BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES

In the Matter of:	)	
	)	
ROBERTA SANDOVAL and	)	
DAVID INMAN	)	
d/b/a Willow Creek ALH	)	License No. 100142
	)	OAH No. 11-0462-ALH

DECISION

I. Introduction

Roberta Sandoval and David Inman, operators of Willow Creek Assisted Living Home (Willow Creek) hold an assisted living home license issued by the Division of Health Care Services. The Division filed a supplemental accusation asserting that (1) Mr. Inman had sexually abused residents of the home;[1] (2) Ms. Sandoval had failed to report, investigate, or correct allegations of abuse and "sexually inappropriate actions" involving residents,[2] and (3) Mr. Inman and Ms. Sandoval had used child proof door locks to prevent residents from leaving their rooms.[3] The Division asserted these actions were in violation of applicable statutes and regulations.[4]

The assigned administrative law judge conducted a hearing. Mr. Inman and Ms. Sandoval were represented by attorney John Pharr, and the Division was represented by Assistant Attorneys General Scott Friend and Alex Hildebrand. The Division called as witnesses X. X. (a resident of the home and the alleged victim of abuse by Mr. Inman), Tina and Dan McCluskey (former aides in the home), Dr. Ellen Havlerson (X. X.'s therapist), and Teresa Stadem (X.X.'s counselor). Ms. Sandoval and Mr. Inman testified, as did Brenda Collins (the operator of the assisted living home where X. X. briefly resided after leaving Willow Creek) and several individuals attesting to Mr. Inman's character.

The evidence establishes that Mr. Inman and Ms. Sandoval prevented a resident from exiting her room by use of a plastic child-proof door knob cover, in a manner that violated her right under AS 47.33.300(a)(2) to be treated with consideration and respect for her personal

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1 Supplemental Accusation, ¶ II, ¶ IV.
2 Supplemental Accusation, ¶ IV.
3 Supplemental Accusation, ¶ III.
4 Supplemental Accusation, ¶ II-¶VI.

dignity. In light of the record as a whole, this violation of law warrants revocation of the license at issue in this case.

II. Facts

Roberta Sandoval has worked in a care provider capacity since 1994.[5] She was a child foster care licensee from 1995 through 1998.[6] In 1999, Ms. Sandoval and David Inman, who had been a couple since 1996, obtained a license to operate an assisted living home for adults with mental health or developmental disabilities.[7] The facility operates as Willow Creek Assisted Living Home. Initially, Willow Creek served two clients, but in 2000 was approved to serve up to three clients and in 2002, up to four clients.[8] Ms. Sandoval is Willow Creek's administrator and a resident care provider, and Mr. Inman is the designee and a resident care provider who also acts as the facility's maintenance person. Ms. Sandoval and Mr. Inman reside on the premises, sharing a bedroom on the ground floor. Also on the ground floor are the kitchen and dining room, a den, dayroom, and office.[9] The residents occupy bedrooms on the second floor.[10] In addition to care provided by Ms. Sandoval and Mr. Inman, day habilitation (off premises) and respite care (on premises) services are provided by employees of independent service agencies.

In August, 2004, Roberta Sandoval was appointed the legal guardian of X. X., a 28 year old Yupik man.[11] X. X. was born and raised in No Name, a village in the No Name area.[12] He has been diagnosed with fetal alcohol syndrome and has a documented history of substance abuse including inhalants (huffing), marijuana and alcohol.[13] X. X. has an IQ of about 65 (mild mental retardation) and has profound difficulties in planning and in mental processing.[14] He functions mentally and socially at the level of an eight or nine year old child.[15] In 1999 X. X. was charged with murder when, after huffing, he shot and killed his infant niece.[16] He was incarcerated or, on six separate occasions, voluntarily admitted to Alaska Psychiatric Institute

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5 R. 136.
6 R. 132-134.
7 R. 14.
8 R. 12-14.
9 R. 695.
10 R. 696.
11 R.1147-1148, 1207.
12 R. 1205, 1207.
13 *See, e.g.*, R. 1142.
14 R. 1143-1144, 1265; Ex. 2, p. 112.
15 *See, e.g.,* R. 1125; R. Sandoval Testimony #13 1:01.
16 R. 1264, Ex. 63, p. 264; Ex. 2, p. 113.

(API) while his criminal case was pending.[17] He was finally discharged from API in July, 2003, after the criminal charges were dismissed when he was found incompetent to stand trial, and he went to live at Willow Springs assisted living home, where David Inman's daughter, Marsha Hunter, was the administrator.[18]

X. X. was evaluated by Dr. Ellen Halverson, a psychiatrist, in February, 2004, when guardianship proceedings were begun.[19] After Ms. Sandoval was named X. X.'s guardian in August, 2004, X. X. had a follow-up visit with Dr. Halverson, after which she prescribed psychotropic medication and X. X. became her regular patient.[20] In April, 2005, Marsha Hunter became concerned about X. X.'s potential for violent behavior, based on his history, his penchant for violent movies and video games, and an incident in which he went looking for the key to the gun cabinet.[21] At Ms. Hunter's request, Ms. Sandoval took X. X. in as a resident at Willow Creek.[22] At that time Tina and Dan McCluskey (a married couple) were working at Willow Creek as day habilitation and respite care providers, as employees of Ready Care, a Wasilla service agency.[23] In addition to X. X., Willow Creek had three other residents: H. H. (resident since 1998), R.R. (resident since 2003), and F. F. (resident since 1998). H. H. and F. F. were older men, aged 68. R. R. was a younger woman, aged 29. All three had significantly greater mental disabilities than X. X., and each had a legal guardian. The Office of Public Advocacy had been the guardian of H. H. and F. F. until 2003, when, after the public guardian sought to remove them from Willow Creek, with Ms. Sandoval's assistance Marsha Hunter was appointed as H. H.'s guardian and her husband as F. F.'s.[24] R. R.'s guardian was M Y, with whom R. R. had previously lived since Ms. Y was her foster parent as a child.[25]

In order to prevent R. R. from leaving her bedroom at night, Ms. Sandoval and Mr. Inman placed a plastic child-proof door knob cover on the inside of her bedroom door.[26] The

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[17] Ex. 2, p. 112; R. 1142, 1264.
[18] R. Sandoval Interview. *See* Ex. 2, p. 112, R. 1264.
[19] *See* Ex. 2, pp. 112-114; E. Halverson Testimony #11 0:06.
[20] *See* Ex. 2, p. 111.
[21] Ex. 2, p. 107. *See also* R. 1163 (1/18/05 report of incident in which X. X. got into medication cabinet and took extra dose of his medication).
[22] Ex. 2, p. 107.
[23] T. McCluskey Sandoval #4 0:02; D. McCluskey Testimony #7 0:01.
[24] *See* R. Sandoval Interview 0:32; M. Hunter Interview 0:12-0:14; Ex. H pp. 3601, 3622; R. 1466. Conflict between the public guardian and Willow Creek staff had existed since at least 2002, when the Office of Public Advocacy complained that Willow Creek had not kept it informed regarding F. F.'s medical status. *See* R. 97-105.
[25] R. 1595; M. Y Interview.
[26] Ex. O; D. McCluskey Testimony #7 0:04-0:05; T. McCluskey Testimony #4 0:53.

plastic cover prevented normal operation of the door knob, and in order to open the door the room's occupant would have to bypass the plastic cover. Because of her limited functional abilities, R. R. was unable to bypass the plastic cover and as a result she was unable to exit her bedroom through the door without assistance. Often, when her day habilitation care provider arrived in the morning, around 9:00 a.m., R. R. was banging on the door of her bedroom because she wanted to get out, and the care provider would let her out.[27]

H. H. became increasingly aggressive and difficult to handle.[28] Ms. Sandoval let Ms. Hunter know that she would not be able to keep H. H. as a resident. With encouragement and assistance from Ms. Sandoval and Ms. Hunter, in August, 2005, Tina and Dan McCluskey obtained a license for Montana Creek Assisted Living home (Montana Creek), and H. H. moved out of Willow Creek and into Montana Creek.[29] Left behind at the Willow Creek facility was a hot tub that had been installed on the premises for H. H.'s use, paid for by his guardian, Ms. Hunter, using H. H.'s funds.[30] After H. H. had left, for the remainder of the time that X. X. was at Willow Creek the only other residents there were F. F. and R. R. In 2006, at Ms. Sandoval's request, an acquaintance of Ms. Sandoval's, K D, was appointed as F. F.'s guardian in place of Marsha Hunter's husband.[31]

Initially, X.X. did well at Willow Creek and did not report any difficulties to Dr. Halverson.[32] The Division of Senior and Disabilities' annual plan of care prepared in August, 2006, reported that he had "experienced great improvements in his quality of life" and that "[h]e is very happy with his current living situation and does not wish to change anything."[33]

However, in the winter of 2006-2007, after X. X. received a telephone call from his mother, with whom he had not spoken in many years, Willow Creek staff reported he appeared more angry and taut, and was having problems sleeping.[34] He reportedly voiced a wish to be

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[27] T. McCluskey Testimony #4 0:07-0:10; D. McCluskey Testimony #7 0:06. *See also*, O. C Interview, 0:12, 0:14 (describing hearing R. R. banging on her bedroom door after her nap).

[28] *See, e.g.,* M. Hunter Interview 0:16.

[29] T. McCluskey Testimony #4 0:14, 0:51, 1:01; D. McCluskey Testimony #7 0:07; R. Sandoval Testimony #13 0:25-0:26; M. Hunter interview 0:16-19.

[30] *See* R. Sandoval Testimony #13 0:32-34.

[31] Ex. H, pp. 3605, 3615. *See* R. Sandoval Interview 0:08; K. D Interview 0:01.

[32] Ex. 2, p. 106 ("He is doing well.") (Dr. Halverson, 6/9/05); p. 105 ("He is doing well.") (Dr. Halverson, 8/4/05), p. 104 ("seems to be doing quite well") (Dr. Halverson, 10/28/05), p. 103 ("doing well") (Dr. Halverson, 1/27/06), p. 102 ("doing fairly well"; "does continue to like to watch movies that are fairly violent and play games that are violent"); p. 100 ("doing well in his assisted-living home") (Dr. Halverson, 11/20/06).

[33] Ex. J, p. 3.

[34] Ex. 2, p. 96 (Halverson staff note, 12/4/06), p. 99 (Dr. Halverson, 2/15/07).

readmitted to API, and Dr. Halverson increased his medication dosage.[35] X. X. appeared to do better after this, and his medication was adjusted.[36] In the late spring of 2007, however, he was having problems with bed wetting,[37] and Willow Creek staff discovered that he had been drinking water excessively, to the point of water intoxication,[38] and his medication was again adjusted.[39] By the end of that summer, he was again doing well.[40] His medication regime was deemed "quite effective."[41]

In the fall of 2007, the Division of Senior and Disability Services objected to Ms. Sandoval's acting as X. X.'s guardian while he was living at Willow Creek.[42] Ms. Sandoval asked K D, F. F.'s guardian, if she was willing to act as X. X.'s guardian as well, and she agreed. Preparatory to the change in guardianship, in October, 2007, the court visitor prepared a report, noting that X. X. stated he was happy at his current residence.[43] In January, 2008, X. X.'s behavior and mood regressed. He wrote notes calling Ms. Sandoval and Mr. Inman names, threatening them, and stating he did not want to live with them.[44] Ms. Sandoval's view was that this was consistent with a pattern of poor behavior and mood at that time of year.[45] Dr. Halverson ordered an increase in his medication.[46] For a couple of days, X. X. appeared to improve but within a short time he again appeared depressed and angry, and said that he could not stop thinking about what he did and wished he could go back and change everything.[47] While these events transpired, the court papers for the change in guardianship from Ms.

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[35] Ex. 2, p. 99 (Dr. Halverson, 2/15/07).

[36] Ex. 2, p. 98 ("doing much better") (Dr. Halverson, 2/23/07), p. 97 ("in general is doing much better") (Dr. Halverson, 3/26/07), p. 95 ("behaviorally doing fairly well") (Dr. Halverson, 5/21/07).

[37] *See* E. Halverson Testimony #11 1:24 (possibly a side effect of medication).

[38] Water intoxication has been defined as "the condition induced by the undue retention of water with sodium depletion; it is marked by lethargy, nausea, vomiting, and mild mental aberrations, and in severe cases by convulsions and coma." Dorland's Illustrated Medical Dictionary (27th ed. 1989), p. 848. *See* E. Halverson Testimony #11 1:22.

[39] Ex. 2, p. 94 ("discontinue his trazodone at bedtime") (Dr. Halverson, 6/25/07).

[40] Ex. 2, p. 93 ("had a good summer"; "is doing well") (Dr. Halverson, 9/24/07).

[41] Ex. 2, p. 92 (Dr. Halverson, 12/17/07).

[42] R. Sandoval Testimony #13 0:41. *See* AS 47.33.330(c) ("An owner [or] administrator…of an assisted living home may not act as a representative of a resident."); AS 47.33.90(15) (" 'representative' means guardian, conservator…or other person designated by a court…to act on behalf of that person.").

[43] Ex. I, p. 2.

[44] R. 1256 (1/18/08). *See* Ex. 2, p. 91 (staff note, 1/9/08).

[45] *Id. See also* Ex. 2, p. 99 ("They have seen a cycle for him"); E. Halverson Testimony #11 1:02, #12 0:01.

[46] Ex. 2, p. 91.

[47] Ex. 2, p. 91. *See* R. 1256 (undated note).

Sandoval to Ms. D were completed and on January 23, 2008, were approved by the court master for signature by the judge.[48]

On February 2, Ms. Sandoval permitted X. X. to go outside for a walk. When he did not return with a short time, Ms. Sandoval glanced outside and saw X. X. staggering as he walked towards the house. She asked Mr. Inman to go check on him, and Mr. Inman observed X. X. concealing a plastic baggy in the snow. Mr. Inman retrieved the bag and found that it reeked of gasoline, and realized X. X. had been huffing gasoline. He brought X. X. into the house, disoriented and glassy-eyed. X. X. was taken to his room to recover. Ms. Sandoval checked his vital signs and removed sharp objects from his room.[49]

The next day, late in the evening of February 3, Mr. Inman discovered in X. X.'s bedroom a disturbingly threatening note written by X. X. stating "I wish I could kill you both cause I really don't like you two, you better call the cops before I kill either one of you assholes."[50] Faced with the written threats and X. X.'s use of inhalants, Ms. Sandoval was fearful. She decided to contact the police for assistance. She spoke with Ms. D, who concurred.[51] Police responded and removed X. X. from the premises.[52] Because no alternative living arrangements had been made, the police took X. X. to the local hospital, from which he was taken to API, where he was admitted on February 4.[53] Ms. Sandoval informed X. X.'s care co-ordinator, Cheri Golden, that the police had taken X. X. Ms. Golden contacted Ms. D, and the two determined that X. X. was at API.[54]

Upon admission to API, X. X. admitted writing the threatening notes, but denied any intent to act on those threats.[55] He stated that he liked Ms. Sandoval and Mr. Inman and was sorry he could not return to their facility.[56] After about ten days, Ms. D was able to arrange a placement at the Willow Lake Assisted Living Facility (Willow Lake), whose administrator was Brenda Collins. Initially, when she spoke with Ms. Collins, Ms. D was highly complimentary of

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48 *See* R. 1158.

49 The facts as stated in this paragraph are based on the testimony of Roberta Sandoval and David Inman. *See also* R. 1288. Ms. Sandoval testified that she spoke with Ms. D about the huffing incident. R. Sandoval testimony, #14 [cross] 0:07-0:09.

50 R. 1254. The note is dated 1/3, but testimony establishes that it was actually discovered on February 3.

51 R. Sandoval testimony #13 1:13, #14 [cross] 0:13; R. 1964 (K. D letter, 3/27/08).

52 R. 1288.

53 R. 1964 (K. D letter, 3/27/08). *See* R. 1261-1270.

54 K. D Interview 0:03-0:06; C. Golden Interview 0:04. *See also* R. 1964 (K. D letter, 3/27/08).

55 R. 1261.

56 R. 1261, 1262.

Ms. Sandoval and Mr. Inman's care for X. X.[57] On February 14, the court issued an order appointing K D as X. X.'s guardian,[58] and Ms. D executed an amendment to X. X.'s plan of care with the Division of Senior and Disability Services, providing for housing at Willow Lake.[59]

X. X. went to stay at Willow Lake after he was released from API on February 25, 2008.[60] Shortly after, on March 6, Willow Lake was given a previously-scheduled inspection by the Division of Public Health and a number of violations were identified.[61] Moreover, following a complaint made to the Division of Senior and Disability Services by a Willow Creek care provider who lived close to the Willow Lake facility and who considered X. X. to not be a suitable person for placement in an assisted living home,[62] upon review the Division of Public Health determined that X. X. was outside the scope of the facility's license.[63] As a result, the Division of Public Health informed Ms. Collins that X. X. would have to move to another facility. Ms. Golden and Ms. D did not want to move X. X. again, and Ms. Collins applied for a modification to her license that would enable X. X. to reside at Willow Lake.[64] In the course of considering that request, and following up on complaints concerning the facility, the Division of Public Health discovered that Ms. Collins was ineligible for the license she held, and it notified her of the intent to revoke her existing license.[65]

Because the Division of Public Health had not approved Ms. Collins' requested modification of the Willow Lake license, within a month or so Ms. D placed X. X. in Montana Creek, where Willow Creek's former resident H. H. had been living since 2005. The administrator there, Tina McCluskey, had known X. X. since 2004 in her prior capacity as a day habilitation service provider at Willow Springs (Marsha Hunter's facility) and at Willow Creek.[66]

In the spring of 2008, in connection with X. X.'s departure from Willow Creek, placement at Willow Lake, and transfer to Montana Creek, various involved parties filed a

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[57] B. Collins Testimony #20 0:02.
[58] R. 1158. The order was effective retroactively to November 27, 2007. *Id.*
[59] R. 1275-1282.
[60] *See* R. 1261-1263.
[61] *See* R. 1946.
[62] *See* R. 1960; R. Sandoval Testimony #13 1:20.
[63] R. 1946.
[64] *See* R. 1946-1948.
[65] Ex. 1, p. 2. *See also* R. 1953. Following a hearing, the license was revoked. Ex. I, In Re Brenda Collins, dba Willow Lake Assisted Living, OAH No. 08-0343-ALH (Commissioner of Health and Social Services 2009).
[66] Testimony of T. McCluskey #4 0:01-02.

variety of complaints. In addition to the complaint of a Willow Creek care provider regarding placement of X. X. at Willow Lake, Ms. Collins complained to the governor that the Division of Public Health had treated her unfairly[67] and she reported that Mr. Inman had a felony conviction,[68] and Ms. D complained to the Division of Health and Social Services that Willow Creek had failed to notify her of X. X.'s pending removal, had failed to adequately monitor him to prevent him from huffing, and had inappropriately released confidential information concerning him.[69] None of those complaints appears to have resulted in an enforcement action by the Division. Nonetheless, the relationships between Ms. Sandoval and Mr. Inman, on the one hand, and Ms. Collins and Ms. D, on the other hand, were strained from that time forward.

Later, in the summer of 2008, Marsha Hunter emailed Ms. Sandoval, letting her know that she was having financial problems and asking for financial assistance.[70] Ms. Sandoval had previously made a loan to her that had not been paid back, and she was unwilling to make another loan.[71] Ms. Sandoval agreed to purchase the hot tub that had been built at Willow Creek for H. H.'s use with his funds, but Ms. Sandoval's accountant put a halt to the transaction.[72] The incident led to an investigation of Ms. Hunter for misappropriation of H. H.'s funds,[73] and to frosty relations between the McCluskeys and Ms. Sandoval[74] and the estrangement of Mr. Inman from his daughter Marsha Hunter (H. H.'s guardian).[75]

Notwithstanding the complaint that Ms. D had filed regarding X. X.'s departure from Willow Creek, she did not remove F. F. from that facility, as she continued to believe that he was

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67 R. 1953-1956, 1959 (4/28/2008).

68 R. 1968; B. Collins Testimony #20 0:02. Following an investigation, the Division determined that Mr. Inman's 1990 conviction for reckless conduct with a dangerous weapon, apparently following a 1989 hunting accident, did not bar him from holding a license. *See* R. 1968-1970 (6/26/2008).

69 R. 1964-1966 (3/27/2008).

70 R. Sandoval Testimony #13 0:32; R. Sandoval Interview 0:30.

71 R. Sandoval Testimony #13 0:32; R. Sandoval Interview 0:30.

72 *See* R. Sandoval Interview 0:31. Ms. Sandoval testified that her accountant had advised her that the transaction raised a "red flag." R. Sandoval Testimony #13 0:32. .

73 R. Sandoval Testimony #13 0:04, 0:12, 0:32-35. *See also* R. Sandoval Interview 0:30.

74 *See* T. McCluskey Testimony #4 0:35, 1:14; R. Sandoval Testimony 0:33-0:34; M. Hunter Interview 0:40-0:41. Ms. McCluskey testified that she had told Ms. Sandoval that she "would not get in the middle of it and would not lie for them." T. McCluskey Testimony #4 0:35.

75 Ms. Sandoval testified that Ms. Hunter had sent abusive and threatening emails, that Ms. Hunter and her father stopped communicating, and that Ms. Hunter believed that Ms. Sandoval had "turned her in" to the Division. R. Sandoval testimony #13 0:04, 0:12, 0:32-35. *See also* R. Sandoval Interview 0:12, 0:30; R. 891 ("Filed complaint…w/ state for financial exploitation. Marsha is out to get her."). Ms. Hunter, when interviewed, stated she was unaware of any specific reason for the estrangement other than the hot tub matter. M. Hunter Interview 0:30-0:31; 0:42.

receiving excellent care there.[76] However, in February, 2009, when Ms. Sandoval and Mr. Inman were absent on vacation and the facility was under the supervision of F. F.'s day habilitation care provider, Peggy Welsh, F. F. had stomach pains and was taken to the emergency room and was diagnosed as having an ulcer.[77] Thereafter, Ms. D began to closely monitor F. F.'s circumstances.[78] On July 21 or 22, 2009, F. F. grabbed the waistband of another resident, R. R.[79] Michelle Walters, R. R.'s day habilitation care provider,[80] observed the incident, verbally redirected F. F., and reported what had occurred to Ms. Sandoval. Ms. Walters also spoke with Ms. Welsh about the incident,[81] and was reprimanded by Ms. Sandoval for improperly sharing information.[82] Mr. Inman told Ms. D about the incident.[83] Ms. D was of the view that Ms. Walters had a negative attitude towards F. F., and she decided that she did not want Ms. Walters to have any further contact with F. F.[84] Ms. Sandoval preferred Ms. Walters to Ms. Welsh, however, and chose to retain her and discharge Ms. Welsh.[85] Thereafter, on August 7, Ms. D gave Willow Creek written 30 days' notice of her intent to move F. F. out of Willow Creek.[86] Ms. Sandoval notified F. F.'s siblings of the proposed move, and they filed an action in the superior court seeking a court order to block the change.[87] The court denied the request, and on December 19, 2009, F. F. moved out of Willow Creek.[88]

After the departure of X. X., F. F. and H. H. from Willow Creek, none of the residents there had any connection to Ms. Hunter, the McCluskeys or Ms. D. Ms. Sandoval and Mr. Inman had no further contacts with any of those individuals or with Ms. Collins or Ms. Welsh. R. R. remained a resident at Willow Creek through 2011, and several other individuals resided

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[76] R. 1966 ("I have another resident at Willow Creek Assisted Living Home that is fairly passive and I do think they are taking excellent care of this passive resident at this time.") (K. D letter, 3/27/08).

[77] *See* R. 61 (date of hire 6/2007); R. 1979, 1987-1989. F. F.'s intestinal problems were later diagnosed, in April, 2011, as a side effect of his medication. *See* R. 1296.

[78] K. D Interview 0:08-0:11.

[79] R. 1974 (July 22); R. 1975 (July 21).

[80] *See* R. 61 (date of hire 4/16/2009).

[81] *See* R. 1990.

[82] R. 212-215, 1975, 2006.

[83] R. 2022.

[84] *See* R. 2021-2023.

[85] *See* R. 1978-1979, 2006-2007, 2014-2015.

[86] R. 2016.

[87] *See* R. 1994-2013.

[88] R. 1366.

there for varying periods. On occasion, Mr. Inman would see X. X. or F. F. in the community. F. F. greeted Mr. Inman warmly on at least one occasion, but X. X. avoided him.[89]

X. X. quickly settled in well at Montana Creek, and his medication was reduced.[90] For about a year and a half, no problems surfaced. In November, 2010, however, Ms. McCluskey reported that if he encountered his previous care provider in the community he became "pretty distressed and anxious."[91] A couple of months later, on February 11, 2011, X. X. had his regular visit with Dr. Halverson. At that meeting, Ms. McCluskey, Dr. Halverson and X. X. discussed a long-time continuing issue X. X. had regarding getting angry when he could not get something he wanted: typically, a movie with sexual or violent content.[92] X. X.'s reaction was to have violent thoughts, which he described to Ms. McCluskey the next day as thoughts of fighting or hitting.[93] Ms. McCluskey told him he could share his thoughts and feelings with her and she would not be angry with him.[94]

On February 12, X. X. spoke by telephone with Ms. McCluskey and Ms. D about his violent thoughts.[95] After that call, in a conversation with Ms. McCluskey, X. X. became unusually talkative, and spoke about the death of his infant niece that led to his imprisonment, then to placement at API, and eventually to Willow Creek. X. X. told Ms. McCluskey that Mr. Inman made him drink salt water, and that he hoarded soda and energy drinks for his thirst.[96] X. X. then stated that on a couple of occasions Mr. Inman had made him watch Playboy movies and rubbed his head, back and stomach,[97] and that Mr. Inman sometimes hugged him.[98] He also

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[89] *See, e.g.,* T. McCluskey Testimony #4 0:39-0:40.

[90] *See* Ex. 2, p. 89 ("doing quite well"; "is not needing the Benadryl at night that we started in March") (Dr. Halverson, 7/17/08); p. 88 ("He notes that he is doing well."; "tolerated the decrease in his Zyprexa quite well.") (Dr. Halverson, 8/22/08); p. 85 ("doing very well"; "sleeping so deeply that he is not waking up when he needs to go to the bathroom, which is why were [*sic*] continuing to cut back on his medications."); p. 84 ("doing great") (Dr. Halverson, 6/1/09).

[91] Ex. 2, p. 77 (11/1/10, Dr. Halverson). *See also* R. 837.

[92] *See* Ex. 2, p. 74 ("Chief complaint: Gets angry when he can't have something that he wants."; "the limitations are secondary to issues with violence and nudity"); R. 837 ("[X. X. has a problem with becoming angry when he is not allowed to have movies that have sexual content in them, angry obscene language rap music, and with being told no for any reasons"). *See also, e.g.,* Ex. 2, p. 48 ("He shared that he got upset because he could not get a movie he wanted because it had inappropriate content.") (2/22/12, Dr. Halverson).

[93] R. 837.

[94] R. 837. *See* Ex. 2, p. 74.

[95] R. 837.

[96] R. 837. That X. X. hoarded water bottles was undisputed. The reason that he did so was disputed. As noted, X. X. testified that he did it because he was made to drink salt water. Ms. Sandoval testified that X. X. had water intoxicated, and Dr. Halverson's notes reflect that she accepted that assertion.

[97] R. 837.

[98] R. 838.

stated, when asked if Mr. Inman had touched him inappropriately, that “I did not let him touch me.”[99] Ms. McCluskey reported what X. X. had told her to Ms. D that same evening.[100]

The next day, X. X. spoke again with Ms. McCluskey and Ms. D about these matters.[101] Two days later, on February 15, at a meeting with Cheri Golden, his care coordinator, X. X. repeated his allegations, and added that Mr. Inman would come into his room at night and “rub his back and his butt with lotion.”[102] Several days later, on February 19, X. X. made additional disclosures to Ms. McCluskey, stating that in addition to watching movies, Mr., Inman had put his penis in X. X.’s mouth and had him drink sperm from a bottle top.[103] These additional disclosures were so disturbing to Ms. McCluskey that she asked X. X. to record his recollections in a journal rather than speaking with him about them.[104] Over the course of the next week or ten days, X. X. wrote several notes describing what had occurred.[105] In the meantime, Ms. Golden had reported X. X.’s statements to the Division’s Adult Protective Services section, where the matter was assigned to investigator Deborah Rumbo, who contacted Ms. McCluskey.[106] The agency also reported the matter to the Alaska State Troopers and the investigating officer met with X. X., Ms. D and Ms. McCluskey on February 24.[107]

On his next visit to his psychiatrist, May 6, Dr. Halverson noted that X. X. had been “somewhat distressed” when they last visited, and that although he did not wish to discuss the matters of concern to him with Dr. Halverson, he had been “able to share them and work through them” with his care providers, and appeared “much more relaxed.”[108] At their next visit, on August 8, X. X. was still not willing to discuss these issues, but Dr. Halverson was made aware that “apparently he may have been in a situation where he was abused.”[109] In consultation with Ms. McCluskey, for the time being it was decided not to engage X. X. in therapy for the reported abuse.[110]

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[99] R. 838.
[100] R. 838.
[101] R. 836. Ms. McCluskey did not, in her testimony or in her notes, describe either conversation. Ms. D did not testify. When interviewed by Mr. Baxter, Ms. D did not describe either conversation.
[102] R. 839.
[103] R. 839.
[104] R. 839.
[105] *See* R. 1766-1789.
[106] R. 749-750, 839.
[107] R. 839.
[108] Ex. 2, p. 72 (5/2/11, Dr. Halverson); T. McCluskey Testimony #4 0:36.
[109] Ex. 2, p. 69; T. McCluskey Testimony #4 0:37.
[110] Ex. 2, p. 69 (8/8/11, Dr. Halverson).

During this period, the Division of Senior and Disabilities Services deferred to the criminal investigation and did not conduct an in depth investigation of its own.[111] However, Ms. Rumbo visited Willow Creek at the end of February, 2011, to check on the welfare of residents and found nothing of concern.[112] In May, the investigating officer informed Ms. Rumbo that he had met again with X. X., but the officer viewed the case as unlikely to warrant prosecution absent some sort of admission by Mr. Inman.[113] As of June, Sheila Jacobsen of the Division's Certification and Licensing section was awaiting the Alaska State Troopers' report in order to close out that section's file on the matter.[114] In August, as the date for renewal of Willow Creek's license approached, Ms. Jacobsen requested an update from the Alaska State Troopers, and was informed that the investigation was continuing, as the investigating officer was attempting to contact former residents.[115] Ms. Rumbo, the Adult Protective Services investigator, conducted another welfare check on September 13, and again found nothing of concern.[116]

On September 20, the counselor for C. C., a resident of Willow Creek, filed a report with the Division of Senior and Disabilities Services that C. C. had complained that Mr. Ingram was mean, aggressive and intimidating, and had used inappropriate sexual language with him, "talking about masturbation."[117] Based on C. C.'s complaint and X. X.'s report of sexual abuse, on September 23 Division personnel went to Willow Creek. Sheila Jacobsen interviewed C. C. C. C. stated that a couple of months previously he had been riding in a car with Mr. Inman when Mr. Inman had told him that he was unable to have sex with Ms. Sandoval any more because she had back issues, and that his doctor had told him he would "have to masturbate or lose it."[118] He added that on another occasion Ms. Sandoval had asked Mr. Inman (who is hard of hearing) to turn down the television because it was bothering residents, and Mr. Inman had said, "F…them."[119] C. C. added other disparaging observations about Mr. Inman.[120]

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111 *See* R. 844-850; C. Baxter Testimony #8 0:02.
112 *See* R. 844, 846-847.
113 R. 848.
114 R. 849.
115 R. 850.
116 *See* R. 853.
117 R. 745.
118 R. 851, 858.
119 R. 858. *See also* W. W. Interview 0:14.
120 R. 858.

Ms. Jacobsen presented Ms. Sandoval with a proposed agreement to impose conditions on the license, the primary condition being that Mr. Inman would not be permitted to be on the premises or to have any contact with residents while the Division's investigation was pending.[121] She informed Ms. Sandoval that if she did not sign the agreement Willow Creek's license would be suspended.[122] Ms. Sandoval signed the agreement, and Mr. Inman resigned his position as designee.[123] With that agreement, and the concurrence of the Alaska State Troopers, Craig Baxter of the Certification and Licensing section undertook an investigation, beginning by interviewing Ms. Hunter,[124] Ms. Sandoval[125] and the current residents at Willow Creek.[126]

In early November, X. X. and Dr. Halverson decided that X. X. was ready to work with a therapist regarding his alleged sexual abuse.[127] X. X. began seeing Tamara Stadem, a licensed professional counselor (LPC), on November 15. At their first meeting, X. X. stated that beginning a few months after his placement at Willow Creek, Mr. Inman had regularly come into his room at night, locked the door, and touched his "private places."[128] X. X. expressed having intrusive memories or flashbacks of these events, and recurring nightmares.[129] He expressed anger that these incidents had occurred and feelings of guilt and shame.[130] LPC Stadem recorded a diagnosis of post-traumatic stress disorder (PTSD).[131]

On November 17, 2011, Ms. Sandoval withdrew her consent to the condition on the license and in response the Division immediately suspended the license.[132] Ms. Sandoval filed a request for a hearing regarding the suspension. Thereafter Mr. Baxter (or staff) conducted interviews with Ms. Hunter, Tina and Dan McCluskey, Ms. D, Ms. Welsh, Ms. Walters, several former residents of Willow Creek, and others. In one of those interviews, O C, the mother of

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121 R. 800-802; C. Baxter Testimony #8 0:16-0:20, 0:31.
122 R. Sandoval Testimony #13 1:45.
123 R. 802, 817.
124 R. 870-871 (9/27/11).
125 R. 874, 882-883 (9/30/11).
126 R. 875-877 (9/30/11, W.W.); 878-881 (9/30/11, C. C.); R. 883 (9/30/11, B. B.).
127 Ex. 2, p. 67 (11/7/11, Dr. Halverson).
128 Ex. 2, p. 61.
129 Ex. 2, pp. 61 ("'I can't get the thoughts out of my head' (past sexual abuse)", 62 ("remembering about the abuse (flashbacks)"), 65 ("recurrent and intrusive thoughts as well as distressing dreams"); Testimony of T. Stadem #17 0:41-0:42, 0:58, 1:11-1:20.
130 Ex. 2, p. 65; T. Stadem Testimony #17 1;21.
131 Ex. 2, p. 64. LPC Stadem testified that she believed the initial diagnosis was by Dr. Halverson, but it might have been hers. She testified she concurred with the diagnosis. T. Stadem Testimony #17 0:07-0:08. Dr. Halverson testified that the diagnosis was added by LPC Stadem, but that she agreed with it. E. Halverson Testimony #11 0:09, #12 0:02.
132 R. 778-779.

former resident Z. Z., informed Mr. Baxter that her daughter had reported to her that Mr. Inman had exposed himself to her and made suggestive comments.[133] Mr. Baxter also obtained and reviewed X. X.'s treatment records and Willow Creek's records. On December 7, 2011, the Division issued a report and notice of violations and intent to revoke the license.[134] Ms. Sandoval filed another request for a hearing. The two requests were consolidated, and this proceeding ensured.

III. Analysis

A. Regulatory Framework

The Division issues licenses to assisted living homes.[135] After it has issued a license, the Division investigates complaints alleging a violation of an applicable statute or regulation by an assisted living home.[136] Following the investigation, the Division issues a report notifying the assisted living home of any violation and of any enforcement action the Division intends to take.[137] The assisted living home must be provided an opportunity to correct any violation that the Division has reasonable cause to believe has occurred,[138] but the Division may take an enforcement action regardless of whether the assisted living home achieves compliance with the statute or regulation.[139]

In this particular case, the Division seeks to take an enforcement action, specifically, to revoke Willow Creek's license, on the grounds that (1) Mr. Inman had sexually abused X. X.,[140] and (2) Ms. Sandoval and Mr. Inman had used child proof door locks to prevent residents from leaving their rooms.[141] Upon proof by a preponderance of the evidence that either alleged

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133 R. 766; O. C Interview 0:05-0:06. When interviewed, Ms. Sandoval stated that at one point she had made a complaint to Adult Public Services regarding Ms. C's ability to care for Z. Z. when she was temporarily residing at her mother's residence, and that Cheri Golden had filed a complaint regarding the manner in which Ms. Sandoval billed for her care for Z. Z. for that same time period. R. Sandoval Interview 0:48-0:49.

134 R.762-770.

135 AS 47.32.010-.900.

136 AS 47.32.090.

137 AS 47.32.120.

138 AS 47.32.140(a).

139 AS 47.32.140(b), (c).

140 Supplemental Accusation, ¶ II, ¶ IV. The Division's pre-hearing memorandum does not address the claim that Mr. Inman engaged in "sexually inappropriate" behavior, and at the hearing, the Division abandoned any claim of sexual abuse of any other resident. C. Baxter Testimony #8 0:16-0:20.

141 Supplemental Accusation, ¶III. The Division's pre-hearing memorandum did not address the allegation, and at the hearing the Division seek a finding, that that Ms. Sandoval had failed to report, investigate, or correct allegations or sexual assault or sexually inappropriate behavior. *See* Supplemental Accusation, ¶IV.

conduct occurred and that it was in violation of an applicable statute or regulation, the Division may revoke Willow Creek's assisted living home license.[142]

B. Child Proof Door Knob Covers

The Division asserted, and Ms. Sandoval and Mr. Inman did not dispute, that the assisted living home had plastic child-proof door knob covers on the inside doors of at least one resident, R. R., to prevent her from exiting her bedroom absent supervision. The Division's Supplemental Accusation asserts the use of such a device was in violation of AS 47.33.300(a)(1) and (2)[143] and 7 AAC 75.295(c)(3)(B).[144]

1. Physical Restraint

The use of physical restraints in an assisted living home is governed by AS 47.33.330(a)(4) and (b), which state:

> (a) An assisted living home, including staff of the home, may not…
> (4) place a resident under physical restraint unless the resident's own actions present an imminent danger to the resident or others….
> (b) An assisted living home may not physically restrain a resident unless the home has a written physical restraint policy that has been approved by the licensing agency. The home shall terminate the physical restraint as soon as the resident no longer presents an imminent danger.

An imminent danger is "a danger that could reasonably be expected to cause death or serious physical harm to the resident's self, to the staff of a home, or to others."[145]

The foregoing statutory language is implemented by 7 AAC 75.295, which states:

> (a) An assisted living home must have a written procedure regarding the use of physical restraint. That procedure must be approved by the department….
> (b) …[P]hysical restraint must be terminated as soon as the resident no longer presents an imminent danger to that resident or others.
> (c) At the time of a resident's admission to the home, the home shall
> …
> (3) address the need for using…physical restraint in the resident's assisted living plan…; the plan must include information regarding

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142 The Division may undertake an enforcement action upon a reasonable belief that a violation occurred. AS 47.32.140(a). It may take an enforcement action even if the alleged violation has been cured. AS 47.32.140(b), (c).
Because the Division did not argue that it may take an enforcement action following a hearing absent proof by a preponderance of the evidence that a violation occurred, for purposes of this decision it is presumed that the law in that respect remains as it was prior to enactment of AS 47.32. *See* former AS 47.33.550(a)(1), repealed, §49 ch. 57 SLA 2005) ("A licensing agency may revoke an assisted living home license…on one or more of the following grounds: (1) a violation of a provision of this chapter, a regulation adopted under this chapter, an order in a notice of violation issued under this chapter, or a term of a license issued under this chapter.").

143 Supplemental Accusation, ¶III. *See also,* Report of Investigation, p. 6.

144 Supplemental Accusation, ¶V. *See also*, Report of Investigation, pp. 6-7. *See also* AS 47.33.330(a)(4), (b).

145 AS 47.33.990(10).

(A) when…physical restraints should be used; [and]
(B) what forms of physical restraint should be used, based on recommendations from the resident's primary physician….
(f) …[P]hysical restraint is a manual method that restricts body movement, or a physical or mechanical device, material, or piece of equipment that is attached or adjacent to the resident's body, that prevents the resident from easily removing it, and that restricts movement or normal access to the body.

At the time of R. R.'s admission to Willow Creek, her guardian reviewed and approved R. R.'s assisted living plan and gave written permission for the use of a child-proof door knob cover on her bedroom door.[146] Use of the device was based on R. R.'s physician's note of "impulsivity, intermittent aggressiveness and inability to care for herself." In light of the plan, the guardian's written consent, and the physician's recommendation for 24-hour monitoring, the Division has not established a violation of 7 AAC 75.295(c)(3)(B).[147]

2. Safety

The Division argued that the use of a child-proof door knob cover on the egress side of R. R.'s bedroom door created a safety risk, and was therefore in violation of AS 47.33.300(a)(1), which states:

(a) [A] resident of an assisted living home has the right to
(1) live in a safe and sanitary environment….

The evidence in this case is that R. R. was unable to either remove the cover or to open her door while the cover was in place. Thus, using the cover created a safety risk. However, the safety risk could be mitigated by appropriate monitoring and evacuation procedures. Indeed, the Division requires that a facility have an evacuation plan for mentally impaired residents[148] and conduct regular emergency evacuation drills.[149] R. R. was a resident who more likely than not would have needed assistance in exiting the facility in an emergency even if there had been no cover on the door knob.[150] In addition, use of the cover was conditioned on use of a monitor in the bedroom.[151] The Division presented no evidence to establish that the facility was not in compliance with the regulations directly governing fire safety in the home, and the home passed

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146 Ex. Q, Ex. S.

147 Because Willow Creek had written authorization for the use of child-proof door knob cover, it is not necessary to consider whether such a device is within the scope of 7 AAC 25.295, which applies only to devices that are "attached or adjacent to the resident's body." 7 AAC 75.295(f). A child proof door knob cover does not restrict a resident's movement within a room, and is adjacent to the resident only when the resident is adjacent to the door.

148 *See* 7 AAC 75.085(b)(12); 7 AAC 10.1010(e)(1)(b), (2)(C), (6).

149 7 AAC 10.1010(f), (g).

150 *See* M. Y Interview 0:41.

151 Ex. S, Ex. Q.

multiple inspections without any note that the use of such a device was improper. On balance, the Division did not establish that the use of a child-proof door knob cover in accordance with the assisted living plan and the written permission of the guardian made the facility unsafe for occupancy by R. R.

3. Personal Dignity

The Division also argued that by limiting R. R.'s ability to exit her bedroom, Willow Creek was inconsiderate and disrespectful of her personal dignity and individuality, contrary to AS 47.33.300(a)(2), which states:

> (a) [A] resident of an assisted living home has the right to…
> (2) be treated with consideration and respect for personal dignity, individuality, and the need for privacy…

R. R.'s mental health and behavioral problems were such that reasonable limitations on her freedom of movement within the facility were appropriate, and use of the cover within the limits of the authorization provided by R. R.'s guardian was a reasonable method of dealing with the behavioral challenges R. R. presented.

However, when care providers arrived in the morning, and at other times, R. R. commonly had to bang on the door of her room because she could not open it and wanted to be let out.[152] To continue use of the child proof door knob cover after the assisted living facility's daily routine began, and at other times, was inconsistent with the written policy that R. R.'s guardian had signed, which restricted use of the cover to bed time, time out and nap time and provided for response to an in-room sound monitoring device.[153] Moreover, to fail to respond promptly and instead to leave R. R. pounding on the door until her day habilitation care provider arrived was inconsistent with consideration and respect for R. R.'s personal dignity and individuality. Use of the child proof door knob cover was intended as a behavior management device due to R. R.'s "high risk behavioral outbursts, and the danger of physical aggression."[154] Continued use of the device to the point that R. R. would bang on her door to be let out, without a prompt response from Ms. Sandoval or Mr. Inman, would increase, rather than decrease, the risk of behavioral outbursts and physical aggression. A physical restraint, by law, may be used

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[152] T. McCluskey Testimony #4 0:10; D. McCluskey Testimony #7 0:06. *See also*, O. C Interview, 0:12, 0:14 (describing hearing R. R. banging on her bedroom door after her nap).
[153] Ex. S, Ex. Q.
[154] Ex. S, Ex. Q.

only until such time as the reason for using it continues.[155] Willow Creek's failure to remove the child proof door knob cover from R. R.'s room in a timely manner each morning and at other times deprived her of her right to be treated with consideration and respect for her personal dignity and individuality, conduct which was contrary to AS 47.33.300(a)(2) and was therefore in violation of AS 47.33.330(a)(1).

C. Sexual Abuse

The Division's Supplemental Accusation asserts that Mr. Inman's conduct was in violation of AS 47.33.300(a)(1) and (2)[156] and 7 AAC 75.220.[157] Sexual abuse[158] of a resident by a staff member deprives the resident of his right to be treated with consideration and respect for his personal dignity, conduct which is contrary to AS 47.33.300(a)(2) and is therefore in violation of AS 47.33.330(a)(1). 7 AAC 75.220 mandates that an alleged or suspected instance of abuse be reported and investigated.[159] Because Mr. Inman is a licensee, a sexual assault committed by him would be in violation of 7 AAC 75.220.

The evidence of sexual abuse consists of X. X.'s oral and written statements and his testimony at the hearing, where he was subject to cross examination. Mr. Inman also testified at the hearing, was cross examined, and denied the acts he was alleged to have committed. There is no corroborating physical evidence of the alleged events, nor would any be expected in light of the lapse of time and the nature of the alleged conduct.

X. X.'s initial disclosures were documented in contemporaneous notes written by Ms. McCluskey, which are in the record.[160] The content and context of those disclosures is, to that extent, reliably established. As described in Ms. McCluskey's notes, X. X. disclosed that Mr. Inman made him "watch Playboy,"[161] Mr. Inman rubbed his head, back and stomach,[162] and Mr. Inman "sometimes…would come up behind him and hug him."[163] X. X. stated it happened "a

[155] *See* 7 AAC 75.295(b).
[156] Supplemental Accusation, ¶III.
[157] Supplemental Accusation, ¶IV. The Supplemental Accusation also alleges that Ms. Sandoval had failed to report, investigate, or correct allegations of abuse and sexually inappropriate actions. The Division did not rely on that allegation at the hearing. C. Baxter Testimony #8 0:16-0:20.
[158] For purposes of this decision, the definition of sexual abuse is that set forth in AS 47.24.900(2). *See* Supplemental Accusation, ¶III (alleging Mr. Inman's conduct was in violation of AS 47.24.900(2)).
[159] 7 AAC 75.220(2)-(7).
[160] *See* R. 837-838.
[161] R. 837.
[162] R. 837.
[163] R. 838.

couple of times" and did not occur when Ms. McCluskey was working at Willow Creek.[164] X. X. also stated, when asked if Mr. Inman had touched him inappropriately, that "I did not let him touch me."[165] None of the conduct disclosed at this time constituted sexual abuse as defined in AS 47.24.900(2).

On February 15, X. X. had a routine meeting with his care coordinator, Cheri Golden. Ms. McCluskey participated in the meeting. Ms. McCluskey's contemporaneous notes[166] state that X. X. reported "all the same information that he told me" and added that Mr. Inman rubbed his back and butt with lotion,[167] and that Mr. Inman came into his room at night. Again, none of the conduct disclosed constituted sexual assault as defined in AS 47.24.900(2).

X. X. provided more information to Ms. McCluskey on February 19. According to her written note,[168] on that occasion he made additional disclosures that included conduct constituting sexual assault as defined in AS 47.24.900(2), specifically, that Mr. Inman put his penis in X. X.'s mouth. X. X. also stated that Mr. Inman "asked him to drink sperm from a cap or something."

Ms. McCluskey testified that X. X.'s disclosure's to her on February 19 were so disturbing to her that she did not wish to speak with him about them again, and she asked him to instead journal about these events. Thereafter, X. X. wrote a series of notes to Ms. McCluskey and at least one to Ms. Rumbo that for the most part repeated information previously disclosed to Ms. McCluskey.[169] X. X. added one specific allegation of sexual assault not previously mentioned, namely that Mr. Inman put his finger inside X. X.'s butt every night.[170] X. X. also asserted that on one occasion, Mr. Inman had rubbed X. X.'s penis raw and made it bleed.[171] He asserted this type of conduct occurred "every night."[172] X. X. stated that on one occasion Mr. Inman grabbed him from behind and kissed his head, and's he characterized this as an attempt to have sex with him.[173] In therapy sessions with LPC Stadem, X. X. made substantially similar

[164] R. 837. Ms. McCluskey's written notes do not mention a time frame. Ms. McCluskey testified X. X. told her it did not occur when she was working at Willow Creek. T. McCluskey Testimony #4 0:52.
[165] R. 838.
[166] R. 839. *See also* R. 749.
[167] R. 749, 839.
[168] R. 839.
[169] *See* R. 1766-1785.
[170] R. 1772 (undated note).
[171] R. 1774 (undated note).
[172] R. 1770 (undated note); R. 1772 (undated note); R. 1774 (undated note).
[173] R. 1768 (undated note to D. Rumbo); R. 1770 (undated note).

allegations to those previously made.[174] His testimony at the hearing was substantially consistent with his prior allegations.

Initially, one must consider whether X. X.'s allegations are intentional fabrications. Ms. Sandoval and Mr. Inman testified that X. X. is a manipulative person who lies in order to get what he wants. However, X. X. had long since moved out of Willow Creek when he began making allegations about Mr. Inman. Ms. Sandoval and Mr. Inman offered no explanation for what would have motivated X. X. to make up these allegations long after he moved out, other than dislike for them and an unsupported assertion that Ms. Hunter would buy him a snow machine because of them. Absent any basis for a finding that X. X. was offered any inducement for making false allegations, or that he had any other motive for intentional fabrication, the suggestion that he would have fabricated allegations of sexual abuse long after leaving Willow Creek is unpersuasive.

That X. X.'s allegations are not likely to have been intentionally fabricated does not mean that they were not exaggerated or inaccurate, however. Some of his allegations are less plausible than others. X. X.'s initial allegations, which did not describe sexual abuse, were elicited Ms. McCluskey, who had a long standing, positive relationship with X. X. and who had negative and suspicious feelings and attitudes towards Mr. Inman. X.X.'s subsequent disclosures, which described conduct constituting sexual assault, were made in response to repeated encouragement to let out his thoughts and that it would be beneficial to his well-being to do so. Furthermore, Dr. Halverson testimony indicates that X. X. was suggestible.[175] It is not altogether implausible that the specific allegations of sexual misconduct were generated or enhanced in response to sympathetic and encouraging inquiries.

Based on Ms. McCluskey's contemporaneous notes and her testimony at the hearing, it appears that the initial disclosures to her on February 12 were not elicited in response to any sort of prompting or suggestion relating to Mr. Inman or sexual contact of any kind. Rather, they appear to have been the spontaneous product of X. X.'s independent thought process.[176] But X. X.'s initial statements to Ms. McCluskey and to Ms. Golden did not include an allegation of sexual contact. That Mr. Inman would rub X. X.'s head and back is not sexual contact, and that

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174 T. Stadem Testimony #17 0:28-0:30.

175 *See* E. Halverson Testimony #12 0:07.

176 *See* Broderick v. King's Way Assembly of God Church, 808 P.2d 1211, 1219 (Alaska 1991) (hereinafter, Broderick).

Mr. Inman applied lotion to his back and butt would be disturbing but is not sexual contact.[177] X. X.'s statement that Mr. Inman would sometimes come up from behind and hug him does not describe improper behavior, and his subsequent characterization of this event as an attempt by Mr. Inman to have sex with him is implausible, particularly in light of the undisputed testimony that Mr. Inman is a "hugger." The allegation that Mr. Inman had watched pornographic movies with X. X. was outside the realm of acceptable behavior, but this was not sexual contact.

After the his initial disclosures on February 12 and 15, beginning on February 19 X. X. made much more serious disclosures, including specific allegations of sexual contact. However, none of X. X.'s disclosures about sexual contact was elicited by a neutral observer trained in the forensic questioning of a mentally disabled person. X. X.'s disclosures of sexual contact were largely consistent over time in their main points, in that X. X. consistently reported that Mr. Inman regularly came into his room at night and engaged in sexual contact with him, but as time went on the disclosures included additional details, some of which are less plausible than others. It is possible that consistency in the main points with the gradual addition of specific details reflects repeated telling of recollected events, with the gradual recovery of memories or increased willingness to describe those events. But consistency is not a guarantee of accuracy or truthfulness.[178] It is also possible that consistency with the gradual addition of specific details reflects repeated recollection of an event, enhanced over time to please sympathetic and encouraging listeners.

Ms. Sandoval and Mr. Inman argue that certain circumstances make X. X.'s allegations less credible: (1) bias against Ms. Sandoval and Mr. Inman on the part of Ms. Hunter, Ms. McCluskey and Ms. D; and (2) X. X.'s expressed desire to return to Willow Creek when admitted to API in 2008. The Division argues that other circumstances make X. X.'s allegations more credible: (3) X. X.'s negative reaction to Mr. Inman when encountering him after leaving Willow Creek; and (4) X. X.'s claim that he huffed gas in order to get out of Willow Creek. In addition, (5) the Division elicited expert opinion testimony to buttress X. X.'s allegations, and (6) Ms. Sandoval and Mr. Inman introduced supportive character testimony.

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[177] The record includes evidence that Mr. Ingram applied lotion to sensitive portions of other residents' bodies for medical purposes. *See, e.g.,* Ex. H, p. 3613; R. Sandoval Interview 0:52, 1:29; M. Y Interview 0:29-0:30.

[178] *See* Broderick, 808 P.2d at 1220 ("consistency may sometimes suggest rehearsal").

1. Bias

The centerpiece of Ms. Sandoval's and Mr. Inman's defense was the argument that X. X.'s disclosures were elicited by persons who were biased against them. The bias against them allegedly stems from Ms. Sandoval's refusal to loan money to Ms. Hunter, Ms. Sandoval's refusal to accommodate Ms. Hunter and Ms. McCluskey with respect to the hot tub Ms. Hunter had authorized to be built at Willow Creek using H. H.'s funds, and Ms. Sandoval's discharge of Peggy Welsh as a care provider for Ms. D's ward F. F..[179] Ms. Sandoval's view is that Ms. D's friendships with Ms. Hunter and Ms. McCluskey led the three to engage in a concerted effort to shut down Willow Creek, and that X. X.'s disclosures are the product of that effort.

a. Marsha Hunter

Ms. Hunter did not speak with Ms. Sandoval or her father for about five years beginning in 2006 or 2007.[180] Ms. Sandoval testified that Ms. Hunter became upset and sent her abusive and threatening emails after Ms. Sandoval refused provide a loan or to purchase the hot tub that had been built on her property for H. H.'s use.[181] When interviewed, Ms. Hunter stated that she was unaware of why her father had not contacted her, speculating that it was because he believed she had filed a complaint with the Division about him, the hot tub matter, or long-standing family issues.[182] Ms. Hunter was not called as a witness at the hearing.

Assuming Ms. Hunter was biased, the fact is that she had no role in X. X.'s disclosures. Accordingly, even if Ms. Hunter was biased against her father, this does not make X. X.'s allegations any less credible.

b. Tina McCluskey

Ms. McCluskey was the first person to whom X. X. made disclosures of concern. She spoke with Ms. D about those disclosures and participated in multiple conversations with X. X. and others at which further, more specific, disclosures were made. She also encouraged X. X. to write about his thoughts and told him it would be beneficial to him to get his bad thoughts out. In view of her role in eliciting the allegations, bias on her part towards Ms. Sandoval or Mr. Inman might discredit X. X.'s allegations.

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[179] *See supra*, footnotes 69-75, 84-86.

[180] When interviewed in 2011, Ms. Hunter stated that as of "next April" she would not have spoken with Ms. Sandoval or her father in five years (except for an incident in 2010 when Ms. Hunter brought a runaway resident back to Willow Creek). M. Hunter Interview #171:22, 0:30.

[181] *See supra* at p. 8.

[182] M. Hunter Interview 0:30-0:32, 0:41.

Ms. Sandoval testified that Ms. McCluskey was biased against her (and, by association, against Mr. Inman) as a result of the financial dispute over the hot tub. Ms. Sandoval asserted that Ms. McCluskey had sided with Ms. Hunter in the matter and believed that Ms. Sandoval had made a complaint to the Division regarding the matter, and that after this her relations with Ms. McCluskey and her husband were chilly.[183] Ms. McCluskey testified that she had nothing against Ms. Sandoval and Mr. Inman, and that it was their choice not to contact her beginning after the hot tub matter, but that she does not trust them.[184] She testified she is an advocate for X. X.[185]

Ms. McCluskey may have been predisposed to believe X. X.'s allegations. However, she had no financial interest in the hot tub matter, and there is no evidence that she had any motive to cause harm to either Ms. Sandoval or Mr. Inman. The evidence does not support the theory that Ms. McCluskey intentionally elicited untrue or exaggerated information from X. X. in order to cause harm to them.

c. K D

Ms. Sandoval's view is that Ms. D was biased against her, and Mr. Inman, because they had refused to accommodate her insistence that Michelle Walters not have any further contact with F. F., which led Ms. D to remove F. F. from Willow Creek, and because Ms. Sandoval induced F. F.'s siblings to file a lawsuit challenging F. F.'s removal.

The record includes ample evidence that over time Ms. D became disenchanted with both Ms. Sandoval and Mr. Inman, particularly after they sought to have her removed as F. F.'s guardian. However, although Ms. D spoke with Ms. McCluskey and X. X. after his initial disclosures, there is no evidence that she elicited any of the more damaging disclosures that he made beginning on February 19. Ms. D's animus towards Ms. Sandoval and Mr. Inman does not lessen the credibility of X. X.'s disclosures to others, made in her absence.

2. X. X.'s Previously Expressed Feelings About Willow Creek

X. X.'s expressed feelings about his experience at Willow Creek, made prior to the time he made allegations of sexual abuse there, are a factor that weighs on the credibility of his allegations. In this regard, the record is mixed. Testimony established that it was not unusual for X. X. to express a wish to leave Willow Creek. However, these appear to be temperamental

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183 *See* note 75, *supra*.
184 T. McCluskey Testimony #4 1:10-1:13.
185 T. McCluskey Testimony #4 1:11.

outbursts or periods of particular emotional stress relating to his criminal history[186] rather than an underlying dissatisfaction with his placement at Willow Creek, and the record also includes observations by independent persons that X. X. generally expressed positive feelings about Willow Creek.[187] Ms. Sandoval and Mr. Inman stress that when he was admitted to API after his removal from Willow Creek, X. X. told the admitting psychiatrist that he had been happy there and wanted to return. As a matter of common sense as well as expert opinion,[188] such a statement was inconsistent with a history of sexual abuse while there. It is also inconsistent with X. X.'s written threats against Ms. Sandoval and Mr. Inman just prior to his removal.

On balance, little weight is placed on X. X.'s previously expressed feelings about Willow Creek, whether positive or negative. Prior to alleging abuse, X. X. did not express an underlying dissatisfaction in his placement at Willow Creek. This may have been because he was content in his placement there, or because he viewed Willow Creek as preferable to either jail or API. Assessing his actual feelings on the basis of the evidence provided is speculative.

3. Negative Reaction to Mr. Inman

The preponderance of the evidence is that on more than one occasion after he was removed from Willow Creek, when X. X. encountered Mr. Inman in a public setting X. X. was evasive and anxious.[189] These reactions are consistent with having been subjected to sexual abuse by Mr. Inman, but they are also consistent with any other reason that X. X. might have for disliking him. Moreover, to the extent these reactions occurred after the disclosures, they are consistent with having lied about having been subjected to sexual abuse by Mr. Inman.

4. X. X.'s Subsequently Expressed Feelings About Willow Creek

The Division stresses that when he made his allegations, and subsequently, X. X. has asserted that he huffed gas in order to get away from Willow Creek. This argument, however, fails to explain why it is, if X. X. had been subjected to sexual abuse for years, he did not attempt to leave before 2008, and it is direct conflict with X. X.'s statements upon admission to API immediately after he was removed from Willow Creek.

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[186] *See e.g.,* K. D Interview 0:17; Ex. 2, p. 99; notes 34-35, 47, *supra*.

[187] *See, e.g.*, notes 32 (Dr. Halverson), 33 (Division of Senior and Disabilities Services), 43 (court visitor), *supra*.

[188] *See* T. Stadem Testimony #17 0:37.

[189] T. McCluskey Testimony #4 0:32. *See also* notes 897 & 91, *supra*.

5. *Expert Opinion Testimony*

The Division elicited expert opinion testimony from Dr. Halverson and LPC Stadem regarding X. X.'s symptoms and behavior. Ms. Sandoval and Mr. Inman objected to the admission of the experts' testimony, and the parties submitted post-hearing memoranda addressing the issue.

The admissibility of expert opinion testimony in the context of sexual abuse cases was first considered by the Alaska Supreme Court in Broderick v. King's Way Assembly of God[190] and was subsequently addressed at length in L.C.H. v. T.S..[191] In the latter case, the court held that "expert opinion testimony that an alleged victim's behaviors are consistent with abuse and conform to a clinical finding of abuse" is admissible, but only "in response to a claim that the conduct in question is inconsistent with claims of sexual abuse, and it may not go so far as to vouch for the credibility of the complaining witness."[192]

Expert opinion testimony that a complaining witness's behavior is consistent with sexual abuse may be provided in the form of "profile" evidence. Profile evidence is evidence that because an alleged perpetrator or victim fits the behavioral profile of a typical perpetrator or victim, the person is the perpetrator or the victim. This type of evidence is inadmissible.[193] Thus, expert opinion testimony is not admissible for the general purpose of showing that, because his behavior was consistent with the behavior of a victim of sexual abuse, X. X. was the victim of sexual abuse. However, expert opinion testimony is admissible to show that a specific behavior exhibited by X. X. was consistent with sexual abuse, but only to rebut a claim that that specific behavior was inconsistent with sexual abuse. For example, if Ms. Sandoval and Mr. Inman claimed that X. X.'s failure to disclose abuse for a lengthy period of time was inconsistent with having incurred sexual abuse, the door would be open for the Division to introduce expert opinion testimony that victims of abuse often do not report it for a lengthy period of time. In

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190 Broderick v. King's Way Assembly of God Church, 808 P.2d 1211 (Alaska 1991) (hereinafter, Broderick).

191 L.C.H. v. T.S., 28 P.3d 915 (Alaska 2001) (hereinafter, L.C.H.).

192 *Id.*, 28 P.3d at 924. At the hearing, the Division asked Dr. Halverson whether, in her expert opinion, X. X. was telling the truth about being abused. E. Halverson Testimony #11 0:12. Counsel for Ms. Sandoval and Mr. Inman objected. The administrative law judge ruled any such opinion testimony inadmissible, but permitted Dr. Halverson to testify that in her opinion X. X. had no secondary gain as a result of making the allegations. *Id.*, 0:15.

193 *See* Cook v. State, 2003 WL 22017274 (Alaska Court of Appeals, August 7, 2003) ("'[W]e have repeatedly held that State may not offer expert testimony to suggest that, because the complaining witness fits the profile of a certain class of crime victim, the witness's report of the crime must be true.", *citing* Russell v. State, 934 P.2d 1335, 1343 (Alaska App. 1997); Nelson v. State, 782 P.2d 290, 297-98 (Alaska App. 1989); Haakanson v. State, 760 P.2d 1030, 1036 (Alaska App. 1988); Anderson v. State, 749 P.2d 369, 373 (Alaska App. 1988).

addition, while profile evidence is inadmissible, expert opinion testimony that a complaining witness's behavior is consistent with a diagnosis of PTSD as a result of sexual abuse has been deemed admissible for the purpose of showing that the sexual abuse occurred,[194] but, again, only to rebut a claim that specific behavior is inconsistent with sexual abuse.

The Division first asserts that the expert opinion testimony of Dr. Halverson and LPC Stadem is admissible as "testimony…that X. X.'s behavior and symptoms were consistent with that of a person who has suffered trauma related to sexual abuse and that in the experts' opinion, X. X. actually suffered this trauma."[195] As characterized here by the Division, the testimony is inadmissible profile evidence: testimony that because X. X. exhibits behavior (in this context, including non-behavioral symptoms) consistent with sexual abuse, the sexual abuse occurred. As presented at the hearing, however, the expert opinion testimony was not profile evidence, but rather was that X. X.'s behavior (*i.e.*, his symptoms) were consistent with a clinical diagnosis of PTSD.[196] Specifically, LPC Stadem testified that X. X. had described to her dreams, recurring and intrusive memories, and flashbacks of abuse and that these experiences were consistent with symptoms of PTSD incurred as a result of sexual abuse.[197] But Ms. Sandoval and Mr. Inman never claimed that any dreams, memories or flashbacks that X. X. experienced were inconsistent with having suffered sexual abuse.[198] Absent any claim that these experiences were inconsistent with abuse, the Division had no basis for submitting expert opinion testimony that they were consistent with a diagnosis of PTSD resulting from abuse.

The second ground identified by the Division is that the testimony of Dr. Halverson and LPC Stadem is admissible to respond to unspecified "issues about the credibility of X. X.'s statements."[199] But simply asserting that X. X. was lying or embellishing is not sufficient to open the door to expert opinion testimony that his behavior and symptoms are consistent with the

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[194] Broderick, 808 P.2d at 1216-1217. *See also*, Shepard v. State, 847 P.2d 75, 80-81 (Alaska App. 1993).

[195] Post-Hearing Brief at 2-3.

[196] T. Stadem Testimony #17 0:09-0:11. Dr. Halverson testified that PTSD is identified as DSM 309.81. E. Halverson Testimony #11 0:06. The Division did not place the diagnostic criteria from that manual into the record.

[197] T. Stadem Testimony #17 0:12-0:15.

[198] X. X. himself was not asked at the hearing whether he had experienced recurring and intrusive memories or flashbacks of sexual abuse. He testified that on one occasion he dreamed that Mr. Inman was chasing him with a gun. X. X. Testimony #1 0:31. Ms. Sandoval and Mr. Inman suggested that X. X. had not actually had the experiences he described to LPC Stadem, and that he had faked the symptoms of PTSD. However, claiming that X. X. was lying about his symptoms did not open the door to expert opinion testimony as rebuttal. *See* Cook v. State, 2003 WL 22017274 (Alaska App. 2003) at 8 ("Cook, by merely alleging that J. B. was lying, did not open the door to the remainder of Dr. Nace's testimony.").

[199] Post-Hearing Brief at 3.

behavior and symptoms of a victim of sexual abuse.[200] Absent specific reference to a particular issue of credibility based on X. X.'s behavior or symptoms that was raised by Ms. Sandoval and Mr. Ingram, this asserted ground is in substance an argument that the expert testimony should be admitted for precisely the reason the court in L.C.H. said it was not admissible: to vouch for X. X.'s credibility.

Third, the Division asserts that Ms. Sandoval and Mr. Inman had "introduced evidence that X. X.'s behavior was inconsistent with suffering sexual abuse."[201] It is true that to the extent Ms. Sandoval and Mr. Inman introduced evidence that X. X.'s behavior was inconsistent with having suffered sexual abuse, the Division could introduce expert opinion testimony to rebut that evidence. But the Division's brief does not specifically identify the specific behavior of X. X. that was claimed by Ms. Sandoval and Mr. Ingram to be inconsistent with suffering sexual abuse. In one respect the expert opinion testimony did not rebut a claim of behavior inconsistent with abuse, but rather supported a claim of behavior inconsistent with abuse: LPC Stadem's expert opinion was that X. X.'s statement upon admission to API that he wanted to return to Willow Creek was inconsistent with his claim of abuse.[202] In another respect, the expert opinion testimony was to the effect that X. X.'s behavior was consistent with the behavior of persons known to have been abused, in that both Dr. Halverson and LPC Stadem testified that victims often do not disclose the abuse until long after it has occurred.[203] To the extent that Ms. Sandoval and Mr. Inman claimed this delay was inconsistent with having suffered abuse, expert testimony to rebut that claim would be admissible.[204] But the expert opinion testimony the Division elicited went far beyond that particular claim, and nothing in the cases cited by the Division suggests that expert opinion testimony is admissible beyond the specific behaviors which are claimed to be inconsistent with sexual assault. In any event, the expert opinion testimony regarding delayed disclosure was not elicited by the Division to rebut a claim of behavior inconsistent with sexual abuse. Rather, the testimony was elicited in the Division's case in chief.

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[200] *See* Cook v. State, 2003 WL 22017274 (Alaska App. 2003) at 8.

[201] Post-Hearing Brief at 3.

[202] T. Stadem Testimony #17 0:37.

[203] *See* E. Halverson Testimony #11 0:11, #12 0:30; T. Stadem Testimony #17 0:25-0:26.

[204] The Division's brief did not cite to any specific argument to that effect. The Respondents' PreHearing Memorandum does not assert that the lengthy delay in making these allegations makes them less credible.

X. X., the Division's first witness, testified that he did not disclose the abuse until "a couple of years ago", that is, some three years after he left Willow Creek, because he was "shy" and "scared," and that he disclosed it when he did because "it was time to let it out or something like that out of my anger."[205] In his cross-examination of X. X., counsel for Ms. Sandoval and Mr. Inman did not ask about these explanations, and did not elicit any testimony casting doubt on X. X.'s explanation for the late disclosure, such as a previously-absent motive for fabrication. In the absence of any alternative explanation for the delayed disclosure (other than a claim that X. X. was lying, which, as previously stated, would not open the door to expert rebuttal testimony),[206] the only evidence that tends to explain the delay is X. X.'s testimony that he did not disclose the abuse because he felt shy and scared. It takes no expertise to recognize that this is a reasonable explanation for the failure to disclose sexual abuse. Accordingly, the expert opinion testimony regarding late disclosure of abuse is unhelpful and will be disregarded.

The fourth ground identified by the Division is that the expert opinion testimony of Dr. Halverson was admissible to rebut Ms. Sandoval and Mr. Ingram's characterization of X. X. as a sophisticated and manipulative liar.[207] Here, we are outside the realm of expert testimony as to behavior consistent with the behavior of victims of sexual abuse. Rather, we are considering X. X.'s mental capacity. On that specific point, the Division asserts that Dr. Halverson's expert opinion was that X. X. lacked the capacity to formulate and consistently maintain a relatively complicated fabricated story of abuse.[208] However, it takes nothing more than common sense to appreciate that a person with X. X.'s cognitive limitations would have difficulty in formulating and consistently maintaining a relatively complicated fabrication. The more pertinent question is whether his reports were consistent over time and whether his narrative was complex, and Dr. Halverson was substantially unfamiliar with those matters. Absent a basis for assessing X. X.'s capacity with respect to the details and consistency he actually provided, Dr. Halverson's opinion simply substantiates what common sense would tell us: that X. X. has a limited mental capacity. Beyond that, it is unhelpful, and her opinion as to his capacity for fabrication is therefore disregarded.

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205 X. X. Testimony #1 0:26-0:30; 0:33.

206 *See* Cook v. State, 2003 WL 22017274 (Alaska App. 2003) at 8.

207 Post-Hearing Brief at 3.

208 *See* Post-Hearing Brief on Evidentiary Issue at 1. *See* E. Halverson Testimony #11 0:24.

As explained above, the Division has not provided a sound basis for admitting the expert opinion testimony it elicited, other than Dr. Halverson's opinion as to X. X.'s mental capacity. In any event, assuming that the Division had established that the experts' testimony was admissible to rebut claims made, or evidence introduced, that X. X.'s behavior was inconsistent with having incurred sexual abuse, that evidence would not be compelling. The reliability of expert opinion testimony in cases of this nature is a subject of substantial debate, for a variety of reasons.[209] Moreover, much of the discussion of the topic, and all of the cases and authorities cited above, occurs in the context of the alleged sexual abuse of a child. The reliability of expert opinion testimony regarding sexual abuse of children is not necessarily equivalent to the reliability of expert opinion testimony regarding sexual abuse of a mentally disabled adult.[210] In addition, both Dr. Halverson and LPC Stadem testified as X. X.'s treating mental health professionals, rather than as forensic experts. Dr. Halverson forthrightly admitted that she was not an impartial witness, because X. X. was her patient.[211] Similarly, LPC Stadem's assessment of X. X.'s clinical condition was premised on her assumption that his allegations were true, rather than on an objective and independent evaluation of all of the relevant information.[212]

In light of the foregoing, the expert opinion testimony of Dr. Halverson and LPC Stadem will be disregarded for purposes of determining the truth of X. X.'s allegations.

6. Character Evidence

X. X. was characterized by Ms. Sandoval and Mr. Inman as manipulative and deceitful. But the evidence on that topic suggests little more than that in some respects X. X. at times acts as a child of eight or nine might be expected to act.

Mr. Inman elicited supportive character testimony from acquaintances. None of those witnesses was a person who had regularly observed Mr. Inman while working at the assisted living home, or who had direct personal experience with him in his capacity as a licensee or care provider. There is hearsay evidence in the record of various bad acts by Mr. Inman, but that

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209 *See generally*, L. Askowitz and M. Graham, *The Reliability of Expert Psychological Testimony in Child Sexual Abuse Prosecutions*, 15 Cardozo Law Review 2027, 2092-2093 (1994).

210 For example, Dr. Halverson testified that children subjected to sexual abuse commonly exhibit behaviors indicative of the abuse, but that she did not know whether the same held true for developmentally disabled adults. *See* E. Halverson Testimony #12 0:12.

211 E. Halverson Testimony #11 0:34.

212 *See generally*, L. Askowitz and M. Graham, *The Reliability of Expert Psychological Testimony in Child Sexual Abuse Prosecutions*, 15 Cardozo Law Review 2027, 2092-2093 (1994). In L.C.H., the experts who testified were forensic experts, not treating mental health care providers, and they did not diagnose PTSD "because the existence of a triggering event was in dispute and to be decided by the jury." *Id.*, 28 P. 3rd at 924, note 31.

evidence is disregarded for purposes of determining the truth of the allegations of sexual abuse.[213]

7. Explanations for X. X.'s Allegations

No motive for X. X. to have fabricated his allegations was established. Ms. Sandoval and Mr. Inman's argument X. X.'s allegations were the product of a deliberate effort by others to obtain retribution for perceived wrongs committed by Ms. Sandoval and Mr. Inman against them was unpersuasive.

Absent any motive for intentional fabrication or a showing that X. X.'s allegations were the product of a concerted effort by others, the only apparent reasonable explanations for X. X.'s allegations of sexual abuse are that the abuse occurred, or that his initial disclosures (which appear to have been spontaneous but did not describe sexual contact) were amplified and exaggerated to include sexual contact in response to sympathetic and leading questioning by Ms. McCluskey, with the encouragement of Ms. D, and that his subsequent statements and testimony reflect those amplified or exaggerated allegations rather than independent recollection of actual events. The former explanation is more plausible than the latter.

IV. Conclusion

The Division established that Ms. Sandoval and Mr. Inman violated AS 47.33.330(a)(2) because they used a plastic door knob cover to restrain a resident in her room beyond the time authorized by the resident's representative, in violation of the resident's assisted living plan, in a manner that was inconsiderate of, and disrespectful to, that resident's personal dignity and individuality. Pursuant to AS 47.32.140, violation of AS 47.33.330(a)(2) is a ground for taking an enforcement action, including revocation. As the Division acknowledged in its closing argument, the specific conduct that was established in this regard would not ordinarily warrant revocation. However, in selecting the appropriate enforcement action the Division must consider all of the circumstances.

One circumstance of note is that on three occasions, twice successfully, Ms. Sandoval assisted in court proceedings to replace a guardian who sought to remove a resident from Willow Creek with a guardian of Ms. Sandoval's preference.[214] While Ms. Sandoval characterizes these

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[213] *See* Evidence Rule 404(b)(1).
[214] *Supra*, notes 24, 87.

interventions as in the best interest of the resident, one might characterize them as in derogation of the appropriate role of a licensee.

Beyond that, the most important circumstance is the presence of multiple credible allegations of sexually inappropriate statements and conduct by Mr. Inman. In addition to the evidence pertaining to X. X., discussed at length above, the record also includes credible evidence of two other instances of inappropriate sexual statements and conduct by Mr. Inman. Specifically, the record includes credible evidence that Mr. Inman made inappropriate comments of a sexual nature to former resident C. C.,[215] and that he exposed himself and made a suggestive remark to another former resident, Z. Z.[216]

In this case, as observed above, the Division established by a preponderance of the evidence that Ms. Sandoval and Mr. Inman deprived a resident, R. R., of her right to be treated with consideration and respect for her personal dignity and individuality, conduct which was contrary to AS 47.33.300(a)(2) and was therefore in violation of AS 47.33.330(a)(1).

In addition the Division provided substantial, credible evidence of three other violations of residents' right to be treated with consideration and respect for their personal dignity, revolving around alleged sexual misconduct by Mr. Inman.[217] The evidence pertaining to all three other incidents may be considered for purposes determining the appropriate enforcement action in this case, even though it was not considered for purposes of determining whether the alleged sexual misconduct occurred.

Under the circumstances of this case, in light of the record as a whole, revocation of the assisted living license is the appropriate enforcement action.

DATED: February 18, 2014

Signed
Andrew M. Hemenway
Administrative Law Judge

[215] *See* notes 117-118, *supra*.
[216] *See* note 133, *supra*.
[217] The record also includes evidence of statement by a former resident, B. B., alleging a fourth instance of improper conduct involving sexual contact. *See* R. 765.

Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, adopts this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of March, 2014.

By: *Signed*
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

[This document has been modified to conform to the technical standards for publication.]