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No. 1015615
SUPREME COURT
OF THE STATE OF WASHINGTON

No. 82800-2
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

PREMERA BLUE CROSS,

Appellant,

v.

P.E.L., P.L. & J.L.,

Respondents.

**MEMORANDUM OF AMICUS CURIAE
BREAKING CODE SILENCE**

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I. INTRODUCTION

The Court of Appeals held that Wilderness Programs may be covered under the Federal Parity Act, 42 U.S.C. § 18031(j). This conclusion is dangerous. Such programs provide substandard care to vulnerable children by using outdated and unproven methods; neglecting the medical, psychological, social, and educational needs of patients; and facilitating the sexual, physical, and emotional abuse of children.

Wilderness programs are not medical or mental health treatment programs and should not be covered by insurance companies or governmental payors. Children detained in Evoke and other wilderness programs receive services inconsistent with accepted minimum standards of care for a behavioral health program. The programs are not staffed with licensed mental health professionals while the participants are in the field.

Wilderness programs such as Evoke raise significant child welfare concerns regarding safety, deprivation of privacy, absence of basic hygiene, substandard nutrition, restricted

parental communication, and harsh punishment, including physical assault. Some of these actions include physical abuse, depriving children of food or water, forcing children to sleep outside without shelter or appropriate bedding, and medical neglect.

To treat Evoke as a medical program or a supportive therapeutic environment does a grave injustice to legitimate mental health treatment programs. The Court should grant review to rectify the Court of Appeals decision that could mandate coverage for these facilities.

II. INTEREST OF AMICUS CURIAE

Breaking Code Silence (BCS) is a 501(c)(3) nonprofit that represents children, youth, and adults who are or were sequestered in the U.S. troubled teen industry (TTI). The TTI is a network of businesses that operate programs designed to change the behavior and attitudes of young people whose families have struggled with parenting. These include wilderness-based programs such as Evoke, as well as residential

treatment centers, therapeutic boarding schools, group homes, boot camps, and faith-based academies or youth ranches. BCS represents and assists survivors of the TTI by promoting youth rights and evidence-based alternatives to abusive congregate care programs. BCS's mission is to eradicate institutional child abuse and to empower survivors of such abuse to engage in advocacy and the promotion of policy change.

In this brief, BCS provides the Court with the necessary context to resolve the legal questions. We provide the requisite background on the nature of and troubles with wilderness programs and the troubled past of the specific wilderness program involved in this case—Evoke—which demonstrates why courts should approach with caution the argument that such programs are analogous to any form of medical treatment.

III. STATEMENT OF THE CASE

BCS acknowledges the statements of the case in the petition. Several facts in the petition bear emphasis:

Wilderness Programs are part of the broader “Troubled Teen Industry.” The TTI includes an expansive network of residential programs and facilities which claim to treat, reform, or rehabilitate youth who need additional care due to family circumstances, traumatic experiences, disabilities, social problems, medical conditions, or learning differences. More than 120,000 children are placed in institutional care each year.

Minimal regulation, lack of consistent policies, inconsistent oversight, and an overreliance on profit-driven companies have all contributed to an environment where youth are systematically abused in the very institutions that purport to care for them.

Adult survivors of institutional child abuse have remarkably poor outcomes. They may be diagnosed with post-traumatic stress disorder, addiction, and other mental health problems. Survivors are more likely to both commit crimes and be crime victims as adults. Death by suicide, murder, and overdose for this population are well above the national norms.

The educational and economic trajectories of survivors are also impacted.

The pervasive problems with wilderness programs is exemplified by the experience of survivor Shira Reichman, who attended the Evoke wilderness program in 2020 when a minor. Shira's experience at Evoke, as told to BCS, follows:

My name is Shira Reichman. I'm 18 years old. My life hasn't been easy but what I want to share about my experiences at Evoke shouldn't happen to anyone. When I was 16 years old, I was transported to a Evoke by "escorts." Evoke is a wilderness program that was presented to my family as a therapeutic program that would help me get my life together. In fact, it had the opposite effect. What I know now, is that the program was intended to break me down and was a gateway to a long term residential treatment program. I hope that my story helps prevent others from having to suffer at this program. I am willing to tell my experiences, in person, to a judge or anyone who has the power to impact the lives of others. I have access to

multiple other participants that are willing to share their experiences at Evoke.

I was dropped at the office for Evoke before being transported to the woods. I was not given any information about what the program was. I did not speak with a counselor or therapist. I was immediately transported to the woods with a 70 pound pack that I could barely lift. I was told that I couldn't speak for 48 hours or until I completed a workbook that was provided to me. If the workbook did not meet their criteria I would need to remain silent.

One of the first activities, that I found to be painful and humiliating was that I was forced to read a letter, written by my parents, that described what they thought was wrong with me in front of all of the other hikers. Every word and every detail. To this day, that experience stands out as traumatic.

I was never told about any goals that I was working on or how the program would end. I was told that I could call home but that was false. When I got to the woods I told the field guides

that I had asthma and did not have my inhaler. The weight of the pack and the amount of hiking caused me to have difficulty breathing. The three field guides did not take me seriously.

Every two weeks we were able to have contact with the nurse who was called "Big Money Melinda." I told her about my asthma but she said that I didn't need an inhaler. I never heard of or saw a doctor while at Evoke. I was able to write to my parents and finally after almost two months, my father was able to convince the staff that I could have my inhaler.

Multiple hikers, including myself, were sick. I recall vomiting and being told that I needed to keep hiking. The same for the others. I recall one hiker who was seriously ill and vomiting and nothing was done. I am not a big person and the 70 pound pack strained my neck. This didn't matter. At one point I couldn't go on due to the pain in my neck. One of the field guides who was called Ducky, I believe his name is Austin, told me to "get off the fucking ground and keep walking." He then dumped pee on my head.

The program consisted of walking miles every day. Therapy took place once per week. It was a group session. Never individual. The therapist would point out each hiker's faults. All issues were discussed in front of the group. There was no privacy. This was particularly hard for me as I am not comfortable speaking in front of others. For me, this activity was humiliating and hurtful. If we wrote letters, all needed to be presented to the group and other hikers would comment on whether they thought we were being truthful. That's it. That was the therapy. In fact, all conversations during my time at Evoke were monitored by the field guides. We were told that nature was healing and that was the therapy.

We did not have tents. At most, we had tarps to put over our sleeping bags. This was hard when there was snow on the ground. There was no privacy. We were forced to use the woods or a bucket to relieve ourselves.

Punishment was harsh and the staff would physically throw me to the ground if I did something they did not like. I was

not the only one. We were restrained on our stomachs, on our backs or while sitting. Once, I was restrained so hard that my shoulder was dislocated. If one of the field guides thought help was needed they would radio for backup. Often, we would experience six men participating in a restraint.

For bathing, we were given a bucket with some water and were told to use our food cup as a way of cleaning ourselves. We were told to use dirt to wash our cup.

We were informed that legally they only had to provide food twice per day. Food consisted of mostly beans and rice and granola or oats for breakfast. The guides threatened to withhold food if we didn't keep hiking. We were given snacks called "good and ugly." Sometimes miles would be added if there were complaints about hiking. I want to emphasize that vomiting and sickness was common and we never received medical attention.

The field guides ignored preferred pronouns. There were hikers who identified as LGBTQ. They were humiliated, told that

it was just a phase and that being gay is not normal and a mental illness.

Since leaving Evoke I have looked at their website. The information is false. There is no diversity or inclusivity. There is no yoga, meditation or mindfulness. There are no service projects. There are no cooking classes or lessons on nutrition. There is no 12-step program or medical care. Just hiking, lack of food, hygiene, on-going punishment and humiliation.

We did “solos.” This means that we were told to hike alone. I was terrified. I was given less than 24 hours notice when leaving the program. I was never given a report on my stay, never spoke with a counselor or anyone else. I was transported from Evoke to a residential treatment facility.

Unfortunately, Shira’s experience at Evoke is not an aberration; it is the norm.

IV. ARGUMENT

A. Wilderness programs provide substandard care to vulnerable patients.

Children who attend wilderness “therapy” programs receive substandard mental health care. Evoke uses methods that do not meet established standards for behavioral health interventions. They use interventions that are disproven and harmful. Evoke and other wilderness programs neglect the basic human needs of their patients for medical care, nutrition, shelter, education, and supportive adult supervision. In addition, they engage in practices and adopt policies that facilitate child abuse.

1. Tough Love. Wilderness programs follow the “tough love” approach to behavioral change. This method embraces harshly punitive actions by authority figures; these actions, which can include physical and emotional abuse, as well as neglect,¹ are used to motivate the child to adopt a compliant attitude. Tough Love has been discredited.²

¹ <https://www.childwelfare.gov/pubpdfs/define.pdf>.

² Pieper, M. H., & Pieper, W. J. (1992). It's Not Tough, It's

2. Inhumane Care. All youngsters placed in out-of-home care should expect to be treated humanely with the same access to legal rights and protections provided to individuals in other detention systems. These rights include, but are not limited to, (1) unrestricted communication with peers, family members (unless such communication is limited by a court order), and advocates including lawyers and social workers; (2) the ability to practice their religion; (3) protection from abuse and a mechanism for reporting maltreatment to the authorities; (4) the right to freely define their own identity and to exist. It is clear that in numerous cases all of these basic human rights have been denied by Evoke staff members.

3. Extensive Evidence of Pervasive Abuse and Ineffective Oversight. In 2007, the GAO found, “We found thousands of allegations of abuse, some of which involved death,

Tender Love: Problem Teens Need Compassion that the “Tough-Love” Approach to Child-Rearing Doesn’t Offer Them. *Child Welfare*, 71(4), 369-377.

at residential treatment programs across the country and in American-owned and American-operated facilities abroad between the years 1990 and 2007.”³

B. Evoke Wilderness Programs.

Evoke has a troubled past. Evoke Cascades, located in Bend, Oregon, closed in November 2021. Its operations were folded into Evoke Entrada, an identical program located in Santa Clara, Utah. Former participants frequently contend that these facilities are abusive.⁴ They report:

- Carrying over half of their body weight in a pack
- Being sexually assaulted by staff
- Eating improperly stored and prepared food
- Hiking while injured
- Being extremely cold, incurring frostbite

³ GAO. Residential treatment programs: Concerns regarding abuse and death in Certain programs for troubled youth (GAO-08-146T).

⁴ Reports from Entrada Survivors can be found here: <https://www.breakingcodesilence.org/evoke-entrada/>.

- Heatstroke
- Drinking contaminated and non-potable water
- Improper hygiene with no access to toilet paper, soap, or menstrual supplies
- Monitored letters and calls to parents
- Not receiving medical care after reporting illness or injury
- Failure to provide adequate individual therapy
- “Therapeutic” tactics that included humiliation and degradation

C. Wilderness Programs do not offer psychiatric services consistent with the standards of care.

Wilderness Programs generally lack appropriate medical supervision. Despite being labeled as so severely behaviorally disordered that they are required to be treated out of their home, Evoke participants are not adequately supervised by nursing or medical personnel. Additionally, children are required to engage in strenuous and risky physical activities in a remote location

where injury is a real possibility. Most young people arrive at the program physically unprepared for the extreme exercise they are required to do each day. However, their medical status is not appropriately monitored and young people who are ill or injured do not receive prompt, competent medical care.

Wilderness programs provide inappropriate level of care. A youngster who has psychological problems impacting their behavior to the extent that out of home placement is considered should receive intensive mental health treatment. This typically includes 3-4 individual or family therapy sessions and 3 or more group therapy sessions led by a licensed mental health practitioner each week. Instead, children who attend the Evoke program only meet for “counseling” once weekly which is supplemented with a version of “group therapy” led by an adult group leader who lacks professional training in mental health and does not have state licensure to provide mental health care.

D. Wilderness programs are not supported by the medical and scientific literature.

There is no scientific, peer-reviewed literature that establishes wilderness programs as an effective treatment for adolescents struggling with any mental health diagnosis. In a recent article about wilderness programs written by Adiel Kaplan,⁵ *Do wilderness therapy programs really work?*, Dr. John Weisz, a professor of psychology at Harvard University who specializes in mental health interventions for children and adolescents, is quoted as saying, “from the state of the evidence that I’ve seen, we really don’t know whether wilderness therapy has beneficial effects or not.”⁶

V. CONCLUSION

BCS believes the Court should grant review of the appellate court’s decision and overturn any finding that would mandate insurance coverage for wilderness programs.

⁵ <https://www.hcn.org/articles/wilderness-do-wilderness-therapy-programs-really-work>.

⁶ <https://www.popsci.com/story/health/wilderness-therapy-results-evidence/>.

*I certify that this document contains 2,499 words,
pursuant to RAP 18.17.*

RESPECTFULLY SUBMITTED this 2nd day of
February, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 2, 2023, I caused to have served a true and correct copy of **MEMORANDUM OF AMICUS CURIAE BREAKING CODE SILENCE**, on the following by the method(s) indicated below:

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