, M.D.

STIPULATIONS FOR TRIAL

1. Jaime Donovan was born on June 2, 1984. She was shot and killed by Alex Winters on May 23, 2007.
2. Alex Winters was born on October 18, 1982. He died of a self-inflicted gunshot wound on May 23, 2007.
3. The amount of damages is not at issue.
4. The authenticity of exhibits is not at issue.

DISCLAIMER

The 2010 mock trial case is a hypothetical case. All names used in the mock trial case are fictitious and were created to be gender neutral. Any similarity to an actual event or to the name of an actual person is strictly coincidental.

STATE OF WISCONSIN CIRCUIT COURT CLEARWATER COUNTY

PAT DONOVAN
2525 N. 55th Street
Clearwater, WI 53100

Plaintiff,

Case No. ________________
Code: 30103 – Medical Malpractice (Other)

v.

LINDSEY PETERSON, M.D. and
CLEARWATER MEDICAL CENTER, INC.
1000 Center Street
Clearwater, WI 53100

Defendants.

COMPLAINT

NOW COMES the Plaintiff, Pat Donovan, by her/his attorneys, Learned & Wise S.C., as and for their Complaint against the above-named Defendants, allege and state as follows:

PARTIES

1. Pat Donovan is an adult resident of the State of Wisconsin who resides at 2525 N. 55th Street, Clearwater, WI.

2. Upon information and belief, Lindsey Peterson (Defendant Peterson) is a physician licensed to practice in the State of Wisconsin and at all times relevant to this complaint was employed by Clearwater Medical Center, Inc. as a staff psychiatrist.

3. Upon information and belief, Clearwater Medical Center, Inc. (Defendant CMC), is a Wisconsin nonstock corporation and a teaching hospital having its principal place of business at 1000 Center Street, Clearwater, WI.

BACKGROUND FACTS

4. On May 23, 2007, the Plaintiff's daughter, Jaime Donovan, was murdered by her long-time boyfriend, Alex Winters. Ms. Donovan had split up with Mr. Winters the previous week, on May 15, 2007, after an argument. Ms. Donovan had not spoken to Mr. Winters between the argument on May 15, 2007 and May 23, 2007, when she called Mr. Winters about coming to his apartment to retrieve some personal effects.

5. Sometime after Ms. Donovan arrived at Mr. Winters' apartment on May 23, 2007, Mr. Winters shot and killed Ms. Donovan. Mr. Winters then turned the gun on himself and took his own life.

6. Unbeknownst to Ms. Donovan, Mr. Winters had been admitted to inpatient care at the Defendant CMC's facility on May 15, 2007, shortly after his break-up with Ms. Donovan, when he checked-in voluntarily, suffering from depression and suicidal ideations. Mr. Winters reported at the time that he felt he might harm himself. He also stated that his girlfriend, Jaime Donovan with whom he had just broken up, had not been as supportive of him recently and he wanted to hurt her, as she had hurt him.

7. Just one month before, in April 2007, Mr. Winters had been admitted following a suicide attempt. Winters had also previously attempted suicide in 1998, 2003, and 2005. Each of the suicide attempts from 2003 forward, followed on some manner of argument between Winters and Donovan.

8. On May 16, 2007, Mr. Winters was examined and treated by Defendant Peterson, a staff psychiatrist who was on call the evening that Mr. Winters was admitted. Upon information and

belief, the Defendant CMC's rules and regulations required that Defendant Peterson follow Mr. Winters' case through discharge to ensure continuity of care.

9. Winters was discharged from Defendant CMC on May 18, 2007. Winters' discharge summary indicated that he had recovered from this instance of severe depression and that his suicidal ideations had subsided. The discharge summary indicated that Winters had been assessed during his stay for homicidal risk factors, and that none were present, but did not indicate any further details in this regard. Winters was prescribed an increased dosage of Prozac, instructed to follow-up with individual psychotherapy, and encouraged to attend community support.

10. The discharge notes from Mr. Winters' prior hospitalization just weeks before, following an earlier suicide attempt, indicate that Mr. Winters was prescribed a dosage of Prozac and referred to outpatient psychotherapy. While the admission notes from May 16, 2007 indicated that Mr. Winters was taking the Prozac as prescribed, they further indicated that he was not then in therapy, contrary to the prior course of care. Nevertheless, the plan of care prescribed for Mr. Winters upon his discharge on May 18, 2007 was effectively the same as that prescribed to him just weeks before.

11. Neither Defendant Peterson nor any member of Defendant CMS's staff ever contacted Ms. Donovan or law enforcement regarding the statements Mr. Winters had made indicating that he wanted to hurt Ms. Donovan.

FIRST CAUSE OF ACTION: MEDICAL MALPRACTICE

(FAILURE TO WARN)

12. The Plaintiff hereby incorporates and realleges the allegations set forth in Paragraphs 1-11, above.

13. After learning that Mr. Winters had expressed a desire to hurt Ms. Donovan, Defendants had a duty to take reasonable steps to protect Ms. Donovan from this threat of harm. At

a minimum, this would have required Defendants to notify Ms. Donovan of the fact that such a threat existed, so that Ms. Donovan could have taken steps to protect herself.

14. As a result of the Defendants' failure to warn Ms. Donovan of the threat posed by Mr. Winters, Ms. Donovan was unaware of the risk that Mr. Winters presented and visited his apartment unaccompanied – at which time she was shot and killed by Mr. Winters.

15. Ms. Donovan's murder resulted from the Defendant's failure to warn.

SECOND CAUSE OF ACTION: MEDICAL MALPRACTICE

(NEGLIGENT TREATMENT/DIAGNOSIS)

16. The Plaintiff hereby incorporates and realleges the allegations set forth in Paragraphs 1-15, above.

17. In treating Mr. Winters, Defendants were required to exercise that degree of care, skill and judgment which a reasonable psychiatrist would exercise in the same or similar circumstances, having due regard for the state of medical science at the time of treatment.

18. Mr. Winters was admitted for suicidal thoughts just weeks after a previous suicide attempt. While Mr. Winters had been on prescribed anti-depressants, Mr. Winters acknowledged that he was not currently in any form of therapy, despite the fact that the discharge orders from his previous hospitalization clearly indicated that therapy was advised.

19. Notwithstanding the fact that Mr. Winters was re-admitted for suicidal thoughts just weeks after a previous hospitalization for a suicide attempt, and also notwithstanding the fact that Mr. Winters was not following the prescribed course of care from before, Defendant Peterson discharged Mr. Winters just 2 days later under essentially the same plan of care that had already been neglected.

20. Defendant Peterson's discharge of Mr. Winters under essentially the same plan of care, as opposed to referring Mr. Winters for intensive in-patient treatment and therapy, was a breach of the Defendants' duty of care.

21. As a result of the Defendants' negligence in releasing Mr. Winters, Mr. Winters was in a position to harm Ms. Donovan (as well as himself).

WHEREFORE, Plaintiff Pat Donovan demands judgment against Defendants as follows:

1. For compensatory damages in an amount to be determined; and

2. For such other and further relief as the Court may deem just and equitable.

JURY DEMAND

PLEASE TAKE NOTICE that Plaintiff Pat Donovan, pursuant to section 805.01(2), Wis. Stat., demand a trial by a jury of twelve (12) persons on all issues so triable in the above-entitled action.

Dated this 20th day of July, 2009.

LEARNED & WISE, S.C.

By: Albert Attorney
State Bar No: 56789

P.O. Address:
Box 1234
Clearwater, WI 53100

1023 MEDICAL NEGLIGENCE

In (treating) (diagnosing) (plaintiff)'s (injuries) (condition), (doctor) was required to use the degree of care, skill, and judgment which reasonable (doctors who are in general practice) (specialists who practice the specialty which (doctor) practices) would exercise in the same or similar circumstances, having due regard for the state of medical science at the time (plaintiff) was (treated) (diagnosed). A doctor who fails to conform to this standard is negligent. The burden is on (plaintiff) to prove that (doctor) was negligent.

A doctor is not negligent, however, for failing to use the highest degree of care, skill and judgment or solely because a bad result may have followed (his) (her) (care and treatment) (surgical procedure) (diagnosis). The standard you must apply in determining if (doctor) was negligent is whether (doctor) failed to use the degree of care, skill, and judgment which reasonable (general practitioners) (specialists) would exercise given the state of medical knowledge at the time of the (treatment) (diagnosis) in issue.

You have heard testimony during this trial from doctors who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment which a reasonable doctor would exercise is not a matter within the common knowledge of laypersons. This standard is within the special knowledge of experts in the field of medicine and can only be established by the testimony of experts. You, therefore, may not speculate or guess what the standard of care, skill and judgment is in deciding this case but rather must attempt to determine it from the expert testimony that you heard during this trial.

The cause question asks whether there was a causal connection between negligence on the part of (doctor) and (plaintiff)'s (injury) (condition). A person's negligence is a cause of a plaintiff's (injury) (condition) if the negligence was a substantial factor in producing the present condition of the plaintiff's health. This question does not ask about "the cause" but rather "a cause." The reason for this is that there can be more than one cause of (all injury) (a condition). The negligence of one (or more) person(s) can cause (an injury) (a condition) or (an injury) (a condition) can be the result of the natural progression of (the injury) (the condition). In addition, the (injury) (condition) can be caused jointly by a person's negligence and also the natural progression of the (injury) (condition).

If you conclude from the evidence that the present condition of (plaintiff)'s health was caused jointly by (doctor)'s negligence and also the natural progression of (plaintiff)'s (injury) (condition), then you should find that the (doctor)'s negligence was a cause of the (plaintiff)'s present condition of health.

The evidence indicates without dispute that when (plaintiff) retained the services of (doctor) and placed (himself) (herself) under (doctor)'s care, (plaintiff) was suffering from some (disability resulting from injuries sustained in an accident) (illness or disease). (Plaintiff)'s then physical condition cannot be regarded by you in any way as having been caused or contributed to by any negligence on the part of (doctor). This question asks you to determine whether the condition of (plaintiff)'s health, as it was when (plaintiff) placed (himself) (herself) under the doctor's care, has been aggravated or further impaired as a natural result of the negligence of (doctor)'s (treatment) (diagnosis).

Comment

In 1988, the court in Schuster v. Altenberg, supra, reaffirmed the concept that liability will not be imposed under this negligence standard for mere errors in judgment. It quoted from its earlier holdings:

> The law governing this case is well settled. A doctor is not an insurer or guarantor of the correctness of his diagnosis; the requirement is that he use proper care and skill. Knief v. Sargent, 40Wis.2d4, 8, 161 N.W.2d 232 (1968). The question is not whether the physician made a mistake in diagnosis, but rather whether he failed to conform to the accepted standard of care. Francois v. Mokrohisky, 67 Wis.2d 196, 201, 226 N.W.2d 470 (1975). Christianson v. Downs, 90 Wis.2d 332, 338, 279 N.W.2d 918 (1979).

The second paragraph also deals with the extent and quality of the doctor's treatment required to satisfy his or her duty. A doctor is not required to exercise the highest degree of care, skill, and judgment. Hrubes v. Faber, 163 Wis. 89,157 N.W. 519 (1916); DeBruine v. Voskuil, supra; Jaeger v. Stratton, supra; Trogun v. Fruchtman, supra; Christianson v. Downs, supra; Carson v. Beloit, supra; Francois v. Mokrohisky, supra; Hoven v. Kelble, supra.

Expert Testimony. Expert testimony is needed to support a finding of negligence on the part of the doctor. Kuehnemann v. Boyd, 193 Wis. 588, 214 N.W. 326 (1927); Holton v. Burton, supra; Lindloff v. Ross, 208 Wis. 482, 243 N.W. 403 (1932); Ahola v. Sincock, 6 Wis.2d 332,94 N.W.2d 566 (1959); Froh v. Milwaukee Medical Clinic, S.C., 85 Wis.2d 308, 270 N.W.2d 83 (Ct. App. 1978); McManus v. Donlin, 23 Wis.2d 289, 127 N.W.2d 22 (1964); Treptau v. Behrens Spa. Inc., supra.

That degree of care and skill (of a physician) can only be proved by the testimony of experts. Without such testimony, the jury has no standard which enables it to determine whether the defendant failed to exercise the degree of care and skill required of him or her. Kuehnemann v. Boyd, supra; Holton v. Burton, supra; Lindloff v. Ross, supra.

Psychiatric Malpractice Claims. The Wisconsin Supreme Court recognized in Schuster v. Altenberg, supra, that a psychiatrist may be negligent by:

1. negligent diagnosing and treating, including failing to warn of side effects of medication,
2. failing to warn a patient's family of the patient's condition and its dangerous implications,
3. failing to seek the commitment of the patient.

Warning a patient of risks associated with a condition and the patient as to appropriate conduct constitutes treatment as to which a physician must use ordinary care. Schuster v. Altenberg, supra.

A psychiatrist may be held liable to third parties for failing to warn of the side effects of medication if the side effects were such that a patient should have been cautioned against driving, because it was foreseeable that an accident could result causing harm to the patient or third parties.

A psychotherapist has the duty to warn third parties or to institute proceeding for the detention or commitment of a dangerous individual for the protection of the patient or the public.

AFFIDAVIT OF PAT DONOVAN

1. My name is Pat Donovan. I am the plaintiff in this matter. I am the mother/father of Jaime Donavan.

2. Jaime was born on June 2, 1984 in Clearwater, Wisconsin. She was murdered on May 23, 2007. Her boyfriend, Alex Winters, killed her. Jaime had gone to Alex's apartment to get some of her things, and Alex killed her there. It was like she was ambushed. She was 22 years old when she died. She was murdered by Alex, although if Dr. Peterson and the staff at Clearwater Medical Center had done their jobs, she'd be alive, so it's really them whom I blame for her death.

3. I was on the phone with Jaime just before she died. We were close – we talked or texted a lot on our cells. She called me to tell me she was going over to Alex's apartment – I can't remember now what she said she was going over there for. I didn't want her to go. I knew Alex well enough to be worried about what he'd do. He was always blaming others for his problems. He wouldn't take responsibility for his illness – he once told me that he didn't see the need to have therapy and I'd even seen him throw out his pills! She ended the call when she got to his apartment. I needed to know she was okay so I drove over there. I was too late. I will never, ever, forgive myself for being too late. What I saw was awful. She was dead. He was dead. There was blood everywhere.

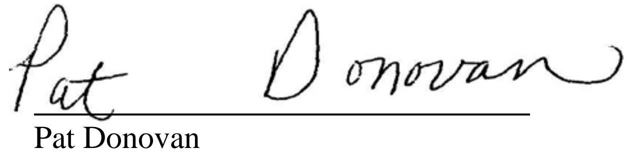
4. Jaime was a wonderful daughter. I loved her so much and miss her terribly. You cannot imagine the pain and trauma that a death of a child causes a parent, especially if the cause of death is murder and especially if the murder could have been prevented if people had only done their jobs. My life and the life of my spouse and other children have been irrevocably damaged; our once happy family struggles every day just to get through the day. There is no joy left in our lives.

5. Jaime graduated from Clearwater High School. She was an honor student and the leading scorer on the girl's soccer team. She took some time off before going to college so she could work to make money for school. She was a freshman at Clearwater State University. Ironically, she wanted to go to medical school!

6. Jaime and Alex had been dating on and off for several years prior to Jaime's death. What she saw in Alex I don't know – Jaime tried to break up several times but Jaime told me that Alex threatened her and I know he attempted suicide several times! What could Jaime do? They say the most dangerous time for a victim of domestic violence is when she tries to leave the relationship. No wonder victims don't leave! She never would have gone to his apartment if she'd known he'd made threats toward her! She was a careful girl; she took care of others and she assumed the doctors treating him would have warned her if he were dangerous. I wasn't able to stop her from going over there but she wouldn't have gone if the doctors had warned her – I know she wouldn't have.

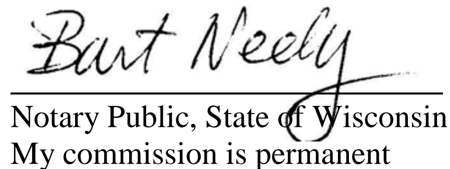
7. Doctors are supposed to understand and recognize threatening behavior in their patients. Dr. Peterson and Clearwater Medical Center should have recognized the warning signs of domestic violence. Dr. Peterson just didn't do his/her job! What kind of doctor is s/he anyway? If s/he asked the right questions or had done the right follow-up or called the police or kept Alex in the hospital or warned Jaime/Jaime, my child would still be alive! Alex said he was going to hurt Jaime and yet Dr. Peterson and the staff at Clearwater Medical Center did nothing, nothing! If they had warned her, she wouldn't have gone to Alex's apartment and would still be alive. She could have stayed away from Alex, been on the look-out for Alex, gotten a restraining order, left town, called the police to protect her – anything to save her life!

8. I'm told the doctors couldn't alert Jaime because that would have violated Alex's right to have his medical records kept confidential. Why is protecting Alex's confidentiality more important than protecting the life of my child? My daughter paid a high price to protect Alex's rights. And protecting Alex's rights didn't even save Alex!



Pat Donovan

Signed and sworn to before me this
20th day of July, 2009



Notary Public, State of Wisconsin
My commission is permanent

AFFIDAVIT OF FRANCES MCDONALD, M.D.

1. My name is Frances McDonald. I am currently a medical doctor, specializing in adolescent psychiatry and practicing in New York, New York. My curriculum vitae is attached to this affidavit.

2. I was retained by the Plaintiff's counsel to testify as an expert in mental health in this case.

3. I attended Harvard Medical School and in 2004, beat Dr. Robin Johnson in receiving the prestigious Tutaj Prize awarded annually to a Harvard Medical School student for excellence in clinical research for my work in detecting adolescent suicidal tendencies.

4. I have reviewed the medical history of Alex Winters and the testimony provided by Dr. Peterson, Dr. Reynolds, Dr. Winston and Dr. Johnson for this case.

5. Based on Alex Winters' medical history and my medical knowledge and expertise in psychiatry, I believe that Alex's suicidal ideations had become more lethal, his hospitalizations more frequent and that this was a result of a deterioration in Alex's mental condition.

6. Specifically, the medical record from May 16, 2007 notes that Alex had always talked about hurting himself. In my professional opinion, such expressions reflect suicidal behavior.

7. In addition, the medical record notes from May 16, 2007 indicate that Alex referenced hurting Ms. Donavan. In my medical opinion, when coupled with Alex's expressed desire to hurt himself, such a statement could very likely indicate a desire to physically harm Donovan.

8. There is no reference in the medical record to Alex defining "hurt" as an emotional hurt only.

9. The notes are totally void of any documentation of a subsequent conversation to define "hurt."

10. Even if a student or resident took the notes and wrote them into the chart, it is the responsibility of the attending, Dr. Peterson in this case, to assure that the notes are accurate and the attending should cosign the note.

11. If Dr. Peterson or Dr. Reynolds had asked Alex to define what he meant by "hurting Donovan," the results of that conversation should have been included in Alex's medical record.

12. However, from my medical record review, I found no other expressed desire by Alex to hurt Donovan.

13. In my review of the testimony provided by Dr. Peterson and Dr. Reynolds regarding the medical record notes from May 16, 2007, I conclude that their recollection of their notes is an index of suspicion when they believe it was necessary to go back and qualify the meaning of hurting in an individual who has always used the word to imply physical harm. Dr. Peterson and Dr. Reynolds claim they tried asking Alex several times about what he meant by "hurt," but they failed to document these conversations in Alex's medical record. And months later, Dr. Peterson

and Dr. Reynolds recall having done that. It is possible that this failure to document is either the result of Dr. Peterson and Dr. Reynolds lying that they followed up with Alex about his definition of "hurt," or that they were just flagrantly aloof when they wrote the medical record. Regardless of the reason, the essential information is not documented in real time for anyone to know what transpired.

14. Because of this failure to document as well as a failure to take seriously Alex's expressed desire to hurt Donovan, it is my professional opinion as a physician to a reasonable degree of medical certainty that Dr. Peterson and Dr. Reynolds did not meet the standard of care.

15. Upon hearing a patient express a desire to hurt another, a treating physician has a duty to create a support system for that patient upon discharge from an institution. For example, the treating physician would ensure that personnel from the hospital would check with the patient to ensure that the patient followed the conditions under which the patient was discharged.

16. Nothing in the medical records or testimony by Dr. Peterson or Dr. Reynolds indicates that Alex had a treating physician or that such a support system was in place for him upon his discharge from Clearwater Medical Center. Both doctors failed to take any steps to be sure such a support system was in place prior to releasing Alex from inpatient care, even though they knew Alex had not followed a similar prescribed course of care before and that he had been readmitted for suicidal thoughts just weeks after that course of care originally had been prescribed. Based upon these failures, it is my professional opinion as a physician to a reasonable degree of medical certainty that Dr. Peterson and Dr. Reynolds did not meet the standard of care.

17. Moreover, it is my professional opinion that Dr. Peterson and Dr. Reynolds failed in their duty to warn Ms. Donovan of Alex's expressed desire to hurt her and that had she been forewarned of Alex's threat, she would have had an opportunity to avoid contact with Alex and may have lived.

18. I recognize the right to a patient's privacy and a patient's right to prohibit disclosure of sensitive information, but I also recognize that a patient's consent to disclose health information is not necessary when there is an imminent risk of harm.

19. I believe that there was an imminent risk of harm and that Dr. Peterson and Dr. Reynolds should have disclosed the necessary information about Alex to Ms. Donovan.

Frances McDonald, M.D.

Signed and sworn to before me this
30th day of July, 2009

Notary Public, State of Wisconsin
My commission is permanent

CURRICULUM VITAE

Frances McDonald, M.D

PROFESSIONAL ACTIVITIES

2004-Present: Psychiatrist in private practice, specializing in Adolescent Psychiatry, New York City, New York

EDUCATION

1999-2004: Resident, Harvard Medical School, Psychiatric Residency Training Program

1995-1999: Harvard Medical School, Cambridge, Massachusetts
MD with honors
Winner, Tutaj Prize for excellence in clinical research; Research thesis: "Why did my child do this?—Detecting adolescent suicidal tendencies."

UNDERGRADUATE

1991-1995: University of Wisconsin, Madison
BA

LICENSURE AND CERTIFICATION

MEDICAL

Medical License, State of New York
National Board of Medical Examiners, certified 1999
American Board of Psychiatry, certified 2004

PROFESSIONAL MEMBERSHIPS

MEDICAL

New York Medical Society
New York Association of Adolescent Psychiatry

PUBLICATIONS

"Why did my child do this?—Detecting adolescent suicidal tendencies," NEJM, 325:14, pp. 214-222, 1999.

"Understanding the risk in risky patients," Annals of Psychiatry, 47:10, pp. 432-439, 2001

"Why people hurt the ones they love," British Med. J., 215:5, pp. 23-29, 2003.

AFFIDAVIT OF SAM WINSTON, M.D.

1. My name is Sam Winston. I am currently a medical doctor in my second year of post-graduate psychiatry residency at a public hospital in Chicago, Illinois. After my residency, I plan to open my own psychiatric clinic in the inner city to serve indigent patients suffering from severe loss of hope. It is my view that patients who are low-income and uninsured need more physicians who are willing to serve them, at whatever cost to the physician.

2. In May 2007, I was a medical student at Clearwater Medical Center and worked with Dr. Lindsey Peterson.

3. I was the valedictorian of my medical school class. In my medical school yearbook, provided to all graduating medical students, my peers labeled me as "very smart, but socially inept, a bit self-righteous, and not very tactful." They all agreed I should go into surgery, but I went into psychiatry to prove that I really could understand and relate to people.

4. I also decided to specialize in psychiatry because I have a desire to prevent people from hurting themselves. I think this desire stems from the suicide of my twin brother at age 17. He killed himself with an overdose of my mother's pain killers after his girlfriend of a year dumped him right before prom.

5. On May 16, 2007, I saw Alex Winters, who had checked himself into Clearwater Medical Center because of suicidal ideations and depression, while making rounds with Dr. Peterson.

6. Dr. Peterson seemed nervous around me, as though s/he was intimidated by me. Ever since I started working with her/him, s/he tried embarrassing me in front of my classmates and asking me what s/he thought to be "tough questions," but I would always answer them correctly and then s/he would move on, until the next time.

7. I was present during Dr. Peterson's questioning of Alex Winters in which s/he asked Alex several questions related to his mental stability and during which Alex expressed thoughts of hurting his girlfriend.

8. I remember he felt she never supported him and wanted him to "snap out of it." I also recall Alex Winters stating that his girlfriend would be "sorry" if she didn't come back to him and something to the effect of "she thinks she can hurt me, but she doesn't know that I can hurt her, too."

9. Based upon these statements and Alex's overall affect, I believe that Winters meant to physically harm his girlfriend.

10. During Dr. Peterson's exam, I noted that Alex had been to Clearwater Medical Center multiple times before for suicide attempts, that the medical record noted arguments between Alex and his girlfriend often precipitated the attempts, and that the frequency of the attempts and hospitalizations had been increasing.

11. Because of these more frequent hospitalizations, as well as my personal experience with my twin brother, I formed the belief that Alex needed more intensive inpatient care.

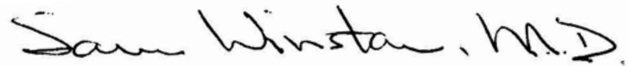
12. I communicated this belief to Dr. Peterson, but s/he dismissed my concerns in front of the other students. I am certain that Dr. Peterson's dismissal of my comments was because of jealousy of my natural medical insight and nothing more.

13. In the past, Dr. Peterson would occasionally warn us about the risks of referring potentially costly cases for inpatient treatment. In one instance, after picking apart my proposed course of care for a homeless man who had been brought to the ER by the police following a public disturbance, Dr. Peterson became frustrated and said: "You can't just push through every TriCare (Military Health Plan) stress case that comes your way; you'll get your ticket punched." – by which I understood him to be saying that some hospitals might terminate my credentials with the medical staff if I made too many referrals for inpatient care that were either uninsured or government insured, as these were costly for the facilities to handle.

14. Although May 16, 2007, marked the first time I had been dressed-down on group rounds, I felt like I knew exactly what to do and what to look for in each patient.

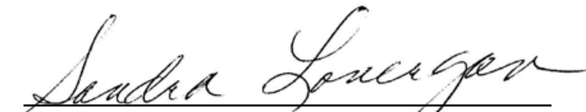
15. I considered writing down my observations, but decided that because Chris Reynolds had been designated the scribe, it would be a waste of my time and skills.

16. I also communicated to several others in group rounds that we try to contact Alex Winters' girlfriend Jaime, not to warn her of any impending harm, but only to obtain her account of her interactions with Alex and whether she thought Alex might be a threat to her, but no one wanted to volunteer on my behalf.



Sam Winston, M.D.

Signed and sworn to before me this
13th day of August, 2009



Notary Public, State of Wisconsin
My commission is permanent

AFFIDAVIT OF LINDSEY PETERSON, M.D.

1. My name is Lindsey Peterson. I am currently a licensed psychiatrist and have been practicing for nineteen (19) years. For the past five years, I have been a staff psychiatrist at Clearwater Medical Center ("CMC"), where I render psychiatric evaluations on in-patients and take calls for emergency consultations. I also have a private practice with a group of other psychiatrists that operate out of Clearwater Medical Center's professional office complex.

2. During the week of May 13, 2007, I was the staff psychiatrist assigned to evaluate and treat emergency psychiatric admissions presenting during that calendar week. Generally, such admissions are involuntary and are brought to CMC by law enforcement.
A substantial number of these emergency admissions are either uninsured (which means that I will not get paid for such services) or are covered by some government benefit program (which means I will get paid just a fraction of my usual and customary charge). Moreover, because the on-duty staff psychiatrist must be readily available to handle emergency consults, that psychiatrist generally needs to rearrange his or her private practice calendar – to say nothing of personal activities.

3. In addition to attending to the emergency psychiatric admissions themselves, the on-duty staff psychiatrist must also oversee a small group of medical students in connection with CMC's teaching activities.

4. Emergency room admissions are not considered desirable work. However, all staff psychiatrists are required to furnish such consulting services to CMC as a condition of obtaining privileges there. In order to minimize the burden this can present, the psychiatry department maintains a schedule rotating such coverage among all of the staff psychiatrists.

5. On May 16, 2007, I had occasion to evaluate a Mr. Alex Winters. Mr. Winters had presented to the Emergency Department of Clearwater Medical Center late in the evening on May 15, 2007 because of a depressive episode which included suicidal ideations. This was the first time I had met or treated Alex Winters, but I had reviewed the record of his previous psychiatric history. Mr. Winters' psychiatric history was remarkable for a number of prior emergency psychiatric admissions – all non-voluntary – each of which was occasioned by a suicide attempt. I noted that the most recent such suicide attempt had been just one month before, in April 2007. Exhibit 1 is a copy of the Discharge Summary from that admission. Mr. Winters had also previously attempted suicide in 1998, 2003, and 2005. The more recent suicide attempts, in 2003, 2005 and April of 2007, each followed an argument between Mr. Winters and his girlfriend, a Ms. Jaime Donovan.

6. Mr. Winters' admission chart did list his insurance as "None." This is not at all uncommon in Emergency Room admissions. This information is provided in order that my office can bill the insurer, government program, or individual patient (if uninsured) for services rendered. However, this information did not affect my clinical judgment in any way.

7. I have reviewed the notes of my evaluation of Mr. Winters, which were transcribed by Dr. Chris Reynolds. Dr. Reynolds was then a medical student and part of the small group

of students accompanying me on rounds. Dr. Reynolds is currently a post-graduate resident at Clearwater Medical Center. As director of the psychiatric residency program at Clearwater Medical Center, I have had numerous occasions to work with Dr. Reynolds and have found Dr. Reynolds to be a high caliber resident. Dr. Reynolds is currently being considered for an associate physician position with my private practice group upon completion of the residency.

8. Attached hereto as Exhibit 2 is a true and correct copy of the Encounter Notes transcribed by Dr. Reynolds. While the notes in question are not a verbatim account of what was said during the evaluation, they are a fundamentally accurate transcription.

9. Mr. Winters did indicate during our discussion that he was thinking of hurting his girlfriend, as reflected in the encounter notes. However, this was not just a free-standing comment, but one made in response to my questioning as to what he was thinking about during a suicide attempt the month before. In discussing the earlier suicide attempt, I asked Mr. Winters, "Why would you do that?" and "What were you thinking about while you were ingesting the drugs." That's when he said he was thinking about hurting his girlfriend, because she had hurt him so much.

10. After Mr. Winters said this, I pressed him on what he meant – in particular, how his girlfriend had hurt him. Mr. Winters indicated that his girlfriend never supported him when he became depressive and thought he should just "snap out of it." Because Mr. Winters only ever indicated that this girlfriend was harming him emotionally, it was my opinion that when he said he was thinking about hurting his girlfriend he was referring to hurting her emotionally – the same way he thought she was hurting him. My opinion was further supported by the fact that all of these statements were made in response to what he was thinking about while ingesting drugs in an attempt to kill himself.

11. In my experience, it is not uncommon for patients with suicidal ideations to believe that by committing suicide, they will inflict emotional harm upon those perceived to be causing them emotional harm. Indeed, I pressed this point with Mr. Winters, asking why would he would go so far as to do this – that is, to take an overdose – and Mr. Winters' response was that it worked. Every time he attempted suicide, Ms. Donovan came back to him.

12. While the notes do not use the word "emotional harm," I did not think this was necessary at the time. Based on the flow of the conversation, it was clear to me that Mr. Winters only wanted to get back at his girlfriend emotionally.

13. Based on my evaluation of Alex Winters at the time, it was my professional opinion that Alex posed no serious threat of physical harm to Jaime Donovan, himself, or any other person. I concluded that the most appropriate course of treatment would be to increase his dosage of Prozac and have him follow-up with me for an evaluation at my office.

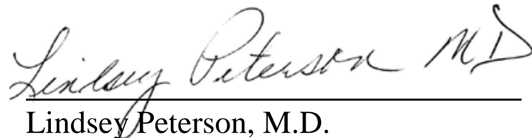
14. Because I did not believe that Mr. Winters presented a serious risk of physical harm to Ms. Donovan, I did not notify her or law enforcement regarding the matter. What Mr. Winters said during my evaluation of him is privileged information, and must be held confidential in accordance with state and federal law, all as described in CMC's Notice of Privacy Practices. (A

true and correct copy of which is attached hereto as Exhibit 3.) Any disclosure of confidential information in violation of this policy could subject both CMC and myself to liability for breach of privacy.

15. While applicable law and hospital policy provide an exception to the general rule of confidentiality where a patient poses a risk of serious and imminent harm to himself or others, I did not believe Mr. Winters presented such a risk. Accordingly, I did not believe that any disclosure to third parties was warranted.

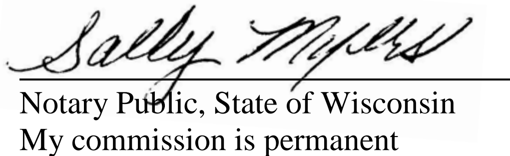
16. I discharged Mr. Winters on May 18, 2007, as it was clear to me that he had recovered from this instance of severe depression, his suicidal ideations had subsided and he denied harboring any homicidal thoughts. I wrote a prescription for the new dosage of Prozac but do not know if it was actually filled. I scheduled Mr. Winters to see me at my office at 10:00am on May 23, 2007, but he did not show up for his appointment. Attached hereto is Exhibit 4, a true and correct copy of the Discharge Summary.

17. Sam Winston was one of the medical students under my direction at the time, and was present for the evaluation of Mr. Winters. I do not specifically recall Sam raising any legitimate concerns about Mr. Winters with respect to his being a threat to others. However, in my experience, Sam had a tendency to take patient comments far too literally in her/his evaluations and often failed to recognize the subtle pathologies at work in patients. S/he was often quick to recommend intense and unnecessary treatments without fully understanding the heart of the problem. Accordingly, it would not surprise me if Sam were to say s/he believed Mr. Winters presented a threat or that s/he voiced a concern to this effect.



Lindsey Peterson, M.D.

Signed and sworn to before me this
20th day of July, 2009



Notary Public, State of Wisconsin
My commission is permanent

EXHIBIT 1

DISCHARGE SUMMARY
CLEARWATER MEDICAL CENTER

Patient: Alex Winters

Date of admission: 4/03/2007

Date of discharge: 4/08/2007

Discharge diagnosis: Axis I: 296.33 Major Depressive Episode, Recurrent, without psychotic feature
Axis II: 301.6 Dependent Personality Disorder
Axis III: None
Axis IV: None

Admitting physician: Dr. Carl Adler

Admitting medications: None

Reason for admission: A patient with a long history of depression and suicidal ideation admitted through the Emergency Room as a result of a suicide attempt.

Hospital course: The patient is a young man with a long history of depression and suicidal ideations and prior suicide attempts. He has frequently been admitted over the past several years when he states that he feels he will hurt himself and he has attempted suicide in the past. He has never indicated any idea of violence towards others.

As has been the case in the past, Mr. Winters was admitted while in crisis over his relationship with his girlfriend, Jaime Donovan. She appears to have little sympathy for Mr. Winters' depression, according to Mr. Winters, and he often deteriorates when he feels especially strongly that she is about to leave him due to her frustration with his disease. However, she has been a regular and supportive presence for him during this admission, as has been the case in the past.

He responded well to supportive psychotherapy and resumed antidepressant medications with Prozac 20 mg daily.

Discharge medications: Prozac 20 mg daily

Follow-up: The patient is to see Dr. Adler in the outpatient clinic on 4/15/2007.

EXHIBIT 2

ENCOUNTER NOTES

5/16/07

M3 transcribing for Dr. Peterson

Pt was last here ~ 1 mo ago. Pt was to follow up with therapist and take medications. Pt was working, did Ø see therapist. Pt was taking meds. Pt is having problems with girlfriend, Jaime – she doesn't understand depression. Pt. has been calling into work, doesn't want to get out of bed.

Pt has had suicidal thoughts. Pt. wants to sleep all time, stop thinking.

Pt. thought s/he would come here before he hurt himself.

Pt was thinking of hurting girlfriend also since she is hurting him. Girlfriend doesn't want to talk about Pt. depression and won't participate here.

Pt doesn't trust himself.

Pt is on Prozac (20 mg) now. Makes Pt. sleep.

Increase Prozac dose.

[Signed] C. Reynolds [M3]

Clearwater Medical Center

NOTICE OF PRIVACY PRACTICES

THIS NOTICE DESCRIBES HOW YOUR PROTECTED HEALTH INFORMATION MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION.
PLEASE REVIEW IT CAREFULLY.

I. Who We Are

This Notice describes the privacy practices of the Clearwater Medical Center and includes the CMC's physicians, nurses, supervisors, and administrative and financial personnel. It applies to services furnished to you by CMC.

II. Our Privacy Obligations

CMC is required by law to maintain the privacy of your health information, also referred to as "Protected Health Information" or "PHI". When we use or disclose your Protected Health Information, we are required to abide by the terms of this Notice (or other notice in effect at the time of the use or disclosure). If CMC revises the terms of this Notice, we will post a revised notice at our offices, on our website and will make paper copies of this Notice available upon request.

III. Permissible Uses and Disclosures Without Your Written Authorization

In certain situations, which we will describe in Section IV below, we must obtain your written authorization in order to use and/or disclose your PHI. However, we may use and disclose your health information to appropriate persons, authorities, and agencies as allowed by state and federal laws, without your written permission for the following purposes:

A. Uses and Disclosures For Treatment, Payment and Health Care Operations. We may use and disclose PHI in order to treat you, obtain payment for services provided to you, and to conduct our "health care operations" as detailed below:

- Treatment. We use and disclose your PHI to provide treatment and other services to you. For example: to assess your need for personal care or to arrange for a service provider. In addition, we may contact you to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to you. We may also disclose PHI to other providers involved in your treatment.

- Payment. We may use and disclose your PHI to obtain payment for services that we provide to you. For example: we may make disclosures to claim and obtain payment from your health insurer, HMO, or other company that arranges or pays

the cost of some or all of your health care ("Your Payor") to verify that Your Payor will pay for health care.

- Health Care Operations. We may use and disclose your PHI for our health care operations, which include internal administration and planning and various activities that improve the quality and cost effectiveness of the care that we deliver to you. For example: we may use PHI to evaluate the quality and competence of our care management teams. We may also disclose PHI to your other health care providers when such PHI is required for them to treat you, receive payment for services they render to you, or conduct certain health care operations, such as quality assessment and improvement activities, reviewing the quality and competence of health care professionals, or for health care fraud and abuse detection or compliance.

B. Disclosure to Those Involved in Your Care or Payment of Your Care. Unless you tell us otherwise, we may use or disclose your PHI to a family member, other relative, a close personal friend or any other person identified by you when you are present for, or otherwise available prior to the disclosure, if we (1) obtain your agreement; (2) provide you with the opportunity to object to the disclosure and you do not object; or (3) reasonably infer that you do not object to the disclosure.

If you are not present, or the opportunity to agree or object to a use or disclosure cannot practicably be provided because of your incapacity or an emergency circumstance, we may exercise our professional judgment to determine whether a disclosure is in your best interests.
If we disclose information to a family member, other relative or a close personal friend, we would disclose only information that we believe is directly relevant to the person's involvement with your health care or payment related to your health care. We may also disclose your PHI in order to notify (or assist in notifying) such persons as well as organizations that are authorized to handle disaster relief efforts, of your location, general condition, or death.

C. Public Health Activities. We may disclose your PHI for public health activities. This includes, but is not limited to: (1) reporting health information to public health authorities for the purpose of preventing or controlling disease, injury or disability; (2) reporting information about products and services under the jurisdiction of the U.S. Food and Drug Administration; (3) alerting a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition.

D. Victims of Abuse, Neglect or Domestic Violence. If we reasonably believe you are a victim of abuse, neglect or domestic violence, and we believe it is in your best interests or we are required by law to do so, we may disclose your PHI to a governmental authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence. This means that if we suspect that you are a victim of abuse, neglect or domestic violence we may disclose your PHI to the protective service agency authorized by law to receive reports of such abuse and neglect.

E. Health Oversight Activities. We may disclose your PHI to a health oversight agency that oversees the health care system and is charged with responsibility for ensuring compliance with the rules of government health programs such as Medicare or Medicaid.

F. Judicial and Administrative Proceedings. We may disclose your PHI in the course of a judicial or administrative proceeding in response to a court order. Under most circumstances when the request is

made through a subpoena, a discovery request or involves another type of administrative order, your authorization will be obtained before disclosure is permitted.

G. Law Enforcement Officials. We may disclose your PHI to the police or other law enforcement officials as required or permitted by law and pursuant to State law in compliance with a court order or a grand jury or administrative subpoena.

H. Decedents. We may disclose your PHI to a coroner, funeral director, or medical examiner as authorized by law.

I. Research. We may use or disclose your PHI without your consent or authorization if the organization has satisfied certain aspects of privacy protection and/or if the CMC Ethics Committee approves a waiver of authorization for disclosure.

J. Health or Safety. We may use or disclose your PHI to prevent or lessen a serious and imminent threat to yourself or another person's or the public's health or safety.

K. Specialized Government Functions. We may use and disclose your PHI to units of the government with special functions, including, but not limited to the U.S. military, or the U.S. Department of State under certain circumstances. We may also disclose information about you in order to comply with laws related to worker's compensation or similar programs.

L. As required by law. We may use and disclose your PHI when required to do so by any other law not already referred to in the preceding categories.

IV. Uses and Disclosures Requiring Your Written Authorization

A. Use or Disclosure with Your Authorization. For any purpose other than the ones described above in Section III, we only may use or disclose your PHI when you grant us your written authorization on our authorization form. For instance, you will need to execute an authorization form before we can send your PHI to your life insurance company or to the attorney representing the other party in litigation in which you are involved.

B. Other restrictions. There are additional federal and state statues/laws that may have more restrictive requirements than HIPAA on how we use and disclose your PHI. If there are requirements more restrictive than listed above, even for some of the purposes listed above, we may not disclose your information without your written permission as required by such laws. For example, we may be required by law to obtain your permission to use and disclose your information related to treatment to mental illness, developmental disability or alcohol or drug abuse.

V. Your Rights Regarding Your Protected Health Information

A. For Further Information; Complaints. If you desire further information about your privacy rights, are concerned that we have violated your privacy rights or disagree with a decision that we made about access to your PHI, you may contact our Privacy Office. You may also file written complaints with the Director of the Office for Civil Rights of the U.S. Department of Health and Human Services. Upon request, the Privacy Office will provide you with the correct address for the Director. We will not retaliate against you if you file a complaint with us or with the Office for Civil Rights of the U.S. Department of Health and Human Services.

B. Right to Request Additional Restrictions. You have the right to request restrictions on how your health information is used or to whom your information is disclosed. While we will consider all requests for additional restrictions carefully, we are not required to agree to a requested restriction. If you wish to request additional restrictions, please obtain a request form from our Privacy Office and submit the completed form to the Privacy Office. We will send you a written response.

C. Right to Receive Confidential Communications. You may request, and we will accommodate, any reasonable written request from you to receive your PHI by alternative means of communication or at alternative locations. If you wish to request an alternative means of communication, please obtain a request form from our Privacy Office and submit the completed form to the Privacy Office.

D. Right to Revoke Your Authorization. You may revoke any written authorization obtained in connection with your PHI. If you revoke your authorization, we will no longer be able to use or disclose health information about you for the reasons covered by your written authorization, though we will be unable to take back any disclosures we have already made with your permission. If you wish to revoke a written authorization, a form of Written Revocation is available upon request from the Privacy Office.

E. Right to Inspect and Copy Your Health Information. You may request access to you medical record file and billing records maintained by us in order to inspect and request copies of the records. Under limited circumstances, we may deny you access to a portion of your records. If you desire access to your records, please obtain a record request form from the Privacy Office and submit the completed form to the Privacy Office. If you request copies, we may charge you for such copies. We may also charge you for our postage costs, if you request that we mail the copies to you.

F. Right to Amend Your Records. You have the right to request that we amend Protected Health Information maintained in our medical record file or billing records. If you desire to amend your records, please obtain an amendment request form from the Privacy Office and submit the completed form to the Privacy Office. We will comply with your request unless we believe that the information that would be amended is accurate and complete or other special circumstances apply.

G. Right to Receive an Accounting of Disclosures. Upon request, you may obtain an accounting of certain disclosures of your PHI made by us during any period of time prior to the date of your request provided such period does not exceed six years and does not apply to disclosures that occurred prior to April 14, 2003. If you request an accounting more than once during a twelve (12) month period, we will charge you $0.15 per page of the accounting statement.

H. Right to Receive Paper Copy of this Notice. Upon request, you may obtain a paper copy of this Notice, even if you have agreed to receive such notice electronically.

VI. Effective Date and Duration of This Notice

A. Effective Date. This Notice is effective on January 1, 2007.

B. Right to Change Terms of this Notice. We may change the terms of this Notice at any time. If we change this Notice, we may make the new notice terms effective for all Protected Health Information that we maintain, including any information created or received prior to issuing the new notice. If we change this Notice, we will post the new notice in waiting areas around CMC. You also may obtain any new notice by contacting the Privacy Office.

VII. Privacy Office

You may contact the Privacy Office at:
Privacy Officer
Clearwater Medical Center
1000 Center Street
Clearwater

EXHIBIT 4

DISCHARGE SUMMARY

CLEARWATER MEDICAL CENTER

Patient: Alex Winters

Date of admission: 5/15/2007

Date of discharge: 5/18/2007

Discharge diagnosis: Axis I: 296.33 Major Depressive Episode, Recurrent, without psychotic feature
Axis II: 301.6 Dependent Personality Disorder
Axis III: None
Axis IV: None

Admitting physician: Dr. Peterson (on call) Patient reports he has no outpatient psychiatrist

Admitting medications: None

Reason for admission: A patient with a long history of depression voluntarily admitted himself to the psychiatric unit reporting that he felt he might kill himself.

Hospital course: The patient is a young man with a long history of depression and suicidal ideations. As has been the case several times in the past, and as recently as April 2007, he has attempted suicide, however this time there was no suicidal attempt. On occasion in the past, he has been admitted while in crisis over his relationship with his girlfriend Jaime Donovan, since this sometimes corresponds with his suicidal ideations. He feels she has little sympathy for his depression and he often deteriorates when he feels especially strongly that she is about to leave him due to her frustration with his disease. It must be said that, in contrast to other hospitalizations, when she has been at the hospital regularly and appeared to be supportive, she was not present at all during this admission. In fact, he seemed angrier towards her than he has in the past.

He responded well to supportive psychotherapy and resumed antidepressant medications with Prozac 40 mg. daily.

Discharge medications: Prozac 40 mg. daily

Follow-up: The patient is to see Dr. Peterson in the outpatient clinic on 5/23/2007.

AFFIDAVIT OF ROBIN JOHNSON, M.D.

1. My name is Dr. Robin Johnson. I am a physician who practices full time in the same specialty as Dr. Peterson, psychiatry. I routinely provide care for patients like Alex Winters and am fully capable, by both experience and education to provide expert opinions as to the care provided by Dr. Peterson. My curriculum vitae is attached to this affidavit.

2. I did attend Harvard Medical School, where I graduated with honors, and then completed my residency in Psychiatry.

3. I have provided expert opinions on several occasions. All cases in which I have been retained as an expert, I have done so in defense of the defendant psychiatrist.

4. Alex Winters had been treated as an inpatient at Clearwater Medical Center ("CMC") on May 15, 2007, when he checked-in voluntarily, suffering from depression and suicidal ideations following an argument with his girlfriend, Jaime Donovan. His psychiatrist was Dr. Peterson. He had previously been admitted for inpatient treatment in April 2007 following a suicide attempt. He had previously attempted suicide in 2005, 2003, and 1998.

5. While Winters had a long history of suicidal ideation and attempts, there has been no history of violence or even threatened violence towards others.

6. When Winters was admitted in May 2007, he again denied having homicidal ideations or assaultive behavior.

7. On May 16, 2007, when discussing his relationship with Jaime Donovan, Winters said that he was "thinking of hurting" Donovan because Donovan had also hurt Winters. Further, Winters expressed frustration that Donovan did not want to talk about Winters' depression and would not participate in the therapy provided during his prior hospitalizations.

8. Present when Winters made these statements were Dr. Peterson and several medical students, including Sam Winston and Chris Reynolds, both of whom are now medical doctors.

9. There is no question that doctors must be able to recognize potentially dangerous behavior in their patients and they must then take the steps to warn those who are at risk of harm as a result. However, this does not require that a physician must be omniscient. Further, the decision that there is no risk must be evaluated in terms of what the physician knew at the time and cannot be criticized based on knowledge of what was to come.

10. It is a violation of the patient's privacy rights under state and federal law to reveal any information about his/her hospitalization unless it is determined there is a risk of harm to another person and, in order to protect that person, private health information must be revealed.

11. It is thought—although not proven—that medications like Prozac are associated with an increased risk of suicide. Several studies have shown that those who are severely depressed

and take Prozac or other antidepressants in the same class as Prozac, have an increased risk of suicide. However, the increased risk is small and may be explained by the severity of the depression in these persons. There is also a risk of violent behavior by those who have been treated with Prozac, but that seems to be more likely several days after stopping the drug.

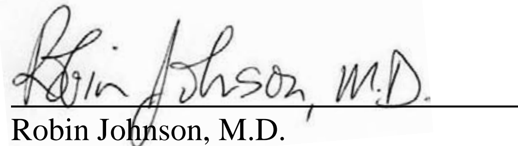
12. In this case, Winters had a long history of suicidal behavior and of a troubled relationship with Donovan. Through it all, there was no history of prior violence, even verbal violence, by Winters towards Donovan. When Winters said he wanted to hurt Donovan, these words could have had any number of meanings, including just a decision to extract emotional revenge. Further, Winters said this on May 16 and was not discharged until May 18. One statement in one moment of a three-day hospitalization should not be over-analyzed. There is no evidence that any similar statements were made at any other time.

13. In fact, it is my opinion, to a reasonable degree of medical certainty, that Winters' statement can only be interpreted that he wanted to hurt Donovan emotionally, as he had done in a repetitive pattern in previous years. He stated to Dr. Peterson that he had used suicide attempts or the threat of suicide to get Donovan to return in the past and that it had always worked. It is apparent that this is a person who was quite versed and quite skilled in using emotional blackmail to make other people feel guilty for the way he felt. And I think this progress note, in the context of all the medical records, and all of the information I have been able to review, would indicate that he's talking about hurting Donovan emotionally, just as she had emotionally hurt Winters, in his interpretation anyway.

14. Furthermore, this pattern of emotional blackmail was described pretty clearly in Winters' previous hospitalizations.

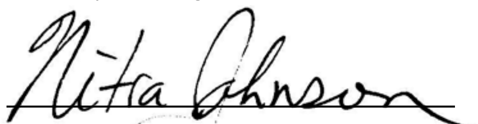
15. Moreover, the discharge plan for Winters was appropriate. The plan provided for an increase in his dosage of Prozac from the 20 mg. he was originally prescribed to the 40 mg. he did well on while hospitalized. In addition, the plan provided for a follow-up visit with Dr. Peterson approximately a week later. This scheduled visit provided a reasonable support system for Winters within the community.

16. Therefore, it is my opinion that Dr. Peterson had met the standard of care in treating Winters.



Robin Johnson, M.D.

Signed and sworn to before me this
16th day of August, 2009



Notary Public, State of Wisconsin
My commission is permanent

CURRICULUM VITAE

Robin Johnson, MD

PROFESSIONAL ACTIVITIES

2004-Present: Psychiatrist in private practice

2004-Present: Consulting Psychiatrist, Robin Johnson, MD, SC, providing psychiatrist forensic and malpractice consultations.

EDUCATION

1999-2004: Resident, Harvard Medical School, Psychiatric Residency Training Program

1995-1999: Harvard Medical School, Cambridge, Massachusetts
MD with honors

UNDERGRADUATE
1991-1995: University of Wisconsin, Madison
BA

LICENSURE AND CERTIFICATION

MEDICAL
Medical License, State of Wisconsin
National Board of Medical Examiners, certified 1999
American Board of Psychiatry, certified 2004

PROFESSIONAL MEMBERSHIPS

MEDICAL
Wisconsin Medical Society

AFFIDAVIT OF CHRIS REYNOLDS, M.D.

1. My name is Chris Reynolds. I am a licensed psychiatrist in the State of Wisconsin. I am currently in the final months of a post-graduate residency in psychiatry at the Clearwater Medical Center ("CMC"). My resident advisor is Dr. Lindsey Peterson, one of the staff psychiatrists. Dr. Peterson has been a great mentor to me in learning the practice. I have applied to join his group practice upon the completion of my residency, but have not yet heard back from the group.

2. In May of 2007, I was a medical student at Clearwater Medical College and followed on rounds at Clearwater Medical Center with Dr. Peterson.

3. On May 16, 2007, I was present when Dr. Peterson evaluated a Mr. Alex Winters. During Dr. Peterson's evaluation, I took notes regarding the discussion for Dr. Peterson to review later. I had taken notes for Dr. Peterson during patient evaluations on previous occasions. Dr. Peterson had never expressed any displeasure to me about the quality of my notes, nor had he ever taken issue with the accounts contained therein.

4. Attached hereto is Exhibit 2 which is a true and correct copy of the encounter notes I transcribed.

5. Based on my recollections, the phrase in my notes "Pt was thinking hurting girlfriend also since she is hurting him" was intended to indicate Alex Winters' thoughts of possibly causing emotional harm to his girlfriend. I did not write this out explicitly, however, because it seemed very clear at the time. When Mr. Winters did say that he was thinking of hurting his girlfriend, Dr. Peterson went into more detail with him to find out what he meant by the remark. Dr. Peters specifically asked Mr. Winters "what do you mean?" and "why would you want to do that?" At that point, Mr. Winters simply said that he was saddened and frustrated that his girlfriend was not more supportive while he was depressed. He thought that his girlfriend just wanted him to snap out of it, be happy, and that really made him feel bad. And because of that, Mr. Winters wanted his girlfriend to feel the same pain that he was feeling.

6. When I wrote that Mr. Winters was thinking of hurting his girlfriend, it indicated "an emotional hurt." These notes were only intended to summarize kind of the general gist of the whole thing, not specifically transcribe every little thing that was said.

7. I did not think that Mr. Winters was a threat to his girlfriend. Mr. Winters consistently expressed concern about losing his girlfriend; he thought she would leave him because of his depression.

8. Sam Winston was one of the medical students in my class, and was present for the evaluation of Mr. Winters. Following the evaluation of Mr. Winters, Dr. Peterson reviewed the matter with the students in the group. I remember Sam and Dr. Peterson had a short debate about this case. Sam believed that Mr. Winters' condition had been steadily deteriorating and that intensive inpatient treatment was warranted. Sam was also pushing to interview a number of collateral people, such as Mr. Winters' parents and girlfriend. I do not recall the precise outcome of the discussion, but I'm certain that Sam did not prevail.

9. Sam had a tendency to come up with fairly grandiose diagnoses and treatments. Dr. Peterson often had to push Sam to justify her/his conclusions. Dr. Peterson frequently lectured all of us about psychiatric practice in "the real world", including the realities of the reimbursement associated with cases. Dr. Peterson cautioned all of us – and Sam in particular – that inpatient referrals were not to be made reflexively, as the relative benefits of such inpatient care over alternative modes of treatment often did not justify the facility costs. Dr. Peterson also warned us that some facilities have been known to de-credential physicians who admit too many costly patients. However, Dr. Peterson did not indicate that CMC was such a facility and certainly never advocated withholding necessary care and treatment on economic grounds. Rather, Dr. Peterson was just trying to prepare us for the realities of practice.

10. I did not record any notes of the discussion between Sam Winston and Dr. Peterson because they were not clinically significant; this was, for all intents and purposes, a classroom discussion.

Chris Reynolds, M.D.

Chris Reynolds, M.D.

Signed and sworn to before me this
19th day of July, 2009

Annie Notary

Notary Public, State of Wisconsin
My commission is permanent

EXHIBIT 2

ENCOUNTER NOTES

5/16/07

M3 transcribing for Dr. Peterson

Pt was last here ~ 1 mo ago. Pt was to follow up with therapist and take medications. Pt was working, did Ø see therapist. Pt was taking meds. Pt is having problems with girlfriend, Jaime – she doesn't understand depression. Pt. has been calling into work, doesn't want to get out of bed.

Pt has had suicidal thoughts. Pt. wants to sleep all time, stop thinking.

Pt. thought s/he would come here before he hurt himself.

Pt was thinking of hurting girlfriend also since she is hurting him. Girlfriend doesn't want to talk about Pt. depression and won't participate here.

Pt doesn't trust himself.

Pt is on Prozac (20 mg) now. Makes Pt. sleep.

Increase Prozac dose.

[Signed] C. Reynolds [M3]