

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>C.A. by and through JENNIFER ALEXANDER, her adoptive mother and legal guardian as next friend, and JENNIFER ALEXANDER in her individual capacity, Plaintiffs,</p> <p>v.</p> <p>AMERIGROUP IOWA, INC. and ANTHEM, INC., Defendants.</p>	<p>Equity No. CVCV058769</p> <p>ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT</p>
---	---

I. INTRODUCTION

This case comes before the Court on cross-motions for summary judgment. Tyler M. Smith, Alexander E. Wonio, and Aaron W. Rapier represent Plaintiffs. Shannon L. Sole, Rebecca R. Hanso, and Samuel Kadosh represent Defendants.

Because this case is factually and legally complex, this order will proceed in the following manner: (1) a short summary of the legal principles governing the Court’s decision, (2) a detailed factual background, (3) a summary of the Plaintiff’s counts and of both parties’ legal arguments, (4) a general explanation of the law pertaining to summary judgment in Iowa, (5) a recitation and detailed legal analysis of each of the Plaintiff’s counts, during which the Court will rule on the legal merits of each count, and finally, (6) an overall conclusion recapitulating the import of the ruling and compiling the Court’s decision on each count.

II. LEGAL PRINCIPLES

At the heart of this case are five DHS¹ child abuse reports, four made by various mental health/medical providers for C.A., Plaintiff's daughter, and one made by an Amerigroup employee. Plaintiff alleges that Defendant initiated and coordinated a series of false child abuse reports to DHS for the purpose of denying Plaintiff's daughter medically necessary services and retaliating against Plaintiff for advocating on her daughter's behalf and that the Defendant is, therefore, liable to the Plaintiff. To make her case, Plaintiff must overcome Iowa's statutory immunity provisions. Because she has not provided evidence sufficient to overcome the broad immunity protections for those who participate in good faith in the filing of DHS reports, and because the undisputed material facts strongly support the allegations in the child abuse reports, Plaintiff's claim cannot succeed and Summary Judgment is appropriate.

Iowa Code §232.73 provides (emphasis supplied):

A person participating in good faith in the making of a report, photographs, or X rays, or in the performance of a medically relevant test pursuant to this chapter, or aiding and assisting in an assessment of a child abuse report pursuant to section 232.71B, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed. The person shall have the same immunity with respect to participation in good faith in any judicial proceeding resulting from the report or relating to the subject matter of the report.

The Iowa Supreme Court has provided lower courts with detailed guidance in the application of this section:

Section 232.73 provides a form of qualified immunity. "Qualified immunity is a question of law for the court and the issue may be decided by summary judgment." Summary judgment is an important procedure in statutory immunity cases because

¹ The agency once known as DHS has since changed its name to Health and Human Services (HHS). Throughout this order the Court will refer to the agency as DHS.

a key purpose of the immunity is to avoid costly litigation, and that legislative goal is thwarted when claims subject to immunity proceed to trial.²

Of qualified immunity, the Iowa Supreme Court has written, “Qualified immunity is ‘an entitlement not to stand trial or face the other burdens of litigation.’”³ And that, “the purpose of immunity under section 232.73 is to remove ‘the fear of litigation’ for those assisting child abuse investigations.”⁴

To effectuate the legislative intent for §232.73, the Supreme Court has interpreted broadly the scope of immunity under that section. So broad is the Court’s interpretation that the immunity covers both those who report and those who aid in the investigation of such reports:

The purpose of the statute is “to encourage those who suspect child abuse to freely report it to authorities without fear of reprisal if their factual information proves to be faulty.” “An additional purpose is to encourage those having information about child abuse to come forward when asked to do so, without the fear of litigation should it later be shown that the information was improperly released.” These legislative purposes, in our view, apply equally to both physicians who initiate reports to the DHS, and to those, such as Dr. Lindaman, who respond to inquiries from child abuse investigators. The statute applies the same good-faith immunity to both those who report suspected abuse and those who assist in investigations initiated by others.⁵

Indeed, the only limitation on §232.73 immunity is one of “good faith.” Good faith, in the §232.73 context has a special significance, the Iowa Supreme Court has written:

As good faith means only honesty in fact, negligence ordinarily has no significance. That is, the honesty in fact that constitutes good faith merely requires honesty of intent and it is not necessary to show that the person was diligent or non-negligent. Bad faith, then, is obviously something far more extreme than a failure to observe reasonable ... standards or the standards of a reasonably prudent [person]. It is

² *Nelson v. Lindaman*, 867 N.W.2d 1, 7 (Iowa 2015) (internal citations omitted).

³ *Id.*

⁴ *Id.*

⁵ *Nelson v. Lindaman*, 867 N.W.2d 1, 8 (Iowa 2015) (internal citations omitted).

irrelevant that the person in question was negligent in forming a particular belief. All that is required ... is the actual belief or satisfaction of the criterion of ‘the pure heart and empty head.’⁶

All that is required, then, for a reporter to avail himself of §232.73’s protections is that he honestly believe that the information in the report is true. The information need not be true. The reporter need not thoroughly investigate the allegations to ensure their truth. In other words, “[t]o avoid summary judgment, the plaintiff must have evidence the defendant acted dishonestly, not merely carelessly, in assisting the DHS.”⁷

So, to survive summary judgment, the Plaintiff must first identify untruths in the DHS reports; then, she must show that those untruths are not attributable to negligence or mistake but are the product of bad faith or willful dishonesty.⁸ Plaintiff cannot leap this hurdle. As evident from the undisputed facts recited herein, there is a factual basis for every one of the DHS reports filed in this case. That is not to say that every allegation in the reports is indisputable but rather that there is no evidence that any of the reporters acted dishonestly or in bad faith. That lack of evidence is fatal to the Plaintiffs’ claims and for that reason the Court grants Amerigroup’s Motion for Summary Judgment.

III. FACTUAL BACKGROUND

A. C.A.’S EARLY LIFE

⁶ *Id.*

⁷ *Id.* at 8.

⁸ *Id.* at 11 (“To avoid summary judgment, the Nelsons needed evidence generating a genuine issue of material fact that Dr. Lindaman acted dishonestly in communicating with Brown.”)

The parties largely agree on the underlying facts. Cheyenne Alexander (C.A.) suffered horrific physical and sexual abuse at the hands of her biological parents. When C.A. was four years old, Iowa DHS removed her and her sister, placing them in foster care. The pair bounced around the foster system until one of their foster homes chose to adopt C.A.'s sister. Now alone, C.A. suffered a serious psychiatric event that resulted in her hospitalization at St. Luke's and, subsequently, her institutionalization at Tanager Place. C.A. would remain at Tanager for fourteen months.⁹

It was during this fourteen-month stay that C.A. met Jennifer Alexander (Jen). C.A. attended the school at which Jen served as school counselor. The pair formed a bond, and DHS asked Jen if she would consider taking C.A. into her home for potential adoption. Jen agreed. In April 2007, Tanager discharged C.A. into Jen's care. Jen adopted C.A. in December of 2007.¹⁰

Unfortunately, the abuse C.A.'s parents inflicted on her had a long tail. C.A. exhibited violent tendencies and inappropriate sexual behavior. Shortly after her adoption, she threw a heavy candlestick at Jen, causing injuries that required sutures. Soon after that, Jen placed C.A. in a psychiatric hospital because of an aggressive outburst.

In 2009, C.A. struck a principal and the police intervened. C.A. was then transferred to a school for children with aggressive tendencies. Her sexual behaviors also continued. C.A.

⁹ Defendant's Exhibit 31 (Guardian's Am. Brief, *In re: Guardianship and Conservatorship of C.A.*, Ward, Probate No. GCPR062128 (Iowa Dist. Ct., Black Hawk County)).

¹⁰ *Id.*

engaged in sexual activity at her doctor's office, then fled. Police retrieved her and, again, C.A. was hospitalized at the University of Iowa Hospitals and Clinics (UIHC).¹¹

A complete retelling of C.A.'s behavior would unnecessarily prolong what promises to be a very long order. Suffice it to say, in June of 2009 C.A.'s outbursts led to a stay at Fairview Hospital in Minneapolis. There, physicians diagnosed C.A. with reactive attachment disorder and recommended that Jen send C.A. to Villa Santa Maria (Villa)—a residential treatment facility located in New Mexico. Jen did as the doctors recommended.¹²

Villa is what is commonly called a Psychiatric Medical Institutions for Children (PMIC). At this juncture, it is essential to mention the sorts of treatment provided by the residential treatment facilities involved in this case. PMICs offer intensive treatment for youths with serious emotional and behavioral problems. These facilities require that their wards live away from home, typically with other patients, so that the treatment staff can monitor the patients' progress.¹³ Much of the dispute in this litigation hinges on whether C.A. required treatment at the PMIC level.

During C.A.'s stay at Villa, Jen paid C.A. monthly visits, and participated in C.A.'s treatment. Eventually, the situation soured. Villa accused Jen of causing problems for the treatment staff. Jen complained that Villa had made several billing errors and that the facility was

¹¹ *Id.*

¹² *Id.* at 3.

¹³ See e.g. Governor's Report to the General Assembly "Psychiatric Medical Institutes for Children (PMIC) Annual Report" www.legis.iowa.gov/docs/publications/DF/804760.pdf; Iowa HHS PMIC Provider's Manual <https://hhs.iowa.gov/sites/default/files/PMIC.pdf>

maladroit in investigating Jen's allegations that a fellow resident had molested C.A.¹⁴ Ultimately, Villa informed Jen that they would discharge C.A. They reasoned that C.A. no longer required a PMIC level of care. Additionally, Iowa DHS had not provided the funding necessary to continue C.A. at such a high level of care.¹⁵ Villa discharged C.A. in August of 2011.

Shortly after her discharge from Villa, C.A. was admitted to Thompson Child and Family (Thompson), a PMIC facility located in North Carolina. There, Jen continued to visit C.A. and to participate in her treatment. C.A. stayed at Thompson until September of 2012, at which point the facility discharged her into Jen's care.

Treatment notes from around the time of C.A.'s discharge indicate that she had improved at Thompson. They also illuminate what will be one of the major fault lines running through this case: C.A.'s tense relationship with Jen.¹⁶

In order to ease C.A.'s transition to home-life, the state provided her with round-the-clock services, including: respite care, in-home mental health professionals to aid C.A.'s

¹⁴ See Defendant's Exhibit 94 at 2

¹⁵ See Defendant's Exhibits 94-100.

¹⁶ Defendant's Exhibit 32 (UIHC treatment note describing C.A.'s progress at Thompson); Defendant's Exhibit 35 (Thompson treatment note describing C.A.'s combative interactions with Jen).

transitions between home and school, and crisis intervention therapy.¹⁷ Despite these amenities, C.A. regressed. On several occasions she had violent outbursts and damaged property.¹⁸

In November of 2012, Police discovered that C.A. had been using the internet to send nude photographs to random men. She had also registered herself with several pornographic websites and was chatting with and sending nude photographs to four strangers. Further, she planned to meet at least one of the men at her home.¹⁹ Ultimately, treating physicians recommended that Jen place C.A. with a PMIC facility that offered classes for sexually abusive youths.²⁰ So, on January 3, 2013, Jen committed C.A. to the care of Piney Ridge Center (Piney Ridge) in Waynesville Missouri, where C.A. would remain until Piney Ridge discharged her on April 11, 2016.²¹

B. C.A. MOVES TO PINEY RIDGE

During her stay at Piney Ridge, C.A. had numerous documented problems. For example, Piney Ridge staff had to physically restrain C.A. after an outburst. On another occasion, C.A. fiddled with the facility's alarm, causing staff to intervene.²² Still, the arc of her stay bent

¹⁷ Defendant's Exhibit 36.

¹⁸ Defendant's Exhibit 31.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Defendant's Exhibit 37.

²² *Id.*

towards progress and Piney Ridge, feeling that C.A. no longer required such intense care, made plans to discharge her in late May or early June of 2016.

Meanwhile, the state of Iowa was reorganizing its Medicaid system. The State provides “Managed Care” through contracts with non-state Managed Care Organizations (MCOs). Essentially, the State pays organizations a certain fee based on the number of Medicaid members and in return the MCO provides medical services to those members. These contracts allow the State to outsource more difficult aspects of patient care while conserving valuable Medicaid resources.²³ One of Iowa’s MCOs is Amerigroup.

Amerigroup is a Medicaid insurance provider that, at the time of this litigation, is a subsidiary of Anthem Inc., a national health insurance provider. In 2015, Amerigroup executed a contract with the State of Iowa. Under the terms of that contract, starting in the year 2016, Amerigroup would serve as one of Iowa’s MCOs.²⁴ Although this change came with little fanfare, it is an essential stone in the foundation of Plaintiff’s case.

In late 2015, as Piney Ridge prepared to discharge C.A., Jen sent a flurry of emails to C.A.’s treatment team. These emails denigrated C.A.’s progress and rebuked treatment staff for

²³ *Managed Care*, Medicaid.gov (December 2023),

<https://www.medicaid.gov/medicaid/managed-care/index.html>

²⁴ See generally, Defendant’s Exhibit 1 (it is worth noting that although the contract was to take effect at the start of 2016, Amerigroup was not prepared by the first of the year and so they undertook their MCO duties in about April of 2016).

what Jen perceived to be their callous indifference towards herself. On December 23, 2015, for example, Jen wrote a letter to C.A.:

Today, we talked about choosing the light side or the dark side. You said you want to be on the light side.

Here's what I want you to think about...

A person who lies sometimes...IS A LIAR...Not a person on the light side.

A person who tricks others sometimes...IS A MANIPULATOR WHO SHOULD NOT BE TRUSTED...Not a person on the light side.

A person who hurts people physically, sexually, or verbally sometimes...IS AN ABUSER THAT HEALTHY PEOPLE SHOULD NOT HAVE RELATIONSHIPS WITH...Not a person on the light side.

Good people...Healthy people...People worthy of trust, time and BEING IN MY LIFE do not turn the truth telling and respectful expression of their feelings on and off. People who turn honesty as well as safety on and off WILL NOT BE IN MY LIFE.

You may say, "Mom, you are expecting me to be perfect."

Yes, perfectly honest and genuine is my expectation.

Yes, perfectly safe is my expectation.

Time is running out. Doing it, then not doing it, then doing it again and claiming to be a new person only to then not do it again, is frankly getting old. I'm so fucking sick and tired of it that it's not even funny.

You say you are a new person, SHOW ME...not sometimes...not when it's easy or most convenient...

SHOW ME BY TELLING THE TRUTH WHEN IT'S SCARY AS HELL AND SUPER UNCOMFORTABLE...

SHOW ME BY DOING THE RIGHT THING WHEN YOU COULD LIE, TRICK, INTIMIDATE, THREATEN OR ABUSE TO GET WHAT YOU WANTBUT YOU DO THE RIGHT THING ANYWAY...

Words are empty and meaningless in terms of telling me what kind of person you are...

SHOW ME...

Love,

Mom²⁵

When C.A.'s caretakers expressed their reticence to deliver the above-quoted letter, Jen wrote them an email to explain herself, saying:²⁶

Ladies- I'm struggling. I'm struggling a lot. I feel like I'm "supposed" to understand that discharge is coming sooner rather than later and accept that there may be nothing we can do to stop it. She may very well end up for 1-2 months in an Iowa facility within the next several months and then be back in my home where SHE WILL HURT ME. Is that what any of us thinks is best? No. Are we going to do everything we can to hold it off as soon [sic] as possible? Yes, and the more regulated she remains, the less possible that is going to be. I have no intention of sending her over the edge purposefully, but I am done slowing things down this much because in doing so, WE are keeping her regulated just enough that her behavior improves so she can come home to me where she will not be regulated. It's not fair to me. I trust that you will write therapy that show we have to slow down because she only can handle so much, but what does that matter to the insurance company who is going to say, "Well, if slow is what she needs, then the next facility can do slow too. Move her on." That's the reality we are working from.

Again, I'm not saying I want to intentionally push her to violence. I'm not in disagreement with anything we did today either, but I feel like everything I wrote is the next step from where our conversation ended. I wrote what was true for me about where I am and where I think we are in terms of wanting to help her. I felt very good about it and still do now when I read it again.

She is trying to hold both right now- "I'm a changed person...Even though I've been turning my truth telling on and off." I need her to GET, really GET that is not going to fly, which we talked about today. I took it another step. It needs to be blatant or she will not get it. She handled today's discussion, which in my mind, makes it time for the next step without losing momentum.

Part of what is happening is there again [sic] little room for my emotions, my needs. When she's dysregulated, I can't express my emotions too much because she can't handle it and may hurt someone. When she's regulated, I have to be so very careful because she may become dysregulated and lose progress. When do I get to express myself? A year ago, we were prepping for me to express myself in relation to her violence towards me-never got there. She couldn't handle it. I haven't had much of a chance to express myself in response to her Cracker Barrel and the months of breaks after. Now the lying. I have expressed myself some about that. This was my first attempt to bring it full circle.

²⁵ Defendant's Exhibit 40 (format adjusted for brevity).

²⁶ *Id.*

She's at a cross roads right now. We slowly worked up to that today, which I supported wholeheartedly. She handled it AND SHE'S LYING. I know it. You know it. I want to keep the challenge real. Maybe that's not appropriate for her. Maybe it's not therapeutic for her. Maybe it's too much, too fast and not worded right for her. Frankly, I don't care. I'm tired of being so careful with her. I'm just tired of having my actions scrutinized, evaluated and coached, which is your job to do. Just keep in mind I've been doing this for 9 years on Christmas day. I'm tired.

We have to be real. There is no time for anything else. I know you agree with that. I also know your priority is her. It should be. I understand that, but right now, my priority is me. I had to sit and listen to that sickness in her voice while she lied to me – the joy she was experiencing from thinking she was tricking me. It haunts me. I can't sleep. I can't eat. I am overwhelmed by images of her stabbing me to death. That's because she's improved just enough to be even more dangerous, and we're talking about plans for discharge. I get it. It's not your fault. Neither of you have done anything wrong, but what am I supposed to do with it all?

There is nothing I said in the letter that is inaccurate. There's nothing wrong with it. I want her wrestling with this idea that lying "sometimes" does make her a liar. She's protecting herself from that and that only helps to minimize her actions. She has some serious choices to make. I only used caps to emphasize certain words so she could see a pattern to what I was saying. If you want me to remove the caps, I will. I swore a few times. Frankly, that will increase the chances that she reads it and takes it seriously, but if you want me to take it out, I will. Bottom line is that I'm over the break and repair as if toying with people in a sick manner is some kind of expected, natural conflict in healthy relationship [sic]. It's not. It's sick. And it's time for her to abandon it and be real or accept the cold, harsh life consequences.

I can't do this. I can't see the sociopath she is and curb my reactions. I'm sickened. I'm scared. I'm angry. But there's no room for that. How am I supposed to feel when interacting with a sociopath? How am I supposed to "be?" I'm supposed to do this and that and this and that, and right now, my question is, "FOR WHAT?" So she can be challenged enough to get

pissed off and blow up and then get dropped off on my doorstep. Do you see how sick and twisted that is?!?!?

I'm not saying this is your fault. You are both doing everything you can. I'm not asking you to change anything. I'm just trying to figure out what is best for me, and I felt really good about writing this and sending it. I guess I wasn't asking for feedback. I'm her mom, and I'll say to her what I want to say to her. If you think it's abusive, you can take whatever action you feel you need to take. I'm sure you yell at your kids for a hell of a lot less than being a sick sociopath who enjoys toying with others, namely you, as a cat plays with a mouse before the kill. I have to DO something or I'm going to lose it here. My PTSD is off the charts. I need to engage in action of some kind or I'm sitting in victim-mode. I can't do that anymore. This letter expresses what I need to express. Honestly, I don't give a rip about how she handles it in the short term. The truth of it will remain.

I'm not going to ask for more of either one of you in terms of your time. It's Christmas. She is where she is. I am where I am. If she calls, this will likely be what I go over with her. What's the worst that can happen? She blows up? Oh well! That can buy us more time, and I'll ten be able to take your lead and slow down.

Jen²⁷

C.A.'s caretakers worked with Jen to find a way to air Jen's concerns while protecting C.A.'s progress. A clinical note from December 24, 2015 details the actions of Piney Ridge treatment staff as they tried to explain to Jen that C.A.'s medical needs and her progress through sexual abuse training weighed in favor of a lower level of care.²⁸ Despite these assurances, Jen sent another email to C.A.'s caretakers, which contained the following excerpts:

- Dr. Hixon, I appreciate very much where we landed today in our discussion. I appreciate that you understand my fears about discharge and that you said you will do everything you can to fight for her [C.A.] to stay at Piney to work on the issues of how [C.A.] treated me, the abuse of her sister and Macy, our dog.
- Also, you are probably right that I'm not sure "how" to express myself at a "moderate" level with [C.A.] because she's never been able to handle that. Maybe it will just take some time because I honestly felt very confident about the letter, but then when you and Christina responded the way you did, I felt confused. I also struggle because I've tried so many different ways to approach things with [C.A.] with little luck.
- I can't "prep" for possible discharge after the February authorization AND go at the pace you want me to go. It's a can't, not a won't. You are asking me to hold back from being real in the hopes of keeping her calm SO THAT she can possibly discharge back to my home (after 1-2 months in another facility where they will not get any of this unless it is under the same umbrella of care she is receiving now). My safety has to matter in this, and if that means I need to push her more than others want me to (although not to an abusive level) so that she has an opportunity to show her true colors and we can stay safe, I will do it. That's a win, win, win – best for her, best for me, and best for us. I'm not asking anyone to "like" that or even condone it. I'm just telling you the truth of where I am.
- This is a pattern with her... With improved regulation comes the ability to be calm, calculating, and more dangerous. And Dr. Hixon, every time it had happened, it has caught me off guard, including these recent phone calls where I could hear the enjoyment in her voice when she thought she was deceiving me. I wasn't expecting

²⁷ *Id.*

²⁸ Defendant's Exhibit 43.

this or looking for it. I was coming off you and Christina telling me she was improving. I was suspicious of that and curious, but I was not expecting what I saw in those calls. Again, it sent shivers up my spine. I thought I was going to get sick. I will take her dysregulated, chaotic anger any day over that cold, calculating sickness.

- I also need us to be aware of these issues because I'm very sensitive to not being believed about what I'm experiencing when it comes to this – whatever THIS is. That is mostly why I'm such a mess today. I feel like my experience of her was discounted and pushed aside as invalid. I feel like I'm not believed. In my head, I get that everyone needs to stay open-minded and not jump to conclusions. Get it, and I feel like I'm reliving not being believed about being at the mercy of a sick sociopath. I don't know what to do with it, and as hard as I worked to organize it in this paragraph and this entire email, there's nothing organized about it inside me.
- Partly why I'm at a loss as to how to “moderately” express my emotions with her is that I vacillate between wanting to anger at her [sic] and being afraid of her. I'm confused in response to her – is she truly modulating in a healthy way or is she using her ability to regulate to be sicker? Which is which? What is what? I want to trust my gut and anger when I feel like angering [sic], but that seems to lead the team to think it's inappropriate and not “controlled” enough so I push it down and get more depressed. When I see that evilness in her, I have no desire to anger – every ounce of energy goes into not vomiting and not dissociating. I just want to get away and never come back because I can't shake the realization that after surviving a monster, I somehow invited the same kind of monster into my home as my child. In fact, my confusion is itself the evidence. Who does that?!?!²⁹

Starting in 2016 through the remainder of this litigation, Amerigroup took over as the MCO for Iowa, meaning they paid for C.A.'s care. Although their contract started in January 2016, Amerigroup's services became fully operational in the spring of 2016.

In February 2016, Piney Ridge tested C.A. for various personality disorders. Dr. Betty Schlesing, the clinician who evaluated C.A., found that C.A. showed signs of a borderline or avoidant personality disorder.³⁰ But, Dr. Schlesing could not substantiate a diagnosis of anti-social personality disorder. Based on her findings, Dr. Schlesing was hesitant to completely

²⁹ Defendant's Exhibit 41.

³⁰ Defendant's Exhibits 45 & 108.

reunify C.A. and Jen, but she did suggest that C.A. would be better served in an independent living facility—in other words, PMIC was no longer the appropriate level of care given C.A.’s pathologies.³¹

On February 23, 2016—the day before Piney Ridge entered a clinical note describing Dr. Betty Schlesing’s report—Jen sent the following email:

Good Afternoon – I spoke with Dr. Betty...It was a very good phone conversation...she is going to revise the report based on some of the history I could answer for her. She said she meets criteria for borderline, avoidant and anti-social personality disorders. She didn’t put the latter in because she thought that I might wish for there to be as much room for hope left in the report as possible, and since she is not yet 18...I told her I would rather it be completely honest. She is going to change the report. She said she does have anti-social personality disorder and is a sociopath, especially considering that she is becoming better regulated. She said she has no internal limits inside and is very, very angry, especially towards me. She said she would worry about my safety if she were to go back into my home, and she said she would worry about my safety if she were to go back into my home, and she said there is reason to believe I would be most at risk while sleeping. This isn’t anything we haven’t already discussed obviously, but once she knew I was “ready” to hear the raw truth, she was very willing to tell it to me. I am relieved by that. I told her that – that as awful as the news and prognosis is, it is validating. And it makes me very sad for her because I still love her – always will. I have to be safe though, and I will fight to keep her at Piney Ridge. The important thing for now is that you need to know that the report will be revised. She wants you to shred what you have and rely on the new report once it comes. If you were going to submit the report to insurance, she asked that you wait until the new report comes to submit that. Please let me know you received this and understand.

Thanks – Jen³²

On February 25, 2016, Dr. Schlesing faxed an update to her report to C.A.’s Piney Ridge caretakers. In that report, she interpreted her own findings, writing the following (excerpted):

- I have checked the scoring and interpretation of [C.A.’s] psychological testing for the third time, and as I mentioned in our phone conversation yesterday that I still

³¹ *Id.*

³² Defendant’s Exhibits 47.

find data still [sic] supports what I wrote in my initial psychological evaluation. I find no indication of antisocial personality disorder, I still find no indication that supports a current diagnosis of Reactive Attachment Disorder (RAD)...³³

- Therefore, as I noted in my conversation with you; although her adoptive mother expressed beliefs that those diagnoses should be added to [C.A.'s] current evaluation, *I am unable to ethically or morally add those to her current diagnoses because I don't have the data to support them according to the criteria that would be required to do so...* Therefore, I have written the following paragraph and give me feedback as to whether it clearly and concisely communicates what I want to communicate regarding options that she may or may not want to chose [sic] from that might be beneficial for her at the time if she progresses as rapidly through the stepwise program.³⁴

Ultimately, Dr. Schlesing recommended that C.A. continue treatment at Piney Ridge, and that she complete the remainder of her sexually abusive youth training. Once she accomplished those goals, Dr. Schlesing stated, then C.A. could move to a step-down program, then to her mother's home, and eventually to independent living.³⁵

On February 26, 2016, C.A.'s Piney Ridge caretakers informed Jen that Dr. Schlesing had faxed the report, which they attached to the email so that Jen could review its contents.³⁶

Jen responded to that email with the following:

It looks like you called Dr. Betty after I talked to her and as a result of that phone conversation, she changed her diagnoses? She was firm with me on the phone that she met the criteria for borderling, avoidance and anti-social personality disorder. I gave her VERY little information other than that I wanted all possible diagnoses included. She told me that she had left them out earlier because she didn't want to jeopardize insurance. I'm trying very hard to stay neutral here, but it looks to me like Piney manipulated this so that you could use the psych. Eval to our benefit in releasing her. I'm so upset right now I can hardly breath. You are screwing me over and you know it! You make think [sic] you are doing what is best for [C.A.], but

³³ Defendant's Exhibit 108.

³⁴ *Id.* (emphasis supplied).

³⁵ *Id.*

³⁶ Defendant's Exhibit 46.

last I checked, it's not good for [C.A.] to hurt people. I can't believe this. She scored in the 75th percentile on the anti-social test. Are you kidding me?!?! I will fight this, and you know it. Jen³⁷

To which Piney Ridge's treatment personnel responded:

Hi Jen – We need to clarify with Dr. Betty if this is her re-write or if she's going to blend this into her report – after we give some feedback on the final paragraph.

When we talked to Dr. Betty, it was to clarify and get a better understanding of what you had mentioned in your email. We can't just shred a psychological, as you requested – without talking to the professional who wrote it. By the time, we had our conversation with her – she had already re-looked at the data and had already come to the conclusion that [C.A.'s] data did not support an antisocial personality disorder dx. She did not have the data in front of her when she was talking to you. Nothing Christina or I said – moved her in that direction – she had already landed there by the time we had our conversation. Dr. Betty is solely resting on the data from her testing to make her diagnoses. I can talk with you more about the testing approach she uses as well when we talk.

She also explained to me the rationale of the Reactive Attachment d/o not being supported by the data, and I can explain that more to you when we talk, it finally made sense to me with her explanation.

I have not read your text or listened to your voicemail yet – and you know I won't address much in an email. What I've written is the extent to which I will address your concerns in an email to avoid miscommunications.

Let's look at a time next week to talk. Jennifer³⁸ [Hixson]

That same evening Jen sent three more emails responding to the treatment personnel at Piney Ridge. The first email reads:

Lies, all lies and you know it. Lies. Lies. Lies. And more lies. Whomever [sic] talked to Dr. Betty manipulated this and you know it. Perhaps Dr. Betty should be careful taking information about others from someone diagnosed with RAD herself. Do you think Dr. Betty would find that to be a problem? Perhaps something that would lead to blurring of boundaries? Or an inability to see something objectively when one over-identifies with a client? And how do you know I texted you if you haven't looked at your texts? More lies. I'm not stupid and you will not manipulate

³⁷ *Id.*

³⁸ *Id.* (emphasis supplied) Jennifer Hixson is the doctor who treated C.A. at Piney Ridge. Not to be confused with Jennifer Alexander—C.A.'s adoptive mother.

me. You want me dead. You want me traumatized. You are enjoying this. You're getting your wishes. I hope you're happy and proud of yourselves. Who does this first of all? Sick people that's who. And who sends that kind of email at 5:13 on Friday, knowing how it will shatter me. Someone who enjoys watching another person fall apart, that's who. Christina³⁹ was out for revenge and she got it. You'd better separate from her and throw her under the bus or you're going down with her. And that's not a threat to your safety. I'll be damned if I'll give you anything to support your lies. Sick people do this. Sick people. All this time I have trusted you. And for what? To be betrayed – not once but twice. You are both sick.⁴⁰

Jen then followed up with a second email:

Just to clarify, you both talked to her or is that another lie that “we” did it because you're going to cover Christina's ass at the expense of your own? I have a right to know who was involved in the conversation, and if I don't get it from you, I'll get it from another source. Not that it matters. You've already screwed me good. What a power trip you both must be on – passive aggressive Christina send an email at 5:13. Stab, stab, stab. Fuck me with a knife and have fun watching. Glad you enjoy it.⁴¹

Finally, Jen wrote: “And i have zero desire to talk to you next week.”⁴²

After this incident, as Piney Ridge continued preparing C.A. for discharge to a step-down facility, Jen began looking for other treatment options at the PMIC level of care. To that end, she contacted representatives of Iowa's new MCO—Amerigroup—to ask about potential facilities to which she might send C.A. On March 21, 2016, Jen emailed Amerigroup representatives, asking, “Can you tell me which out of state providers now have contracts with Iowa that may be appropriate for [C.A.]? Thanks – Jen.”⁴³

³⁹ One of the treatment professionals at Piney Ridge.

⁴⁰ Defendant's Exhibit 46.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Defendant's Exhibit 6.

Coincidentally, Amerigroup had, on March 11, 2016, executed a contract with Provo Canyon School—a PMIC in Utah—which took effect on April 1, 2016.⁴⁴ On March 25, 2016, Jen sent the following email, apprising Amerigroup case workers of her intentions:

Hello Everyone,

Provo Canyon School in Utah has clinically approved [C.A.] for placement in their program upon discharge from Piney Ridge in Missouri. No other treatment facility is willing to take [C.A.] other than Provo Canyon School. I have the no's from the Iowa PMIC's as well as from Chaddock in Illinois.

Carmen suggested this morning that she have contact with Amerigroup now so that this authorization can be good to go in 4-6 weeks when Provo Canyon School has an opening. Please use this email as permission for Amerigroup and Carmen to communicate together as needed, but please include me in the communications as much as possible. I am not giving permission for Piney Ridge staff to know anything about the new placement yet. I'm also not giving Piney Ridge permission to communicate with Provo Canyon School without me present.

Attached are [C.A.]'s most recent monthly treatment plan reviews. Also attached you will find [C.A.]'s most recent psychological evaluation. These are the same documents Provo Canyon has reviewed. The evaluation is the first version of the psychological report. Dr. Betty never sent a final report after conversing with Piney Ridge and drastically changing her assessment. I have called her to obtain information about my daughter's evaluation, which I'm entitled to as her parent. She will not return my calls, nor has she sent me the final report as she promised to do.

Finally, I know that Amerigroup hasn't officially started yet, and I know that case management may not be figured out yet. I am desperately hoping Shannon can be assigned as our case manager though. This would be for the sake of efficiency and quality of care for [C.A.] as well as for support of me. Shannon knows us and can be a huge asset in this transition when we know that [C.A.] often manipulates new providers and splits them against me - sometimes successfully unfortunately. The Piney team we landed with for two years really came to understand this, and Shannon was a big piece of getting us moving in the right direction. The fact that we had such a strong working relationship with the Piney team is a big piece of why I feel so betrayed by their recent actions. Their actions came out of nowhere for me and ultimately, put my safety and [C.A.]'s safety at risk. Please picture me over here begging for Shannon to be our case manager so she can help this transition occur in a way that sets up [C.A.]'s team to understand her complex needs. I need them hitting the ground running with what is best for [C.A.] so precious time and resources are not wasted.

⁴⁴ Defendant's Exhibit 5.

Thank you,

Jen Alexander⁴⁵

The availability of a bed at the Provo Canyon School (Provo) prompted Jen to accelerate C.A.'s discharge from Piney Ridge. And, on April 11, 2016, C.A. was discharged into the care Provo Canyon School.⁴⁶ C.A.'s final discharge summary documented the progress she had made at Piney Ridge:

[C.A.] was estimated to complete her SAY program at the end of May 2016 or early June 2016 and discharge planning included placement into a step down program closer to her legal guardian that would aid in facilitation of working on the relationship between [C.A.] and her mother. At this time, the facility would have to discharge [C.A.] due to no longer meeting the admission criteria for a level 4 plus facility. Ms. Alexander did request for [C.A.] to stay longer at Piney Ridge, however, ethically, Piney Ridge was not in agreement and asked for Ms. Alexander to continue to locate a step down facility as identified in the discharge planning process of the treatment plan and MTPR reviews each month. Ms. Alexander was able to find a facility in Utah, however, a bed was available before [C.A.] was ready for discharge and with no guarantee of a bed availability at time of projected discharge, discharge occurred. Due to not completing her SAY and recommendation of discharge until the completion of SAY, this discharge is against medical advice (AMA).⁴⁷

C. C.A. MOVES TO PROVO CANYON SCHOOL

Things at Provo School began on the right foot. As Jen said in her deposition,

I felt like we were off to a good start. I think that it always takes time to understand any child, any teen, who is in treatment and their family, and we were hopeful in the beginning stages of that. I was hopeful that we could pick up where we left off in Missouri, particularly since Dr. Hixson participated in that Communication with

⁴⁵ Defendant's Exhibit 4.

⁴⁶ Defendant's Exhibit 37.

⁴⁷ *Id.*

Provo, and they seemed to understand the complexity of her needs and what we needed to work on.⁴⁸

But soon Jen and C.A.'s relationship struggles re-emerged. In one of her first emails to the treatment staff at Provo—sent April 26, 2016—Jen reiterated her conviction that C.A. is a sociopath.

Hi Kieree,

Phone call this afternoon didn't end well with [C.A.]. While she didn't slam the phone down, she hung up on me.

She was "down." I was asking questions. She was expressing a whoa [sic] is me, I've lost everyone, I'm not going to try to build any relationships and it's not worth trying anymore "stance." I listened for a bit and tried to be encouraging, but it was victim-stance.

It's becoming clearer to me how much she may have been manipulating her former therapist. I knew it happened once in a while, but if what she is saying is accurate, I think it was happening more than I realized. She told me today that Christina (old therapist) is the "only" person who has stood by her and that she told her before she left that [C.A.] was like her own child [sic]. If that's true, that wasn't appropriate. Also, Christina is the main reason [C.A.] was not allowed to stay at Piney Ridge, but now [C.A.] sees this alignment with her and that they were both powerless to the move - both victims in a sense. Whether that's really how it was or simply how [C.A.] is viewing/portraying it now, I'm once again the bad guy. I did remind her that Piney Ridge insisted on the move and my preference was for her to stay longer. That wasn't possible and I found her a new place, which is very good and able to help her if she will let the people there help. She said that she doesn't want any help and wants me to give her up. I reminded her that we've talked about that numerous times - good, loving moms don't give up their kids. I've stood by her for ten years and am not stopping now. She said, "Yea, while you've put me in treatment centers." I said, "You know why you've been in treatment centers. I'm not going down that victim road with you." She said she was done and hung up.

She is honeymooning and trying to hold in all her anger, hoping she can skate through the levels without really having to engage. I also think she feels highly uncomfortable because she doesn't know the ropes of the new place, doesn't know how to work the system like it seems like she was doing previously and thus, feels out of control. In some ways, she had probably become too comfortable at Piney - having been there longer than any of the staff (literally). She was top dog and was working at least some of the staff. I think her seeming "depression" is more about the loss of that than anything else. The whole time she was at Piney, she hated it

⁴⁸ Defendant's Exhibit 44 (Deposition page 181).

and angered at me for not letting her go somewhere else. Now, I'm the bad guy because I didn't let her stay. She always wants something different than what she has. By focusing on that, she doesn't focus on herself and making necessary changes.

You mentioned [C.A.]'s capacity (or lack thereof) to engage in a healthy relationship with me last week. I believe she's capable with help if she would accept the help, but she has to give up controlling everyone and everything. She has to be willing to be vulnerable in real emotions and accept both the good stuff as well as limits/boundaries in healthy relationships. Having a healthy relationship with a mother is her only chance. Otherwise, her path to be a sociopath will only be more solidified. Those traits are already emerging. In my mind, if we give up on that goal, we are giving up on her. I'm not willing to do that.

Truly, If she put in 1/4 of the energy into working at our relationship that she currently puts into tricking/manipulating and then, fighting (when the tricking doesn't work), she could be in a much better place. She's older now. It's about choice. I realize that. Can't choose for her. She has to want it, but I'm not going to do well listening to the poor me - I'm still in treatment after all this time and there's no point in trying - "thing." We've had years of her not putting much effort at all into anything healthy in our relationship when she was given oodles of help and many opportunities to make a different choice. Her choices have landed her where she is. It's a painful reality, and if she were truly grappling with it, that'd be one thing, but what I see is victim-stance

Just thought it was important for you to know where we are heading into tomorrow.

Thanks - Jen⁴⁹

By summer 2016, Jen had become openly hostile to Provo treatment staff and combative with C.A. For example, during a group therapy session (07/06/2016) at which C.A. and Jen met with clinician Kierea Miller, Miller tried to explore their relationship.⁵⁰ C.A. described her own failure to facilitate a relationship with her mother. She explained that she was comfortable with the cyclical nature of their relationship and that she did not want to put in the work required to repair her relationship with her mother.⁵¹ Jen “felt like [C.A.’s] statement was ‘bull shit’ and that

⁴⁹ Defendant’s Exhibit 48.

⁵⁰ See Defendant’s Exhibit 49.

⁵¹ *Id.*

it was [C.A.] parroting previous therapists.” From there, Jen and C.A. co-escalated until C.A. had to be removed.⁵²

Throughout the month of July 2016, Jen sent numerous emails arguing with the Provo providers and expressing her opinion that C.A. was faking any improvement and that C.A. posed a threat to Jen’s life.⁵³

On July 22, Provo held a staffing session, which Jen attended. During this meeting Provo recommended that C.A. be discharged to a lower level of care. Additionally, Provo recommended that the parties cut off family therapy, preferring that C.A. and Jen pursue separate therapy until they could achieve a desirable rapprochement.⁵⁴

On July 25, 2016, Jen sent a handful of questions to C.A.’s treatment staff. She raised issues about appealing Amerigroup’s decision not to authorize further treatment at PCS and about PCS’s plans to discharge C.A. Finally, Jen asked when Provo would reinstate family therapy.⁵⁵

On or about the week of August 10-16, 2016, Jen came to Provo to visit C.A. During the visit, treatment professionals encouraged Jen and C.A. to attend group trust-building exercises together. Most notably, the Provo professionals suggested a group rock-climbing activity. In this

⁵² *Id.*

⁵³ Defendant’s Exhibit 50.

⁵⁴ Defendant’s Exhibit 52.

⁵⁵ Defendant’s Exhibit 51.

activity, Jen would serve as one of a pair of belayers.⁵⁶ So, C.A. would climb while Jen and a member of the treatment team belayed. Then, Jen would climb while C.A. and a member of staff belayed. At first, this activity went well, C.A. climbed; then Jen. To increase the difficulty and to ensure that the parties trusted each other, the treatment staff asked C.A. to climb blindfolded. By taking away a necessary sense, Provo hoped to increase C.A.'s reliance on Jen's guidance throughout the climb. Again, the activity went without incident. But, when the therapist asked Jen to wear the blindfold, Jen reported that she did not and could never feel safe with C.A. standing behind her.⁵⁷ The group retired to discuss Jen's concerns and C.A. indicated that she understood. The following notes from the Provo therapist describe the rest of the incident:

Monica asked [C.A.] what things she had done in the past to lose trust from her mother. [C.A.]'s answer included lying, aggression and assault. Monica then asked Jen the same questions. Jen became highly emotional—crying and having what appeared to be a difficult time breathing—and stated, “That feels very blaming!” Monica clarified that the question was not intended to be blaming, but simply to look into the relationship and discuss its (sic) circular nature in order to work towards healing in the relationship. Jen reported that [C.A.] was the cause of her trauma and that she had done nothing but love [C.A.]. Without looking up and in a monotone voice, [C.A.] reported, “My mom has done nothing but love and care for me. You don't understand.”

...Jen remained highly defensive and blaming in the session. She encouraged [C.A.] to share the things she had told her in private. [C.A.] continually repeated, “I don't want to ruin the visit.” Jen continued encouraging her, in a somewhat leading manner, “Your biggest fear is...” [C.A.] responded, “That I have the capacity to kill someone.” Jen added, “No, but who specifically.” [C.A.] continued to verbalize that she did not want to ruin the visit. She was looking down and avoiding eye contact. Jen went on, “You are scared that you are going to kill me, specifically, right?” [C.A.] nodded and continued nodding—as if in agreement—as her mother spoke.

⁵⁶ A person who watches a climber's rope to ensure that, if the climber makes an error, he does not fall.

⁵⁷ Defendant's Exhibit 162.

Jen shared that she didn't want to be mad at 'this kid', but that [C.A.] was someone completely different once October hit. [C.A.] continued looking down and nodding while her mother spoke. It was unclear as to whether what [C.A.] was saying was genuine, as her main goal appeared to be not to ruin the visit and she may have agreed with her mom simply to keep the peace.

Jen brought up that she did not like what this writer had said to [C.A.] that she is 'married to her cycle and needs to get a divorce from it' as it implies that [C.A.] has a choice over her behavior, which Jen felt strongly that she doesn't. This writer made it clear that I believed [C.A.] did have choice with her behaviors. Jen shared her trauma and experience with [C.A.] in her 'bad months' and reported that it was impossible to understand unless it was seen. Jen reported feeling unsafe and fearful that her daughter would hurt or kill her.

When session ended, this writer assessed how client and her mother felt. Client's mother reported that she wanted to take a short break, but felt comfortable taking [C.A.] off grounds to go hiking.⁵⁸

Jen and [C.A.] went on the aforementioned hike without incident. Another therapist corroborated the above-cited account in a note dated August 18, 2016.⁵⁹ On that same day, C.A.'s had a therapy session, during which her therapist noted that, "[C.A.] reported that the visit was 'amazing' overall." C.A. also said that the rock-climbing therapy session was "a good experience" and that she "felt safe and happy." The therapist further noted that:

Client reported that she has never done this good in her good months. This writer stated that, even if client made a mistake during her bad months, it would not mean that she failed and that she could get 'back on the horse' and still be successful. Client reported, "Don't let my mom hear that. She would be pissed off if she heard you say it. My mom thinks one mistake is over." This writer asked client how that affected her. Client reported that in the past when she has made a mistake and her mom has expressed a huge loss of trust, she has given up completely on trying because she feels there is no point—at which point her behaviors get worse.

This writer asked the client why the 'bad months' are so hard for her. She reported, "They're just so overwhelming because that's when I have to start dealing with my trauma, and still deal with my mom's trauma." This writer asked for clarification; client reported that most of her therapy is has (sic) been focused on how she has traumatized her mom, and in her 'bad' months, her trauma comes up and she feels that it is too overwhelming to work on her trauma and her mom's at

⁵⁸ *Id.*

⁵⁹ *Id.*

the same time. [C.A.] reported having on (sic) therapist that didn't focus on her trauma, but shortly thereafter, a therapist change was requested.⁶⁰

This may have been the end of the incident, except that Jen's account of events varied greatly from that of the Provo therapists. In an email dated August 20, 2016, Jen provided her version of events. The email is extraordinarily long, but the Court has concluded that it is appropriate to quote almost the entire text to illustrate what the Provo therapists were facing in their dealings with Plaintiff. The email reads:

...

Provo chose a completely inappropriate, emotionally unsafe and disastrously ill-timed experiential activity for family therapy during our first visit in more than a year. The purpose was to assess trust and safety in our relationship. Why was that necessary when we clearly had no safety or trust? Not enough to go out to lunch, let alone having my life put in her hands while I'm blindfolded and told to rock climb while my meet my maker-er is in control of the rope that keeps me safe (or not) but also is going to guide my every move. That is a RAD kid's (sic) DREAM and a trauma mama's WORST NIGHTMARE.

That family therapy session traumatized me. You do not get away with apologizing for my "perception" of negativity. For the love of rock climbing (my new swear phrase), no you do not. I.WAS.TRAUMATIZED. PROVO.CAUSED.IT.

The exercise was NOT voluntary as I was given no info. up front (like I asked for), nor asked if I wanted to participate. Furthermore, as I frantically pulled on my helmet and ropes so that I could FLEE (i.e., fight, flight freeze reflex associated with a flooded arousal state), I was told that we "must stay attached." I wasn't even voluntarily "IN" the room because I was TIED TO MY KID. I sure as hell wasn't "voluntarily" in the conversation where you had me relive past traumas and next, asked me what I had done to break [C.A.]'s trust – all while I sobbed.

Over the next few days, I sent three heartfelt, yes they were lengthy, emails from a place of vulnerability, not anger. I was clear in the response I needed. I asked for you to understand what that day was like for me. Yet, I received no response for four days until I begged for one. That was crazy-making. When Kierea did respond, there was not one line expressing care or concern for my well-being. The main idea was basically, "Your emails are too long. I don't know what to respond to. Stop emailing unless you have a specific question for me to answer." Now, I was traumatized, no one seemed to care and I felt like I was told not to talk about it.

⁶⁰ Plaintiff's Exhibit 3 at 3.0045.

That's when I sent you an angry email that yes, even included a word count because I can be that much of a bitch. Truth be told, I flipped open Brene' Brown's *Rising Strong* chapter about not responding rashly to emotionally charged emails and said out loud, "Eff you Brene' Brown" and pushed send. Did I stop there? No, In the middle of the night I decided to give you what you asked for - questions – all eighty-some of them. Some were good questions that I still want answered and others were nothing more than attempts to belittle and shame you for your lack of knowledge and experience surrounding trauma-informed care (because I am that horrible of a person). I am sorry I shamed you, but people have breaking points and you landed hard on mine. I was already terrified, extremely sleep-deprived, on sensory overload, experiencing flashbacks and otherwise, not generally in a very good mood (all still true today). Kierea's email was akin to looking at a person on fire and saying, "Your cries for help are bothering me, and I really don't know how to respond. If you list out questions in a concise manner, 'll come back tomorrow with answers." A person on fire would likely scream not very nice things to a person who said that, which is similar to what I did.

Kierea then wrote, "Our intent was not to traumatize you." Oh okay, so if you don't intend to run over someone with your car, I guess you have no responsibility to help them when they lay on the ground with life-threatening injuries. You get to walk away and sleep well at night knowing you didn't intend for the horrific incident to occur even though you weren't looking in the rearview mirror as you pushed on the gas pedal. Is it really a surprise that a response like that made me even more upset? You went on to explain that my sharing of the traumatic experience was getting in the way of my daughter's treatment as if my honest to God near-death event (because hint, I.CANNOT.TAKE.THIS.ANYMORE.) was somehow an act of "attention seeking" - an interruption to Cheyenne's care. That's like saying, "By the way, screaming, crying person on the ground writhing in pain after I ran over you with my car, could you move off the driveway because I have other things I need to be doing and you "doing that," "right there," "right now" is getting in my way." UNBELIEVABLE.

Is it really any surprise that I sent you a very angry (yet controlled) letter at that point where I threatened your license, your treatment center and a malpractice lawsuit? Everyone who has read that letter has told me it was probably over the top. I still read it and stand by every single word (of that one). What's the disconnect? It may sound harsh to threaten Provo with a lawsuit when you are new to us and clearly lack understanding of trauma, but the problem is that you are coming in on turn fifteen of the Jenga game. Do you realize how many professionals I've encountered who don't understand and took out blocks that I had to rearrange somewhere on top, leaving the foundation shaky? Who made things worse while I did everything in my power to remain calm? Do you know how many hours I have spent trying to educate providers to help them know better and do better (I even wrote a book; at least I haven't asked you to read THAT ;-)? Do you know how many times I've taken Cheyenne to the ER and was told that I needed to learn to control my child's temper tantrums like every other parent and did not indeed punch someone in the face with my scratched, bloody, bruised hands from her violence

(nor would I ever punch anyone)? Or, how many times doctors tried to send us home because there wasn't a bed? Do you know how much effort (and emails - very lengthy emails ;-)) have gone into the fight to get this kid the treatment she needs? What about the HOURS of conference calls? Or, the times we've been "moved on" from one treatment center to another because no one wanted to admit they didn't know how to help this kid and it was ruining their reputation? Provo, you are getting the raw end of the deal because you are getting me at my wits end. I'm sorry; it sucks to be you because I am convinced now that the only way this poor excuse of a monstrously harm-inducing mental health system is going to change is via lawsuits, especially when insurance companies and treatment centers are owned by Fortune 500 companies. The only language that is going to matter is MONEY. Parents, advocates, top notch providers and even legislators begging and pleading don't do it. Newspaper stories of dead coaches and dead mothers don't mean jack shit either. People write on Facebook, "Oh my goodness that's awful; the system needs to change." And the next day, they write, "Oh, let's just post happy things today." Bottom line? People with mental illness are not worth it to us. Stigma wins. Discrimination runs rampant because children with cancer and their families would NEVER be treated in this manner. Sadly, too often the worst of it comes from mental health clinicians themselves who provide treatment that is just plain bad; people suffer terribly. Until providers and facilities have to "pay" for these outcomes, nothing is going to change. This is not where I started, but it is where I have landed after nearly ten years. That is why I stand by that email.

Which brings us full circle to your subsequent apology for my "perception" of having had a negative experience. Do you forget that I'm a counselor? Do you forget that I know what all those little lines mean?

Everybody and their dog knows that a statement like that means, "We see that you are a crazy person, and we want to calm you down so we are going to say that we are sorry that you have a crazy perception of having been mistreated. That way we accept no true responsibility for our actions, continue to feel justified in blaming you, and maybe you will be dumb enough to catch the words "I'm sorry" and feel like you got what you wanted so we can all move on without a lawsuit - one that we will of course win because we did absolutely nothing wrong' but alas, it would be a pain in the ass to go through all of that and there are attorney fees involved along with bad press so yes, give crazy mommy the 'apology' she is looking for." I.HEAR.YOU.

All that counselor, manipulative-ease you've learned needs to go out the window. It's garbage, and I see through it. We all came out of school full of theories, techniques and a wish to change the world, but often, something very important is left out. It's the understanding that we are all on this planet together. Helping people, truly helping, requires genuine relationships where we care for one another - where we matter to one another. And the only way we get anywhere near THAT is by listening. We also have to let go of over-simplified explanations and interventions aimed at "fixing" the superficial layer of problems. Life is complex. Relationships are complex. People are complex. Just when we think we have it figured out, we

are most at risk of having it completely wrong. From there, we not only don't help but might even make things worse.

Speaking of making things worse, do you know what the worst thing in ALL of this is? There really are a lot of worsts, but perhaps one of the biggest is the vicious cycle we are in together. You don't get trauma. You don't know how to offer trauma-informed care. That is not your fault; you simply need training (the knowledgeable and compassionate professional in me understands this only I'm not a professional with you, I'm an exhausted, broken Mom who has been through hell and back with this kid, and as a result I don't always stay calm when professionals stick cattle prods in my wounds). One of my goals is to make sure you get training, not just for our sake but for the sake of all youth and families in your care. If you don't, you will keep re-traumatizing people, and you will keep perceiving their reactions as "CRAZY," confirming how it's all the other person's fault and not in the least bit yours. Then you will respond as if those people are crazy, which traumatizes them more. The cycle goes round and round.

People, this is what happens in domestic violence situations ALL the time. ALL THE. TIME. One of the best trainings I ever attended was not in grad. school or after grad. school. It was when I was a freshman in college as a psych. major. I volunteered to work with youth at a domestic violence shelter. They required a weekend-long training. My biggest take away was how "sick" abusers are and how masterfully the abuse cycle works in their favor. Husband (because usually it is the male) beats up his wife, threatens her life. One time she calls the police; they show up and she's frantic. They see no visible wounds because the recent bruises healed last week. Tonight, he "only" held a gun to her head and pulled the trigger but there were no bullets in the barrel "this time." So the police see an uninjured woman who is frantic, screaming, crying - losing her mind because of how he has terrified her. And what does he do? He stands there cool, calm and collected, saying, "Officers, I'm so sorry your time was wasted this evening. As you can see, my wife is not at all well. She is in fact mentally ill. I will take care of her from here. Again, I apologize for wasting your time." Next, the cops look at him with pity for having to put up with her. THIS.IS.CLASSIC.

I.AM.BEGGING.YOU. to see the relationship between that story and what happens between us. I'm not calling you a domestic violence perpetrator. I am telling you that my child operates from that exact same cycle, but instead of new professionals believing me, you question me. You remind me that "she only struggles in her relationship with you, Mom." It is subtle, but you are blaming me, and I cannot deal with it anymore. It's devastating, and it doesn't help her get better, which jeopardizes my safety.

To be specific, you look for things in my actions that "reinforce" Cheyenne's behaviors because you are so stuck in Behaviorism that you don't even know there is more current research out there to explain what is going on with these tough kids. You "find" what is "causing" her behavior in my actions. In fact, I'm sure you have me plugged into an "antecedent, behavior, consequence" chart on paper or at least in your head. No matter what I do, it is my fault. If I'm patient and therapeutic, you

will say I'm not firm enough. If I'm firm and setting boundaries, you will say I'm too strict and "reactive." When I asked what you would like me to do instead, Emily said that I should hang up on the child in response to her poor behavior. Really, that's the best you've got? I just shook my head.

Here's the deal. I used to be highly patient and therapeutic along with keeping her world very structured and small, which is what Cheyenne needed when she was little. I worked with the last treatment team and my therapist to intentionally get where I am now - a place where I respond authentically on purpose (unless I'm being re-traumatized because that is far from purposeful). I do this because it's healthier for me but also so my child can have an opportunity to see how her actions impact others. Without that, she has no shot at empathy development folks. Zilch. But all you see is how Mom's "reactivity" must be reinforcing her behavior by making her feel powerful. Then, later, when Mommy's "reactivity" is not at all intentional but rather, a trauma-response, you seal the deal on it being my fault. What you don't see is that you are doing exactly what the police sometimes do, and do you know what happens then? Those victims sometimes get killed.

THEY.GET.KILLED.

I am terrified.

I am frantic.

I am desperate.

Because that's how people feel when they are afraid for their life and rightly so. I have told you that is how I feel. It has been no secret. I came into this visit after weeks of preparing to bring this dangerous child, whom I love with my whole broken heart, back into my home - anticipating my own death. Will it be cold, calculated and when I least expect it? Will I wake up to her hovering over me while I sleep, but instead of her eating pineapple out of a can with a huge nail (true story), will I see the knife she stabs me to death with instead? Or, will it be more impulsive like the old days? Will there be a honeymoon where things seem to be going okay. 'll start to trust her more and then, BAM, out of nowhere, she'll explode when I tell her "No" and she will bash my head in with something nearby that she picks up in haste? Lord Jesus hear my prayer, please let me die and not end up alive with a traumatic brain injury. Amen.

I get it that you are seeing a lack of trust and safety in our relationship folks. That's because there IS a lack of trust and safety in our relationship, and you're right that a month of unemotional "just what we want to hear words in therapy" doesn't make me feel safe. You know what else doesn't make me feel safe? Rock climbing with her as my belayer and having it go well. Because what the hell does that mean? Of course it went well. She's in a highly controlled treatment center with staff watching. She likes to rock climb. It's extra fun to completely be in control of her attachment figure and LITERALLY PULL THE STRINGS. I wasn't going to die rock climbing. My distress was not that I truly thought / was going to die. MY DISTRESS WAS THAT YOU SOMEHOW THOUGHT A SUCCESSFUL ROCK

CLIMB THAT TRIGGERED MY TRAUMA IN EVERY WAY IMAGINABLE WOULD SOMEHOW ERASE THE LACK OF SAFETY THAT IS REAL, AUTHENTIC AND JUSTIFIED IN THIS DANGEROUS RELATIONSHIP.

THAT.MAKES.ME.LOSE.MY.EVER.LOVING.MIND.

So what did I do? I broke and shattered. Later, I understood that you didn't get it. I tried to write something (two things actually) that would help you understand. Was it long? Yes. Is this long? Yes. Long emails frustrate and annoy you because your time is limited. I get it. So why am I wasting my breath again? I truly don't know, especially when you made it clear that my words don't matter. My real or felt safety doesn't matter. Ugh, here we are again, I don't matter. Should I just delete this now?

I will probably send this. All I can land on is that writing to you and begging like a pathetic dog for you to understand brings some small degree of hope. Hope that you will see what is happening enough to help instead of doing what you are doing now, which is rearranging the deck chairs on the Titanic. But then do you know what happens? I hate myself for sitting here begging to matter to you. You find it pathetic too - that a mother would focus on herself instead of her child. If only you understood that I am her ship, and if i go down, she goes down too. See me as a crazy drain on your time and energy if you want. Talk about me behind my back in terms of how awful I am if you want, but if you care about my girl, you need to start caring about me too because helping me helps me help her.

The most despairing thing in this mess, though, is that all I've ever wanted to do is help kids - especially this kid. And it doesn't matter to you. If I'm really going to be raw and honest right now, all I want to do is go get her, bring her home and let her kill me. I'm ready to GET.IT.OVER. WITH. That's because I can't do this anymore. That, of course, would damage her so how could I do that? I am out of options. I feel hopeless. Where we are is not good.

Jen⁶¹

On September 2, 2016, Provo responded to Jen's concerns with a conciliatory letter:

Jen-

We understand and acknowledge how much pain, chaos, and disappointment Cheyenne has caused since being in your home. We understand the impact this pain continues to have on you. While the trauma responses are not your fault, we also understand your responsibility on taking care of yourself and managing those responses.

Regarding the family therapy session while you were visiting with Cheyenne, the purpose of that session was to improve communication between you and Cheyenne, as well as strengthen the relationship. We did not foresee or intend for a strong

⁶¹ Defendant's Exhibit 53.

traumatic response. We feel appropriate support was given before, during, and after the therapeutic exercise. There was no evidence during or immediately after the session you were being traumatized. Following the exercise when the processing continued in one of the visit rooms, there were no signs of distress and you chose afterwards to take Cheyenne off grounds on a hiking activity.

At this time family therapy is contraindicated. We believe that continuing family therapy at this time will likely cause more distress in both you and Cheyenne causing further damage to the relationship. We feel your ability to work through your traumatic responses is crucial to making family therapy a success. Because of the apparent emotional instability at this time we feel these responses are doing more damage to the relationship, and not allowing it to move forward in a healthy manner. We recommend you continue to work with Dr. Stuart to develop better coping skills and learn ways to lessen your reaction to Cheyenne. The hope is that by doing this, you and Cheyenne will be able to move forward in the relationship in a healthy and safe manner.

We recommend that Cheyenne receive two individual therapy sessions per week in lieu of family therapy. This will allow her to continue accomplishing her treatment plan goals and learn skills to help her be successful in a lower level of care. We will continue to work with Cheyenne to address her manipulation, cycle of abuse, emotional disconnection, lack of remorse and empathy, and thinking errors. We will help her develop skills to function in society and thus decrease her risk of hurting anyone else, including you.

All communication between you and Cheyenne will continue through supervised social calls, arranged with therapist supervising. Each week you will receive a written report about Cheyenne's progress during that week. Any questions directly related to Cheyenne's progress can be emailed to therapist and will be addressed in the next written report.

Because of your lack of trust in and personal attacks on Kierea, we will also be making a therapist change. Emily Scofield will now be the assigned therapist. All communication to and from Provo Canyon School will go through Emily. Again, all communication will be in writing.

We will continue working on discharge planning. We are currently gathering a list of other Stepdown programs, outside of Iowa to provide you and Amerigroup with in order to make Cheyenne's transition possible. The hope is that we can come to the best outcome as soon as possible.

Sincerely,

The Provo Canyon School Student Enrichment Team⁶²

⁶² Plaintiff's Exhibit 3 at 3.0048-49.

On September 2, 2016, Provo reported Jen Alexander to the State of Utah Division of Child and Family Services. Provo alleged that Jen was emotionally abusive towards C.A. Ultimately, the report was determined to be unfounded due to lack of evidence.⁶³ The Utah Division of Child and Family Services wrote the following:

This case has been staffed with supervisor, [R.A.]. The allegation of emotional abuse is unsupported due to lack of evidence. In interview with AV, AV stated comments made by MO do bother her but AV did not disclose great emotional distress over conversations with MO. MO denied any emotional abuse. MO resides in Iowa. AV is not scheduled to return to family residence in Iowa but instead will be transferred to a different treatment center once one a placement has been set up with MO and insurance company. No services will be provided.⁶⁴

Contemporaneous records indicate that Provo's therapists called Iowa Child Protective Services on September 2, 2016 to report their concerns about Jen's relationship with C.A. They wrote:

[C]oncerns of emotional abuse towards [C.A.] from her mother for the following reasons:

Mom has been impeding [C.A.]'s progress in treatment as evidenced by:

- a. Whenever [C.A.]'s progress or changes are pointed out, mom becomes agitated and tries to convince therapist that [C.A.] is faking it and that she is incapable of making changes.
- b. Mom pushes the issues of [C.A.] being a sexual perpetrator, even though the sexual acting out occurred when [C.A.] was 5 and 9, and despite [C.A.]'s own sexual abuse from her biological parents.
- c. Mom consistently tells [C.A.] she is "sick" and "sick minded"
- d. Mom tells [C.A.] if she had not been in treatment for 7 years she would have killed someone
- e. Mom tells [C.A.] if she was not in treatment she would be in jail

⁶³ There appears to be ample evidence to support an honest belief in the abuse, but there is no evidence that the statements were made with willful dishonesty.

⁶⁴ Plaintiff's Exhibit 3 at 3.0051

f. [C.A.] believes her mother knows her better than she knows herself this leads her to second guess what she thinks and feels

g. Mom states [C.A.]'s words mean nothing to her. When [C.A.] gives her an answer she does not agree with, she belittles, states it is wrong, or that [C.A.] is lying.

h. Mom states [C.A.] cannot make progress unless she is emotionally escalated.

Mom is emotionally unstable as evidenced by:

a. Yelling, swearing, screaming, and breaking things while on the phone with the insurance and Provo Canyon School.

b. Continuing to claim [C.A.] will kill her one day, but stating she would rather bring [C.A.] home than send her to a lower level of care.

c. Continuously putting herself into the victim role as well as [C.A.] into the role of her perpetrator.

The CPS investigator stated there was a case for mental injury but since Utah CPS had opened a case they would not be opening a case. She said they would collaborate to help with any requests Utah CPS made. She suggested social calls between [C.A.] and her mother be supervised.⁶⁵

Provo seems to have taken CPS's advice as, on September 7, 2016, they moved Jen and C.A. to supervised communications, writing:

Jen-

When we had the phone call prior to your visit, we clarified that 'Peak Phase' was the highest phase within our program and meant she was in the maintenance stage of the Stages of Change. We stated she was currently on 'Ascent Phase' and working towards 'Summit Phase'. Meaning she was working towards the 'action' Stage of Change.

We are not restricting your access to Cheyenne, we are making clinical recommendations and setting boundaries. One of the reasons for the supervised social calls is for the safety of you, Cheyenne, and others. In the past couple of weeks you have stated that when you were alone with Cheyenne, in person and on the phone, she made threats towards you and indirectly towards Kierea. We want to offer support during those calls and address the issues of safety.

The other reason is we feel the current relationship between you and Cheyenne is unhealthy. There is emotional distress on both ends and until you and Cheyenne can address your own emotional needs separately, working on the relationship

⁶⁵ Defendant's Exhibit 55.

outside of supervised phone conversations will only increase the frustration and cause more damage.

We recommend you continue to work with Dr. Stuart in order to address your own trauma, trauma reactions, and responses to Cheyenne.

We are doing our very best to help Cheyenne capitalize on her individual progress and recognize the value in continuing this rigorous therapeutic family journey. Our ultimate goal is successful family reunification. In order to achieve this goal we ask that you fully cooperate with our recommendations.

Thank you,

The Provo Canyon School Student Enrichment Team⁶⁶

Fed up with Provo, Jen made plans with Amerigroup to transition C.A. to a facility in Colorado, Devereux Cleo Wallace (Devereux). Amerigroup did not have a contract with Devereux at the time, and it had to make one so that C.A. could transfer to the new facility.⁶⁷ Jen also demanded that no one at Amerigroup share her transfer plans with anyone at Provo.⁶⁸

Meanwhile, when C.A. learned that Utah CPS had closed its investigation into her mother's conduct, she stated that, "her mother was only going to be more controlling of her life and she would force [C.A.] to be in treatment until she was 18."⁶⁹ She further stated that, "she was afraid of her mother and did not want to return home, or have a relationship with her, but did not want to be in treatment forever."⁷⁰

⁶⁶ Defendant's Exhibit 139.

⁶⁷ Defendant's Exhibit 11.

⁶⁸ Plaintiff's Exhibit 3 at 3.0055–56 (emails dated 9/19/16)

⁶⁹ Defendant's Exhibit 60.

⁷⁰ *Id.*

A little more than a month later, on October 21, 2016, Provo filed a second child abuse report, this time with Iowa DHS. According to the intake form, a member of the Provo treatment team:

[A]lleged that [C.A.] (age 16 year) has been in and out of home placements for many years. It is alleged that her mother, Jennifer Alexander, is unable to recognize her progress or accept that she is improving. Jennifer tells [C.A.] that she is a sick person, is a sexual predator and that she will never e (sic) well. It is alleged that these allegations are not based on facts, are internalized by [C.A.] and are impeding her ability to make therapeutic progress. The child reacts with verbal and physical aggression, property destruction, demeaning self-talk and panic attacks. Mental injury is alleged.⁷¹

Iowa DHS issued a letter on 11/21/2016, which determined that the allegations of abuse were unfounded. Specifically, it wrote:

THE DEPARTMENT'S DECISION IS: This incident is NOT CONFIRMED and NOT PLACED on the Central Abuse Registry. This decision may be different than the determination of abuse concerning your child.

...

Not Confirmed means that it was not possible to determine, by more than half of the available evidence, that abuse occurred. The child abuse assessment summary is retained five years from date of intake or five years from the date of closure of services record, whichever occurs later.⁷²

Meanwhile, Provo continued, without Jen's assistance, to prepare for C.A.'s discharge.⁷³

In early December, C.A. wrote a letter to Kelley Pennington, an Amerigroup employee. In this letter, C.A. requested that Amerigroup send her to a step-down facility. C.A. suggested that Jen would "guilt trip" Amerigroup into keeping C.A. at the highest level of care and she pointed out

⁷¹ Defendant's Exhibit 56.

⁷² Plaintiff's Exhibit 79 at 79.009

⁷³ Defendant's Exhibit 62 (letter from Provo dated 11/28/2016).

that Jen had not had daily contact with C.A. in five years.⁷⁴ In the end, Amerigroup approved a contract with Devereux, and on December 20, 2016, Provo discharged C.A.

D. C.A. MOVES TO DEVEREUX

As was the case with her prior placements, things at Devereux went well in the early days. C.A. had a few violent outbursts.⁷⁵ But, by April of 2017, the following note appeared in C.A.'s file:

Provider has identified that the member is ready for a change in level of care and is actively working on discharge planning to the provider's assessed appropriate level of care for this member. The provider is aware of how to contact Amerigroup for assistance with discharge planning as needed. Reviewed with provider that they have contact with the member's mother and are actively communicating with her on the needs of the member and working on the discharge plan. At this time we will continue to authorize services and next review will be in 28 days.⁷⁶

In June of 2017, Jen's relationship with Devereux began to deteriorate. She wrote an email to Lisa Gaudia, one of the Devereux therapists, venting her frustrations (excerpted):

- In my email with you, I was vulnerable saying, "I really, really hope you will believe me about the state she was in." I thought that would matter. I really thought you would want to check in with how I was doing and discuss how we could move forward with a plan. What we talked about in session was fine, but after being caught off guard by her sick communication yesterday, I needed to connect with someone before being back in the room with her.
- But somehow I'm expected to praise her today for being respectful in this call after she point blank told me last night that she would manipulate you and tell you what you want to hear? Are you kidding me? Do you have any earthly idea how crazymaking this is?!?! But the worst part of it all is that I don't think you even believe me so then once again I'm the fucking bad mother and she's the poor, poor child who gets pitied. I seriously cannot take it anymore.

⁷⁴ Defendant's Exhibit 9.

⁷⁵ See e.g., Plaintiff's Exhibit 4 at 4.0011.

⁷⁶ Plaintiff's Exhibit 4 at 4.0018.

- And maybe you'll sit there and read this and say, "Jen, I'm not able to say all those things in front of her or validate your experience, Jen, in front of her." Maybe, just maybe, Lisa, I already fucking know that and that's (sic) why I have requested that we talk alone first. It's because I can't handle the anxiety of sitting on a call not knowing if the latest adult who is going to judge my parenting under a fucking microscope even believes me about what I've been through.
- So yes, I guess you can chalk up the session as a great success. We both held it together for your benefit, and I for one, am experiencing my traumatic re-experiencing alone. Go us!

Lisa Gaudia responded a few hours later as follows:

Hi Jen,

I hear how upset you are. That was certainly not my intention, but I can see from your perspective that this was an upsetting session for you. I thought that we had discussed, via email, that we would address yesterday's phone call in our session today, and that the goal would be to be able to discuss it with [C.A.] being able to remain calm (not escalate, storm out of session). I thought it was progress that she was able to do that. She was irritable and at times agitated during today's call, but did not lash out, storm out or be hostile. I feel like she heard your points in this conversation. She was clam (sic) and regulated returning to her unit.

We can talk before the session on Tues 7/4. I can call you at 8:45am Tues, how's that? Before bringing [C.A.] into the room.

Shortly thereafter Jen again responded again. She accused C.A. of manipulating Devereux, reiterated her fear that C.A. would kill her, and suggested—without evidence—that C.A. and another resident were having inappropriate sexual relations.⁷⁷

On July 5, 2017, Lisa informed Jen that Devereux would not seek further authorization for C.A. The treatment team no longer felt that C.A. required the PMIC level of care.⁷⁸

In an email sent the next day, Laura Stickney, another therapist at Devereux, tried to alleviate Jen's anxiety about C.A.'s impending discharge. She pointed out that one of the doctors

⁷⁷ Defendant's Exhibit 64.

⁷⁸ Defendant's Exhibit 66.

whom Jen had hired to evaluate C.A. had determined that a lower level of care would suffice for C.A.'s needs.⁷⁹

Jen responded almost immediately, directing her ire not only at the Devereux clinic but also towards Amerigroup. She accused Amerigroup of orchestrating Devereux's recommendations and using proxies to accomplish their malign intentions.⁸⁰

Discharge plans continued as Amerigroup attempted to remit C.A. to Piney Ridge. For its part, Piney Ridge was adamant: if it were to take C.A., then Jen could not have any involvement in C.A.'s treatment.⁸¹

At this point, C.A. had not received any word about what she would do or where she would go after her impending discharge. She sent another letter to Amerigroup representative, Kelley Pennington. In that letter, C.A. reiterated her desire to move to a lower level of treatment or some other placement where she could acquire the skills necessary to thrive in the outside world.⁸²

On or about August 7, 2017—just about the time that Amerigroup received C.A.'s letter—Jen sent another email to Amerigroup. She forbade the MCO from making any move without first receiving Jen's consent.⁸³ When Devereux representatives sought Jen's consent (in

⁷⁹ Plaintiff's Exhibit 4 at 4.0073.

⁸⁰ *Id.*

⁸¹ Defendant's Exhibit 17.

⁸² See Defendant's Exhibit 13.

⁸³ Defendant's Exhibit 14.

emails dated August 8, 2017), Jen accused them of covering either their own—or Amerigroup’s—tracks.⁸⁴

On August 10, 2017, Julie Carlson (another representative for Amerigroup), emailed Jen to make a final discharge plan. She also set up a phone call between Jen and Lakes LifeSkills (Lakes)—a lower-level-of-care life-skill-training center located in Iowa—in hopes that Lakes might be a good fit for C.A.’s needs.

Jen responded to the email by discounting the possibility that Lakes would take a 17-year-old. She likewise informed Ms. Carlson that she would not consider Piney Ridge unless she was intimately involved in the planning and treatment process—a redline for Piney Ridge.⁸⁵ Jen then sent another email, this time stating that Lakes LifeSkills had refused to take C.A. before she turned 18. Besides their refusal, Jen enumerated a slew of reasons why Lakes would not be an appropriate placement for C.A.⁸⁶

Julie Carlson then (the same day—August 10, 2017) emailed Lakes LifeSkills to see if there was any way to get a waiver for C.A. In that email, Carlson wrote:

I had given out your name as a potential referral for [C.A.] who is currently in PMIC in Colorado. Her mother is reporting Lakelife Skills (sic) is unable to serve her due to her age, in addition to other potential concerns. I’m just wondering if you would consider serving her if we are able to get a variance from the state? If you are unfamiliar with the variance for serving 17 ½ yr olds, I could put you in touch with the DHS helpdesk. They can help us walk through this process and the requirements.

If there are other barriers in serving [C.A.], please let me know.

⁸⁴ Defendant’s Exhibit 15.

⁸⁵ Defendant’s Exhibit 113.

⁸⁶ *Id.*

The Lakes professional responded to Carlson (the same day—August 10, 2017), writing:

[C.A.]’s mother called me today. I found her a little bit overwhelming to be honest. She called numerous times and left messages and sounded quite enthusiastic about her daughter coming here. However, when I actually got to talk to her I discovered she really was doing reconnaissance for reasons why we would be inappropriate for her daughter! Mum feels her daughter needs somewhere that provides restraints. I explained we were trauma informed and did not utilize restraint. She told me she’s writing a book on trauma informed care which will include restraint as an intervention....Anyway, she was pretty much horrified by every detail I gave her about Lakes LifeSkills. Despite the fact that we have a large number of young women with similar histories.

She feels that this is a plot by Amerigroup to cut costs and not in her daughter’s best interest and as her guardian she calls the shots. I asked if DHS was involved, she said absolutely not! I pressed her a bit and asked if they were on the phone calls, nope. Eventually when pushed she said they were on the call but only for ‘training purposes’.

Long story short, if I have a bed I would consider her recent behaviors and progress and seriously look at taking her. Mum may be a barrier to appropriate goals.⁸⁷

About two weeks later, on August 22, 2017, Devereux filed a child abuse report against Jen

Alexander. The Child Protective Services intake form listed the following complaints:

It is alleged [C.A.] (age 17) is in a residential treatment facility in Colorado and has been recommended for a lower level of care by three different treatment facilities due to the progress she has made overall. Mother, Jennifer Alexander, refuses to participate in discharge planning or cooperate with referrals to agencies that can provide a lower level of care. As a result of mother’s refusal to participate in discharge planning, [C.A.] is not receiving care commensurate with her needs. Denial of Critical Care, Failure to Provide Adequate Mental Health Care is alleged.

Iowa DHS would later determine that this report was unfounded.

On August 31, 2017, Amerigroup wrote to Jen informing her that they would extend C.A.’s treatment authorization at Devereux through September 22, 2017. In that same email, Amerigroup again suggested Lakes LifeSkills as a possible step-down for C.A. They clarified

⁸⁷ Defendant’s Exhibit 16.

that Lakes was willing to take C.A. and that, if Lakes accepted her, they would ensure that she did not stay with age-inappropriate roommates.⁸⁸

On September 5, 2017, Amerigroup provided to Jen a list of potential step-down facilities that might be willing to take C.A. after her discharge from Devereux. After calling to consult with the sixteen recommended facilities, Jen responded to Amerigroup on September 9, 2017. In her response, Jen detailed why none of the facilities would work for C.A.⁸⁹

Amerigroup responded on September 11, 2017, asking whether Jen had provided the potential placements with the most current clinical data and whether she had signed a release permitting Devereux to speak with a potential placement.

Jen responded on the same day. She assured Amerigroup that she had shared the most recent clinical data. She also accused Amerigroup of malfeasance, writing:

It is awful that the people I have trusted to care for my already severely traumatized child have instead, harmed her more, but we all know Amerigroup is as much responsible for that as anyone because I'm sure Devereux was doing what Amerigroup told them to do in making false allegations of abuse.⁹⁰

Jen said nothing about the Devereux releases.

Amerigroup responded on September 12, 2017, again prompting Jen to provide the release forms for Devereux.

A few hours later, Jen responded. She wrote:

⁸⁸ Defendant's Exhibit 20.

⁸⁹ *Id.* at Amerigroup email dated September 11, 2017.

⁹⁰ *Id.* at Jen Alexander email dated September 11, 2017.

Who do you want releases for? Please fill each form out in their entirety with the names, addresses, and contact info. of WHO you want to communicate with because right now, I have no clue who that would be. I'm not signing blank releases, nor do I have time to fill them out. Please make sure that it states that the exchange of VERBAL information is ONLY allowed if I'm also part of those conversations, per my attorney's recommendation, which I will be following. If you can explain to me a good reason for a private conversation without my involvement, I will consider that if Dr. Stuart is also present.

Time—and numerous emails—passed.⁹¹ Yet no one had set a plan for Devereux's impending discharge of C.A. The only certainty was that Devereux would discharge C.A. on October 9, 2017. Where she would be discharged, and what services she would receive upon discharge, remained nebulous.

Everything changed when, on or about September 25, 2017, Devereux issued a two-week discharge notice. The sudden appearance of the deadline, as it so often does, kicked off a flurry of activity. Jen emailed Amerigroup and Devereux informing them that she had not located a facility to which she could send C.A. Jen also noted that she had not received any update on in-home services. Finally, she pleaded with Amerigroup to secure further treatment until October 14, 2017—the date on which Jen had scheduled a trip to visit C.A. This short extension, Jen reasoned, would allow her to pick C.A. up as soon as Devereux discharged her.⁹²

Devereux responded to Jen on September 26, 2017, writing:

We will seek authorization from Amerigroup through the 14th so that you make (sic) pick up CA when you are here for your conference. I want to make clear that in yesterday's phone call there was a miscommunication that Amerigroup was denying time after Oct. 9. They did not deny, Devereux was not going to seek authorization. As we have stated we do not think she meets this level of care and are recommending a lower level of care which is why we were not going to seek

⁹¹ Plaintiff's Exhibit 4 at 4.0133–138

⁹² Plaintiffs Exhibit 4 at 4.0160–200

continued authorization. We will however for this purpose to discharge on the 14th.⁹³

Jen responded:

Thank you for clarifying this Laura and thank you for helping to make sure that we have until October 14th. How unfortunate, though, that there was yet another “miscommunication” about something so important. It was stated yesterday by Devereux staff that Amerigroup REFUSED to authorize beyond October 9 despite calls back and forth multiple times between Devereux and Amerigroup.

I find it hard to believe that someone would “misunderstand” something like that, especially when I’ve clarified with you, Laura, numerous times what the difference is between a two-week authorization and a two-week discharge notice. Perhaps a more accurate way to describe what happened yesterday is that Devereux staff once again failed to tell the truth. Not telling the truth is a definite pattern I notice with the Devereux treatment team, and I find it extremely concerning.

If anyone has any questions about what was stated yesterday by the Devereux team, I would encourage you to talk to Barb Lind who was also present for the entire meeting and has been present for family therapy as a witness as well. Because let’s face it, if Devereux is lying to me, maybe just maybe, they’re not telling you the truth about [C.A.]’s needs or about me either. The lengths programs will go to unload a kid they don’t want to work with never cease to amaze me anymore, especially after the are bullied by an MCO. It is deeply, deeply disturbing because [C.A.]’s struggles are not her fault. If this is what happens to kids who have mothers who advocate for them, can you imagine what happens to kids who don’t have someone who is able to make sure they get what they need? We should ALL lie awake at night thinking about that if we care even a little bit about our youth.⁹⁴

On September 29, 2017, Devereux issued a letter describing the care it had provided to C.A. and making recommendations for future care. It ultimately concluded that C.A. would be better served by a lower level of care at a life-skills facility. It further noted that with only nine months remaining before C.A. turned eighteen, the time was ripe for C.A. to learn the responsibilities of a self-sufficient adult.⁹⁵

⁹³ Defendant’s Exhibit 190.

⁹⁴ *Id.*

⁹⁵ Plaintiff’s Exhibit 4 at 4.0216–217.

The next day, Jen wrote her own lengthy letter, which she hoped would be included in C.A.'s file as an attachment to the Devereux letter. In that letter she assured readers that she has “never had problems with acting out or becoming hostile with [C.A.]” Jen recapitulated her trauma from the rock-climbing exercise and generally restated her views regarding C.A.'s treatment history.⁹⁶

In early October of 2017, Amerigroup scrambled to secure some post-discharge services for C.A.⁹⁷ Devereux, meanwhile, informed C.A. that she would likely discharge back to her home. Jen was displeased with this because she had not wanted Devereux to tell C.A. where C.A. was going until Jen and the providers had formed a concrete plan.⁹⁸

As the day of discharge drew near, Amerigroup became fed up with the lack of progress in locating a place for C.A. to go after her discharge from Devereux. It requested the clinical history that Jen had sent to potential providers.⁹⁹ Devereux clinicians reviewed this history, and one of the therapists, Laura Stickney, noted her numerous disagreements with the provided documentation. Stickney disagreed with Jennifer's characterizations of C.A.'s behavior in the following particulars:

- The history stated that C.A. was a danger to herself and others.
 - Stickney did not agree that C.A. was dangerous.
- C.A. was marked as having highly inappropriate sexual knowledge and as having an excessive preoccupation with sex.
 - Stickney noted that, although C.A. had kissed another resident, she did not believe that C.A. had an inappropriate preoccupation with sex.

⁹⁶ Plaintiff's Exhibit 4 at 4.0218–22

⁹⁷ Plaintiff's Exhibit 4 at 4.0223–24.

⁹⁸ Plaintiff's Exhibit 4 at 4.0226.

⁹⁹ Defendant's exhibit 19.

- The history listed C.A. as displaying hypersexuality.
 - Stickney thought that this classification was “questionable.”
- The history listed C.A. as displaying extreme risk-taking.
 - Stickney thought that this classification was “questionable.”
- The history stated that C.A. had considered performing self-injurious acts. And that the intent of such acts was to kill herself.
 - Stickney felt that this classification of C.A.’s behavior was “questionable.”
- The history stated that C.A. had threatened others or was preoccupied with violence.
 - Stickney felt that this classification of C.A.’s behavior was “questionable.”
- The history noted that C.A. had short-term and procedural memory problems.
 - Stickney wrote: “It is noted that in the last 3 days [C.A.] has failed or dropped out of education program (sic). She has not dropped out of the education program, nor has she failed.”
- The history listed a number of diagnoses of which C.A. apparently suffered.
 - Devereux diagnosed C.A. with Disruptive Mood Dysregulation Disorder, PTSD, and Reactive Attachment Disorder of Childhood.
- Finally, the history noted that C.A. was a sexual abuser with a risk of abusing others.
 - Devereux objected that it had not experienced that risk during C.A.’s extended stay at their facility.¹⁰⁰

It was on the basis of this history that many of the step-down facilities rejected C.A. as a client.

The day before C.A. discharged from Devereux, Amerigroup authorized numerous transition services for C.A., including: respite care, med management, a crisis help-line, family and individual therapy, and habilitation services. Jen responded, noting the inadequacy of these provisions and lamenting the absence of capacity to restrain C.A. should she turn violent.¹⁰¹

Time having finally run out, Devereux discharged C.A. into her mother’s care on October 14, 2017. The Devereux discharge note indicates that C.A. was anxious but happy to be returning home and that she was excited to learn the skills to live independently.¹⁰² Importantly, Devereux

¹⁰⁰ *Id.* (reformatted for clarity).

¹⁰¹ Defendant’s Exhibit 21.

¹⁰² Plaintiff’s Exhibit 4 at 4.0145.

prepared a safety plan to ensure that C.A. had a smooth transition back to home life. Included with this plan were a number of Means Restriction Instructions:

- Lock all prescription and over-the-counter medications
- Supervise use of sharp objects and keep them secured when not in use
- Remove harsh chemicals/cleaners from child's access and use should be supervised
- Razors should be replaced with NAIR or other hair removal cream
- Any and all weapons should be locked or removed from the home¹⁰³

E. C.A.'S LIFE TO THE PRESENT

Initially C.A.'s transition home went smoothly. Then, at the end of October or in early November, C.A. asked for more responsibilities. Jen, agreeing that this would be to C.A.'s benefit, allowed C.A. to manage her own medications. She gave C.A. a week's worth of her night-time medications. After a fight with her mother, C.A. attempted suicide by taking all of her medications. On November 7, 2017, Allen Hospital in Waterloo Iowa admitted C.A. for treatment.¹⁰⁴

On November 9, 2017, Richard Shults, an Iowa DHS employee, filed the fourth child abuse report against Jen Alexander. That report reads:

It is alleged that Jennifer Alexander (mother) of [C.A.] (age 17) permitted her daughter to have access to medications knowing the child has a recent history of suicidal attempts. It is alleged [C.A.] overdosed on medications and required medical intervention as a result of her mother allowing her access to the medications. Denial of Critical Failure to Provide Proper Supervision is alleged.¹⁰⁵

Eventually, Iowa DHS determined that this report was unfounded.

¹⁰³ Defendant's Exhibit 117.

¹⁰⁴ See generally Defendant's Exhibit 69.

¹⁰⁵ Defendant's Exhibit 70.

Meanwhile, C.A. had recovered from her suicide attempt and Allen Hospital was busy planning her discharge. On November 17, 2017, the following note appears in C.A.'s medical file:

Mom has emailed me requesting patient's recommendation for discharge. Contacted Mom and left message on voicemail. Explain that doctor's recommendation per notes: The fact that further institutionalization is not going to help with her behaviors and she has to be managed in the community in order to plan for her future. Received a call from insurance who explains that there is a bed available for patient at Lake Life Skills where patient can gain community living skills to be independent. Patient's mom has already rejected these services for patient through insurance. Mom feels patient is not ready for that level of care or assistance.¹⁰⁶

As she had with C.A.'s other placements, Jen resisted the hospital's recommendation of a lower level of care. As one of C.A.'s doctors noted:

Discussed discharge plans with Mckebe from social service and it appears that mother is not ready to accept patient home. Patient is making sufficient progress that we believe that going home is an option we should try rather than continue to perpetuate institutional placements that has gone on for the last 5 years. Mother has not been comfortable with it and is taking his stance which is counter to what our thoughts are about [C.A.]. [C.A.] in the meanwhile is getting frustrated with all this and says her patience is running out. Encouraged to continue to behave in a manner that we could accomplish the goals that we are working on i.e. return home with her mother agreeing to give it a good try. She has been attending classes and groups and seems to be showing signs of stability. Mother on the other hand continues to state that she is concerned about patient's safety and that of hers if patient is to return home.¹⁰⁷

The hospital continued to work with Jen to prepare her for C.A.'s return.¹⁰⁸ But, Jen soon soured on their efforts. Two notes from this time give insight into the treatment team's thinking. The first note reads:

¹⁰⁶ Defendant's Exhibit 71.

¹⁰⁷ Defendant's Exhibit 72.

¹⁰⁸ *Id.*

Patient' mom continues to send emails regarding her concern of patient returning home and how she does not feel safe due to patient past behaviors. Spoke with patient who explains she wants to go home and she loves her mom and she is not allowed to show any expression because she is afraid of scaring her mom. She mentions that she does not need placement she needs her mom. Left message on moms' cell and office phone asking if she does not want patient home what type of placement does she have in mind that will assist patient with her concerns she has. Only response is through e-mail and she claims my voice message in inaudible and that I e-mail her instead so she can have our conversation in writing. This writer refuses to response by email with patient's mom and will continue to notify her by phone. Was told by mom in previous meeting this writer did not feel comfortable emailing or writing any recommendations and to obtain any info through medical records. Will contact mom again to prepare for discharge on Monday. Doctor wants me to assure mom is on board with Monday's discharge. Left messages on mom's work and cell to respond about patient discharging Monday.¹⁰⁹

The second note, filed about two hours later, reads:

Contacted patient's mom again and was able to speak with her about patient discharging Monday. She explains 5pm will be a good time. Services with patient through EPI will began Dec. 1. Asked mom if she had a place in mind for placement and she says she just wants her to go somewhere and be safe. She mentions she did not know any PMIC's and she would need help with that. May her aware that the patient is stable and safe to return home and will be discharging on Monday. I made mom aware I refuse to communicate with her through text or email because many things get mis delivered and she has shown me during the family meeting that she takes my advise or suggestions and twist them around about her doing something wrong. She mentions that she will take our medical and professional advise to bring patient home although she is telling us patient will not be safe. Mom began accusing me of speaking about her to insurance and how I have communicated to a Leslie with Amerigroup about her and bad things were said. I inform mom that I will not be accused and that I would end the call if she continued to do so. Mom mentions that if Allen Hospital wants to go down for returning her daughter home where she is not safe then we will be at fault. Call had to be ended with mom getting irate and making assumptions about this writer. Patient's mom has called me 5 times after call was ended. This writer refuse to continue any further conversation with patient's mom.¹¹⁰

On November 21, 2017, Allen Hospital discharged C.A. into Jen's care.

¹⁰⁹ Defendant's Exhibit 73.

¹¹⁰ *Id.*

Then, on January 5, 2018, C.A. chewed and swallowed a battery in another suicide attempt. Mercy hospital admitted C.A. for treatment. At Mercy, Dr. Sriramamurthy Ravipati took charge of C.A.'s psychiatric treatment. He met with Jen and C.A. and noted several issues with their relationship. He wrote (excerpted):

- The relationship between the patient on her adoptive mother is extremely intense very dynamic as well.
- The dynamic interaction between the patient and her mother is extremely provoking. The adoptive mother is also extremely angry at the patient as well. They both continue to argue...with each other.
- Patient is tolerating her medications at current time no major complications seen she is currently going to be discharged back into outpatient treatment patient is not psychotic she is not delusional she is not suicidal nor Homicidal.
- The adoptive mother continues to display significant provoking behavior from the patient. She will constantly negatively criticized the patient for no apparent reason. She also displays anger towards the patient as well.
- In a professional opinion she [Jen] appear to be constantly provoking this child into explosive anger outbursts.
- I strongly recommend in the meantime that they should have intensive in-home services which have been set up but apparently according to the adoptive mother these services are not provided through the Department of human services. Also caution the mother that if she feels threatened she can go her local County Court house and file a petition on charges of aggression directed at her in the Court. The relationship between the patient or her adoptive mother his severely pathological very dysfunctional.¹¹¹

On January 9, 2018, Mercy Hospital discharged C.A. back to Jen's care. Amerigroup made notes about Jen's relationship with C.A. In a January 10 conference call with Mercy Hospital, Amerigroup representatives compiled a list of Jen's provocative behaviors.¹¹²

¹¹¹ Defendant's Exhibit 75.

¹¹² Defendant's Exhibit 23.

C.A. stayed with Jen for a few weeks without incident. Then, on or about January 21, 2018 C.A. was again hospitalized. This time for superficial cuts on her arms and for increasing suicidal ideation.¹¹³ Dr. Ravipati again treated C.A. He noted the following details:

- Following her hospitalization the patient openly tells me that she was really not suicidal she just wanted to get away from her mother and being in a safer setting.
- It has been extremely difficult dealing with the adoptive mother she has been recording conversations from a nursing staff on multiple occasions a tremendous amount of splitting also was a craving by the adoptive mother with the treatment team as well as with the state.
- She [C.A.] very clearly denies that she has any intention to hurt her mother or or anybody. However she does admit that her mother constantly provokes her and makes her angry very easily and negatively confronting heart weaknesses emotionally.¹¹⁴

Dr. Ravipati was not alone in his assessment of C.A. and Jen's relationship. Numerous treatment notes from around this time identify the provocative relationship between Jen and C.A.¹¹⁵

Finally, on January 29, 2018, Amerigroup filed the fifth and final child abuse report, which reads:

It is alleged Jennifer's systematic verbal down grading and forcing her daughter [C.A.] (17) into institutions over the past ten years has caused [C.A.] to make extreme behavior choices like taking an over dose of medications and swallowing a battery to try and harm herself. [C.A.] has not been able to gain the skills to be able to sustain herself alone once she turns age eighteen due to being institutionalized but, Jennifer refuses to allow [C.A.] to participate in a program that will help her gain those skills in a supported environment. Jennifer provokes [C.A.] with degrading and disparaging language causing [C.A.] not to be able to function on a daily basis. Mental injury is alleged.

As it had with all prior reports, DHS determined that this report was unfounded.

¹¹³ Defendant's Exhibit 76.

¹¹⁴ Defendant's Exhibit 76.

¹¹⁵ See Defendant's Exhibits 119, 120, 121, and 122.

While this concludes the legally relevant narrative of this case, a brief overview of C.A.'s remaining peregrinations will clear up any remaining loose ends.

C.A. returned to the hospital in early February after she ran away from home then threatened to cut herself. She was discharged from the hospital to another residential treatment facility, Cherokee Mental Health Institute (Cherokee).¹¹⁶ At Cherokee, C.A. did well. Within a month, Cherokee recommended a lower level of care.¹¹⁷

As she had in the past, Jen resisted the push to release C.A. to a lower level of care.¹¹⁸ Shortly after C.A. turned eighteen, Jen applied for and was granted a guardianship over C.A.¹¹⁹ Jen then sought injunctive relief to prevent C.A.'s discharge from Cherokee.¹²⁰ The Court agreed with Jen and granted her a temporary injunction.¹²¹

¹¹⁶ Defendant's Exhibit 78.

¹¹⁷ Defendant's Exhibit 142 & 125.

¹¹⁸ Defendant's Exhibit 142 ([P]atient's mother, who is her legal guardian, has put limitations on the social worker's ability to make referrals.)

¹¹⁹ Defendant's Exhibit 31.

¹²⁰ Defendant's Exhibit 79.

¹²¹ Defendant's Exhibit 80.

On September 6, 2018, Iowa DHS petitioned the Court to remove Jen and to appoint a successor guardian.¹²² In the end, on or about January 25, 2019, the parties agreed that C.A. would transition to Lakes LifeSkills, where she remains to this day.¹²³

On August 22, 2019, Jen Alexander on her own behalf and as C.A.'s guardian sued Amerigroup and its parent company, Anthem.¹²⁴ She raises multiple claims.¹²⁵ The Court enumerates these claims below.

IV. SUMMARIZING THE LAWSUIT

Plaintiff sued Amerigroup and Anthem; every claim she brings against Amerigroup she likewise raises against Anthem.

COUNT I: Plaintiff's first count is for Declaratory Relief and Declaratory Judgment. Plaintiff states that Amerigroup conditioned necessary medical care on Plaintiff's surrendering her rights to the state of Iowa and that such conditions are illegal. She asks the Court to declare illegal Amerigroup's actions.

COUNT II: Plaintiff next alleges that Amerigroup acted in bad faith in the administration of its MCO contract. When Amerigroup and Iowa signed the contract, argues Plaintiff, they were bound by a duty of good faith towards third party beneficiaries of that contract. Plaintiff attacks what she describes as "Amerigroup's historic, persistent and arbitrary denial of health care

¹²² Defendant's Exhibit 83.

¹²³ Defendant's Exhibit 44.

¹²⁴ See Plaintiff's Original Petition.

¹²⁵ See Plaintiff's Second Amended Petition.

claims.” Plaintiff claims that Amerigroup acted with malice and reckless indifference to C.A.’s health and that, therefore, Amerigroup is liable.

COUNT III: Plaintiff alleges that Amerigroup tortiously interfered with her custodial, parental, and guardianship rights. According to Plaintiff Amerigroup conditioned C.A.’s continued treatment on Jen’s surrender of her parental rights. This act, per Plaintiff, renders Amerigroup liable to Plaintiff.

COUNT IV: Plaintiff alleges that Defendant is liable for Intentional Infliction of Emotional Distress (IIED). According to Plaintiff, when Amerigroup reported Jen for child abuse, it acted outrageously, causing Jen severe emotional distress for which Amerigroup is liable.

COUNT V: Finally, Plaintiff alleges that Amerigroup is liable for Negligent Infliction of Emotional Distress (NIED).

The case passed through the regular phases of discovery. Now, both parties move for Summary Judgment.

Defendant asks that the Court grant Summary Judgment on every one of Plaintiff’s counts. Defendant raises multiple reasons why the Court should grant Summary Judgment in its favor.

Plaintiffs, meanwhile, asks that the Court to grant Summary Judgment on two matters. First, Plaintiff asks the Court to declare that, as a matter of law, Defendants violated certain duties that they owed to Plaintiffs and that the violation of those duties constitutes legal bad faith. Second, Plaintiffs ask the Court to collaterally estop Amerigroup from relitigating the issue of child abuse.

The Court will evaluate the parties' arguments at greater length below.

V. ANALYSIS

A. SUMMARY JUDGMENT GENERALLY

“A grant of summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.”¹²⁶ “A fact is material when its determination might affect the outcome of a suit. A genuine issue of material fact exists when reasonable minds can differ as to how a factual question should be resolved.”¹²⁷ “We view the record in the light most favorable to the nonmoving party.”¹²⁸ “[W]e draw all legitimate inferences the evidence bears that will establish a genuine issue of material fact.”¹²⁹ “If the nonmoving party cannot generate a prima facie case in the summary judgment record, the moving party is entitled to judgment as a matter of law.”¹³⁰

Before the Court turns to the parties' arguments it is important to deal with some preliminary matters. Plaintiff asks the Court to find that Amerigroup and Anthem are the same legal entity. The Court finds that the facts of this case do not justify piercing the corporate veil. Plaintiff has not shown sufficient evidence that Amerigroup is the alter ego of Anthem. The companies operate using separate instrumentalities and, where they do overlap, their overlap is

¹²⁶ *City of W. Liberty v. Emps. Mut. Cas. Co.*, 922 N.W.2d 876, 879 (Iowa 2019).

¹²⁷ *Linn v. Montgomery*, 903 N.W.2d 337, 342 (Iowa 2017) (Internal citations omitted).

¹²⁸ *Slaughter v. Des Moines Univ. Coll. of Osteopathic Med.*, 925 N.W.2d 793, 800 (Iowa 2019).

¹²⁹ *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 96 (Iowa 2012).

¹³⁰ *Susie v. Fam. Health Care of Siouxland, P.L.C.*, 942 N.W.2d 333, 336–37 (Iowa 2020).

too minimal to justify piercing the veil. Even if it were proper to pierce the veil, the Court finds no liability accrues to Amerigroup, thus no liability accrues to Anthem.

As for the remaining analysis, the issues are sufficiently complex that the Court must address each count and argument separately. The Court begins with the Plaintiff's Motion for Summary Judgment.

B. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs ask the Court to summarily decide two issues: (1) they ask the Court to declare what rights and duties the parties owe each other under the MCO contract and to find that Amerigroup breached those duties in bad faith, (2) they ask the Court to collaterally estop Amerigroup from relitigating the issue of child abuse. Finding that neither of these requests is proper, the Court DENIES Plaintiff's Motion for Summary Judgment.

i. DECLARATORY JUDGMENT ON THE ISSUE OF BAD FAITH

“Generally, [a] declaratory judgment is meant to define the legal rights and obligations of the parties in anticipation of some future conduct, not simply to proclaim liability for a past act.”¹³¹ In other words, a declaratory judgment gives the parties a clear view of their responsibilities so that they can avoid future litigation. To this end, a request for declaratory judgment must be prospective.

Here Plaintiffs ask the Court to, “find Defendants’ violations of [MCO contract] duties constitute bad faith under Iowa law.”¹³² This is a retrospective request. Plaintiffs do not ask the

¹³¹ *Livingood v. City of Des Moines*, 991 N.W.2d 733 (Iowa 2023) (internal quotation marks omitted)

¹³² See Plaintiff's Motion for Summary Judgment.

Court to declare that the alleged violations *would be* a violation, instead they ask the Court to declare that the alleged violations *do constitute* bad faith.

To illustrate: Plaintiffs cite the following as one of Defendant's contractual duties: "To engage families to actively participate in treatment planning and development of successful interventions... in which families' opinions are respected, their strengths are explored and validated, and families are given opportunities to choose the course of care for their loved one."

The Court could—prospectively—derive a legal duty from the clause, but it cannot—retrospectively—declare that Amerigroup's acted in bad faith in its administration of the above-quoted language. Because Declaratory Relief is not the proper vehicle for determining Amerigroup's good or bad faith, the Court DENIES Plaintiff's request for Declaratory Judgment.

ii. COLLATERAL ESTOPPEL

Plaintiff next asks the Court to collaterally estop Amerigroup from relitigating whether Jen abused C.A. The Iowa Supreme Court has written of collateral estoppel:

In order for the prior determination to have preclusive effect in subsequent litigation, four elements must be met. These prerequisites are:

- (1) the issue concluded must be identical
- (2) the issue must have been raised and litigated in the prior action
- (3) the issue must have been material and relevant to the disposition of the prior action
- (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.¹³³

¹³³ *City of Johnston v. Christenson*, 718 N.W.2d 290, 297–98 (Iowa 2006) (re-formatted for clarity).

Plaintiff argues that, because DHS determined that all five child abuse reports lacked foundation, the issue has been adjudicated and Amerigroup cannot relitigate the matter.

There are two basic problems with Plaintiff's argument. First, the process and investigative power of a DHS investigation is very different from the investigative power available through litigation. Litigators can discover information that DHS has neither the time nor the resources to uncover. So, to say that a DHS report is sufficient to meet the "previously litigated" prong of the collateral estoppel analysis is incorrect.

Second, the issues concluded are not identical between the DHS investigation and the current litigation. DHS investigated whether child abuse occurred based on the information provided to them at that time. The question now is whether Amerigroup or the other entities that filed abuse reports are entitled to qualified immunity because they had a good faith basis for filing their reports. In other words, did the available evidence justify Amerigroup in seeking DHS intervention. Because these are entirely different issues, the Court DENIES Plaintiff's request for collateral estoppel.

C. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Turning to the Defendant's Motion. Defendants ask the Court to grant Summary Judgment on all counts. Plaintiff's counts can be broken into four sub-categories: (1) Declaratory Relief, (2) Tortious Interference with Parental Rights, (3) various claims related to breaches of the MCO contract, (4) claims (including Negligent Infliction of Emotional Distress and Intentional Infliction of Emotional Distress) related to the filing of the child abuse reports. The Court takes these counts in turn.

i. DECLARATORY RELIEF

For the above-stated reasons, the Court DENIED the Plaintiff's request for Declaratory Relief. Therefore, the Court GRANTS Defendants' Motion for Summary Judgment on the count seeking Declaratory Relief.

ii. TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS

"Iowa law does not presently recognize a cause of action for tortious interference with the parent-child relationship."¹³⁴ Plaintiffs admit that they brought this claim for the purpose of a future appeal. The Court GRANTS the Defendant's Motion for Summary Judgment on this count.

iii. VIOLATION OF THE DUTY OF GOOD FAITH AND FAIR DEALING AND OTHER CONTRACTUAL BREACHES

Plaintiff argues that Amerigroup acted in bad faith in its relationship with Plaintiff and that, because Plaintiff is a third-party beneficiary of Amerigroup's MCO contract, Amerigroup is liable for its bad-faith actions. Amerigroup argues that Plaintiff is not a third-party beneficiary of the MCO contract and therefore Plaintiff cannot recover on the basis of alleged breaches of the MCO contract.

In *RPC Liquidation v. Iowa Dep't of Transp.*, 717 N.W.2d 317, 321 (Iowa 2006), the Iowa Supreme Court wrote:

Th[e] question [of whether a contract has third-party beneficiaries] turns on the parties' intention. In determining the parties' intention we are bound by what the contract says except in cases of ambiguity. *State Public Defender v. Iowa Dist. Ct.*, 594 N.W.2d 34, 37 (Iowa 1999). And when the contract is not ambiguous, we will enforce it as written.¹³⁵

¹³⁴ *Spencer v. Philipp*, 856 N.W.2d 3 (Iowa Ct. App. 2014).

¹³⁵ *RPC Liquidation v. Iowa Dep't of Transp.*, 717 N.W.2d 317, 321 (Iowa 2006).

The Court applied this principle in *Walters v. Kautzky*, 680 N.W.2d 1. In that case, the contract read, “[t]here are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the [Department of Corrections] and the Public Defender.”¹³⁶ The Supreme Court concluded, “When a contract expressly negates the creation of third-party beneficiaries, we have rejected the claim that such status exists.”¹³⁷

Here, the MCO contract contains the following clause: “**No Third Party Beneficiaries.** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.”¹³⁸ This clause is nearly identical to the clause that the Iowa Supreme Court interpreted in *Kautzky*. It follows, then, that the contract here does not create third-party beneficiaries.

Plaintiff is not a third-party beneficiary of the contract and therefore cannot complain of breaches in the contract. The Court GRANTS Defendants’ Motion for Summary Judgment on those counts related to breaches of the MCO contract.

iv. COUNTS RELATED TO THE CHILD ABUSE REPORTS

Returning to the issue of immunity, Defendant makes several arguments related to the child abuse reports: (1) that it has statutory immunity from any liability related to the child abuse reports, (2) that it did not file most of the child abuse reports in this case, (3) that it did not act outrageously.

¹³⁶ *Walters v. Kautzky*, 680 N.W.2d 1, 3 (Iowa 2004).

¹³⁷ *Id.*

¹³⁸ Defendant’s Exhibit 1, Exhibit A, § 2.13.8.

In its distilled form, Plaintiff's argument is this:

1. Amerigroup authored or caused others to author child abuse reports against Jen Alexander
2. Those reports were made in bad faith
3. The making of bad faith child abuse reports is legally outrageous
 - Therefore, Amerigroup is liable to Plaintiff.

Each of Plaintiff's premises is shaky. First, the only child abuse that Amerigroup authored was the fifth and final report. Every other report was made by another care provider or treatment facility. Plaintiff attempts to end-run this problem by arguing that, although Amerigroup did not author the child abuse reports, it used its influence to convince providers to report Jen. The Court after exhaustive review of the record has found nothing beyond speculation and inference to support these claims, let alone any evidence that these other reporters did not make their reports in good faith.

Even if the Court assumes without deciding that all five child abuse reports bear Amerigroup's fingerprints, it does not follow that Defendant is liable. This is so because Iowa Code §232.73 grants immunity to, "A person participating in good faith in the making of a report...or aiding and assisting in an assessment of a child abuse report pursuant to section 232.71B."

As noted at the outset of this Order, the scope of immunity under §232.73 is very broad. Plaintiff argues that this immunity does not apply to Amerigroup because the MCO acted in bad faith. It is true that §232.73 contains an exception for reports filed in bad faith. But, "[t]o avoid summary judgment, the plaintiff must have evidence the defendant acted dishonestly, not merely carelessly, in assisting the DHS."¹³⁹

¹³⁹ *Id.*

Here, there is no evidence of the sort of intentional bad-faith that Plaintiff would need to show in order to overcome §232.73 immunity. Each and every child abuse report is amply supported by the record. And, more to the point, there is no evidence whatsoever that the individual filers did not believe the things they reported. To overcome the statutory immunity, Plaintiff needs more than a casuistic reading of the allegations in the reports. She must identify information in the reports that the reporter did not honestly believe to be true. Such evidence is totally absent from this case.

Take for instance, the one report that Amerigroup authored. It reads:

It is alleged Jennifer's systematic verbal down grading and forcing her daughter [C.A.] (17) into institutions over the past ten years has caused [C.A.] to make extreme behavior choices like taking an over dose of medications and swallowing a battery to try and harm herself. [C.A.] has not been able to gain the skills to be able to sustain herself alone once she turns age eighteen due to being institutionalized but, Jennifer refuses to allow [C.A.] to participate in a program that will help her gain those skills in a supported environment. Jennifer provokes [C.A.] with degrading and disparaging language causing [C.A.] not to be able to function on a daily basis. Mental injury is alleged.

Each of these claims is well-supported or at least arguably well-supported. Jen did make disparaging remarks.¹⁴⁰Jen did send C.A. to institutions for close to a decade.¹⁴¹ C.A. did make extreme behavioral choices: she overdosed on her medications¹⁴²and she swallowed a battery.¹⁴³ C.A., by her own admission, did not have the skills necessary to live in the community¹⁴⁴—a

¹⁴⁰ E.g. Defendant's Exhibit 40 (referring to C.A. as a manipulator and abuser).

¹⁴¹ See Factual Background section above.

¹⁴² See Defendant's Exhibit 69.

¹⁴³ See Defendant's Exhibit 75.

¹⁴⁴ See Defendant's Exhibit 13.

proposition that Jen, by constantly placing C.A. in residential treatment centers, seems to agree with. And Jen did refuse to send C.A. to Lakes LifeSkills or a similar life-preparation center.¹⁴⁵ Each of these choices may have been right—or at least justified. But the question is not whether Jen is or is not abusive, the question is whether Amerigroup had a good-faith basis for filing the report as it did. The Court cannot but conclude that Amerigroup had such a basis.

Without evidence of Amerigroup's bad faith in reporting, §232.73 shields Defendant from liability for either Intentional Infliction of Emotional Distress or Negligent Infliction of Emotional Distress and the Plaintiff's claim cannot survive Summary Judgment. Amerigroup has immunity for its filing of and assistance with child abuse reports. Accordingly, the Court GRANTS Defendant's motion for Summary Judgment.¹⁴⁶

VI. CONCLUSION

For the above-stated reasons, the Court DENIES Plaintiff's Motion for Summary Judgment and GRANTS, on all counts, the Defendant's Motion for Summary Judgment. Plaintiff's Petition is dismissed at Plaintiff's cost.

¹⁴⁵ See Defendant's Exhibit 113.

¹⁴⁶ Even if the Court assumes that §232.73 does not apply, the Plaintiff's claim cannot survive. This is so because Defendant's actions are not legally outrageous. Filing a child abuse report puts the reported-party into an investigation that abides by the rules of constitutional due process. Undoubtedly, that process is stressful and time-consuming. But an investigation that respects a person's due process rights is not a legal outrage. So, every premise in Plaintiff's argument is fatally flawed.

SO ORDERED.




State of Iowa Courts

Case Number
CVCV058769
Type:

Case Title
JENNIFER ALEXANDER VS AMERIGROUP IOWA INC
ORDER FOR JUDGMENT

So Ordered



John Telleen, District Court Judge,
Seventh Judicial District of Iowa

Electronically signed on 2024-01-22 13:41:38