

Legal Update



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LICENSING AGENCY ALLOWS CALIFORNIA CHILD CARE STAFF TO OPERATE INSULIN PUMP FOR CHILD WITH DIABETES

BY CHRIS PALAMOUNTAIN

Four-year-old Brian and his family received good news last summer when the California Department of Social Services Community Care Licensing Division informed Brian's child care provider – Never Neverland Child Care – that center staff could operate the insulin pump necessary to regulate the child's insulin-dependent diabetes. Brian is one of thousands of children in California, and some 125,000 individuals under the age of 19 nationally, affected by this chronic

childhood disease. According to the American Diabetes Association, 13,000 new cases are diagnosed every year among children between five and eight years old, and only asthma is more common in the school-age population.

When Brian Wann was diagnosed with diabetes on December 1, 1998 just before his third birthday, his family worried about the impact of the disease, both on Brian and on the whole family. One of their concerns was Brian's ongoing participation in his child development program, which he attended every morning. The family was pleasantly surprised when child care licensee Kristy Lee, and her mother, Sharon Campbell, who worked with her, expressed interest in learning to administer the constant blood finger-prick tests that diabetes requires. In January 1999, Brian returned to his child care program. At the time, he was receiving insulin through injections given by his parents before coming to child care in the morning, which required that he awake a bit earlier than usual. The providers quickly mastered finger-pricking, blood testing, and counting carbohydrates. They learned how to treat low blood sugars, calling Brian's mom only when the count was high so she could come to the center and give him an additional injection if necessary. Ms. Wann picked Brian up from the facility at 12:30 – immediately after the children ate lunch – and gave him his lunchtime shot of

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In October 1999, knowing that Brian was interested in and ready to attend the full-day program, the family and providers started exploring how the child care program staff could administer shots. Much to their mutual disappointment, they learned within a matter of days that licensed child care facilities in California were legally prohibited from giving insulin injections, because doing so was considered to be a medical practice. Under Health and Safety Code § 1596.750 child care services are limited to “non-medical care.” Ms. Wann considered challenging the law, but decided against any legal action because Brian was to be put on an insulin pump in the near future, and thus would no longer need injections. An insulin pump is a device worn attached to the body. With only the push of a few buttons, it administers insulin through a tube preinserted through the wearer’s skin. The pump enabled Brian to maintain a more consistent blood-sugar level, thus stabilizing his diabetes more effectively than injections did. Ms. Wann assumed that child care providers could operate the pump consistent with state licensing guidelines because there was no invasive procedure that involved piercing the child’s skin with a needle. She was soon informed by the state licensing agency, however, that it interpreted the law to forbid licensed child care providers from administering insulin in any fashion. If Never Neverland staff were to operate Brian’s insulin pump, the program would lose its license to operate. Once on the insulin pump, Brian had to receive a bolus of insulin from the pump every time he ate a meal or a snack. It was not feasible

for his mother to visit the child care facility several times a day to push the buttons that operated the pump, so it seemed the family was faced with having to choose between the insulin pump and the preschool where Brian was thriving. Given Brian’s medical condition, the family regretfully decided the insulin pump was a higher priority, and he began using it in April 2000.

The decision was agonizing for all involved, as they believed that it was in Brian’s best interests to remain at Never Neverland under the staff’s loving, nurturing, and knowledgeable supervision. Brian benefited from the on-going social interaction with his peers, and, perhaps most important, he needed to experience as much consistency and normalcy in his life as possible. With the encouragement of licensed provider Kristy Lee, and her commitment to learn about use of the pump if the licensing agency would permit her to do so, Ms. Wann proceeded to look for a solution.

Her search led her to the Child Care Law Center. After looking into her case, CCLC agreed to undertake an investigation of Community Care Licensing’s policy regarding insulin pumps in child care. CCLC staff attorneys contacted the agency’s Sacramento office and urged consideration of both an exemption from licensing policy in the Wann case and a change in state policy generally. The state agreed.

As a result, Ms. Lee, the local Community Care Licensing analyst, and Ms. Wann met to discuss Brian’s care. The family provided considerable information to Community Care Licensing, including letters from Brian’s endocrinologist and primary care physician, a formal request for an exemption from Ms. Lee, a detailed

training plan, emergency protocols, and pump manufacturer literature and video tapes. On August 3, 2000, 20 months after Brian’s diagnosis, the state informed CCLC staff that the exemption was approved and that Brian could return to Never Neverland.

Ms. Wann recently described her family’s odyssey to obtain child development services for her child with a disability. She said that “dealing with diabetes is often a struggle, but this is one instance where I feel we have triumphed over the disease. I am thankful to have wonderful people in my life like Kristy, Sharon and [CCLC staff attorney] Chris, without whom Brian might not have had the opportunity to continue attending daycare. Their unfailing support and combined efforts helped turn the tables in our favor. While I am thrilled with the outcome of all our efforts, I feel an extraordinary amount of information was required to justify our right to obtain an early education for Brian. I am hopeful this one small step may benefit other young pumpers and their families, and help educate people about the complexities of diabetes.”

Thanks to the efforts of everyone involved in Brian’s case, the state has said that a general change in insulin pump policy is forthcoming. There is no date certain by which the policy change will take effect, however; agency officials say they are “working on it.” Thus, it is possible that further advocacy may be necessary.

The success in convincing the state to change its policy in Brian’s case follows a similar victory last year regarding G-tube feeding in child care settings. In that case also, CCLC was contacted by parents of

children with disabilities who were in effect excluded from child care due to state policy prohibiting licensed child care providers from providing G-tube feedings to children who needed to receive their nutrition through that means. CCLC, along with other advocates, prepared litigation against the state that, in the end, proved unnecessary when the state changed its policy. (For more information on the G-tube issue and its resolution, see the January 2000 issue of *Legal Update*.)

It is likely that such issues will continue to arise. Advances in medical technology are enabling many children with disabilities to be increasingly independent and involved in activities with their peers, such as child care. In many cases, however, their full participation will require assistance with incidental health services that can safely be provided by trained child care providers, as they regularly are by parents, and that do not rise to the level of medical procedures. Even before the G-tube case arose, the licensing agency had determined that child care providers could administer nebulizer care for children with asthma. The G-tube and proposed insulin pump policy changes are further steps in the right direction and have the potential to make child care more accessible for thousands of additional children. There are numerous other health services that could also be safely offered by child care providers, such as changing catheter and colostomy bags. Advocates and parents of children with disabilities hope that Community Care Licensing will take a systematic approach and search all its policies in order to make further changes that will expand access to child care.

CCLC will continue to encourage them to do so and to pursue advocacy in appropriate forums if they do not.

In the meantime, families of children with insulin-dependent diabetes should feel free to contact Chris Palamountain at CCLC. When the state policy change becomes official, this information will be published in *Legal Update*.

Chris Palamountain is a staff attorney at the Child Care Law Center.

PLAYGROUND SAFETY IN CHILD CARE CENTERS

BY DANIELA KRAIEM

The issue of safety hazards that may be present in outdoor play areas in homes, parks, schools, and child care centers has gained prominence in recent years. The federal government ordered the promulgation of voluntary safety guidelines for playgrounds in the early 1980s, and several states have adopted or are considering regulations that include technical specifications for playground structures.

Since most child care centers include outdoor play areas, they should stay abreast of emerging legal requirements. Center operators should be aware of technical advances in playground equipment and surfacing that can reduce the incidence of injuries and the risk of liability in the child care setting. However, child care center playgrounds differ in several important ways from settings for which safety standards may be tailored, such as park and schools playgrounds that are

open to the general public. For this reason, center operators must also work to ensure that regulations governing playground safety take into account the particular circumstances of child care center settings.

Background

Several key documents set forth technical specifications for playgrounds. The U.S. Consumer Product Safety Commission's ("CPSC") "Handbook for Public Playground Safety" contains guidelines and technical specifications for outdoor playground equipment, including fall zones, surfacing, layout and design of playgrounds, manufacturing materials, and playground operation and maintenance.¹ The American Society for Testing and Materials ("ASTM") publishes the "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use," which contains technical specifications for materials and manufacture of playground equipment.² It is important to note that while these standards apply to playgrounds used by children ages two to five, they were not developed especially for child care centers. The Consumer Federation of America publishes the Report and Model Law on Public Play Equipment and Areas.³

Although the federal government does not require adherence to either the CPSC guidelines or the ASTM specifications, at least five states, including California, Michigan, Texas, North Carolina, and New Jersey, require some playgrounds to comply with regulations based on one or both sets of standards.⁴ Regulations in Connecticut suggest voluntary compliance.⁵ However, even in

states that mandate compliance, the application of the standards varies widely. For example, California requires that almost all public playgrounds comply with portions of the CPSC and ASTM guidelines by 2003,⁶ while Texas requires that playground equipment or surfacing purchased with public funds after 1997 substantially comply with the 1994 CPSC guidelines.⁷

Legal Implications of Playground Safety Standards and Regulations

The existence of safety standards and the increasing public awareness of the importance of playground safety raise two primary legal issues for the operators of playgrounds. First, states that have promulgated specific regulations for playgrounds may impose civil penalties for failure to comply. For example, in Michigan a person who manufactures or assembles a playground for compensation is subject to a fine of up to \$10,000 for failure to comply with the regulations.⁸ However, not all states that mandate compliance impose civil penalties or even enforce the regulations. In California, for example, the Department of Health, which promulgated the regulations, is not charged with enforcement, and the law does not provide any administrative penalties for non-compliance.⁹

The second issue is the effect of the standards on potential liability. Playground operators should be aware that the CPSC guidelines and ASTM standards could be used as evidence in a personal injury lawsuit in any state, regardless of whether it mandates compliance, on behalf of a child injured on the playground. In any lawsuit over alleged negligence by a playground operator, the attorney for the injured child must

prove that the playground operator did not meet the standard of care owed to the child. What "standard of care" is owed is determined, in turn, by deciding what a "reasonable" playground operator would do in the same circumstances. Various factors may go into determining reasonableness, including the laws of the state, the customs of the community, and available safety technology and information. If playground equipment and surfacing were installed and maintained in compliance with CPSC and ASTM or other guidelines, this could be regarded as persuasive evidence that a playground operator was "reasonable." The reverse might also be true: lack of compliance with the guidelines could be evidence that the playground operator was not "reasonable." In the latter case, if the court found that the lack of compliance caused or exacerbated the child's injury, the playground operator could be found negligent and liable for the costs associated with the child's injury.¹⁰ A court may also look to other evidence, such as expert testimony from playground safety specialists and other playground operators, to determine what the standard of care should be.

Even in states where compliance with the CPSC and/or ASTM standards is mandatory, the standard of care that will be applied in a negligence lawsuit is still up to the judge or jury. However, courts frequently find that reasonable people comply with the law, and thus, especially in these states, it is likely that a court would find that a "reasonable" playground operator's equipment would meet CPSC or ASTM standards. This is the case even if the statute requiring compliance expressly states that it does not affect liability.

In considering liability, it is important to remember that each lawsuit is different, and the outcome will depend on the individual circumstances. Existence of standards does not mean that all playground operators are bound to follow them, unless required to do so by state law. However, since the outcome of any lawsuit is unpredictable, the safest approach for any playground operator is to maintain a good safety program, follow all legal requirements, and even go beyond legal requirements to use the safest equipment and surfacing available.

Special Legal Issues in Child Care Center Playgrounds

Special legal issues may arise in the child care center playground context. As noted above, the CPSC guidelines and ASTM standards were not developed for use in child care settings and thus may include elements which do not make sense in the child care center context. For example, child care centers may have small outdoor spaces which make application of the standards very difficult. Centers may also provide high levels of supervision that might mitigate some safety concerns, as an adult may be able to steer children away from dangerous behavior or ensure that they are safe when engaging in developmentally appropriate risk-taking. Finally, child care playground standards may be superfluous because most child care centers are subject to health and safety regulation through the licensing process. Licensing regulations frequently require that centers offer children safe outdoor play areas, and some licensing agencies inspect outdoor spaces and equipment for safety hazards. On the other hand,

since child care centers are professional caretakers for very young children, they are often held by courts to very high standards of care.

It is uncertain whether a court would choose to use the CPSC guidelines in determining the standard of care owed by a child care center, since the guidelines were not developed expressly for centers. A court might also rely on state licensing laws and recommendations developed specifically for child care centers, such as the National Health and Safety Performance Standards Guidelines for Out-of-Home Child Care Programs,¹¹ as evidence of the appropriate standard of care. This may vary in each case, and may depend in part on whether the state laws mandate compliance with the CPSC and/or ASTM standards or other standards in child care center playgrounds. Thus, it is important that child care center staff understand their state’s legal requirements and meet or exceed those requirements in order to reduce the risk of injury and exposure to liability.

Public Policy Recommendations for Playground Safety Regulation in Child Care Centers

Although playground safety is an important issue, regulations that are not tailored to the specific setting may place unnecessary and expensive burdens on child care center programs without making children safer on the playground. States seeking an appropriate balance may want to consider the following policy recommendations:

- Playground regulations should build upon, and not contradict,

existing regulations or licensing requirements. States may want to examine existing regulations to determine whether a new regulatory scheme is needed, or whether modifying existing regulations may serve the same purpose with less disruption to the child care centers.

- Playground regulations must be clear and easily accessible to playground operators, and should not require special training or knowledge to understand.
- Playground regulations should be developed and enforced by the same agency that licenses child care centers, so that enforcement is carried out by an agency already familiar with child care settings and the individual provider.
- Playground regulations should consider the level of staffing common in child care center settings.
- Playground regulations should consider the relatively small spaces in many child care center yards.
- Playground regulations should be

enforced by a state agency that is also available to give technical assistance to child care centers attempting to comply with new legal requirements.

- The state agency that enforces the regulations should be able to issue waivers or exemptions from specific technical standards if the center is unable to meet the specification but can demonstrate an alternative means to ensure children’s safety.
- State agencies should provide funding for renovation and repair, as centers are more likely to make needed repairs when funds are available for that specific purpose. In the absence of state funding, efforts should be made to alert private foundations or public-private partnerships to the need for playground renovation grant and loans.

Daniela Kraiem is a staff attorney at the Child Care Law Center.

1 CONSUMER PRODUCT SAFETY COMMISSION, HANDBOOK FOR PUBLIC PLAYGROUND SAFETY (1981). The handbook is available at www.cpsc.gov.

2 AMERICAN SOCIETY FOR TESTING AND

PLAYGROUND STANDARDS FOR ADA COMPLIANCE

Guidelines for making playgrounds accessible for children with disabilities have just been issued by the Architectural and Transportation Barriers Compliance Board (65 Fed. Reg. 62498, Oct. 18, 2000). They will serve as the basis for standards to be adopted by the U.S. Department of Justice for new construction and alterations of play areas covered by the Americans with Disabilities Act. Following final adoption by the Department of Justice, the guidelines will be enforceable under the ADA. Watch *Legal Update* for further information.

MATERIALS, ANNUAL BOOK OF ASTM STANDARDS (1999).

3 CONSUMER FEDERATION OF AMERICA, REPORT AND MODEL LAW ON PUBLIC PLAY EQUIPMENT AND AREAS (1998).

4 See CAL. HEALTH & SAFETY CODE § 115730 (West 2000); TEX HEALTH & SAFETY CODE § 756.061 (West 2000); MICH. COMP. LAWS ANN. § 408.684 (West 2000).; N.J. STAT. ANN. § 52:27D-123.9 *et. seq.* (West 2000); N.C. GEN. STAT. § 110-91.

5 CONN. AGENCIES REGS. § 21a-12a-2 (2000).

6 CAL. HEALTH & SAFETY CODE § 115730.

7 TEX HEALTH & SAFETY CODE § 756.061.

8 MICH. COMP. LAWS ANN. § 408.684 (West 2000).

9 CAL. HEALTH & SAFETY CODE § 115725.

10 See *e.g.* Dash v. City of New York, 654 N.Y.S. 2d 33 (N.Y. App. Div. 1997).

11 BUREAU OF MATERNAL AND CHILD HEALTH, NATIONAL HEALTH AND SAFETY PERFORMANCE STANDARDS GUIDELINES FOR OUT-OF-HOME CHILD CARE PROGRAMS, available at <http://nrc.uchsc.edu/national/index.html> last visited on 10/16/00.

ASK A LAWYER: RESTRAINING ORDERS AGAINST PERPETRATORS OF DOMESTIC VIOLENCE

BY CYNTHIA GODSOE

In this regular column, the Child Care Law Center answers legal questions frequently received on our service line. For information regarding legal issues in child care, call us any weekday between noon and 3 p.m. Pacific Standard time at (415) 495-5498. We also welcome suggestions about questions we should address in future "Ask a Lawyer" columns.

Please note: This article discusses restraining orders using California as an example. Every state has its own process, and the terms used may be different. For more information about restraining orders and services for victims of domestic violence in your state, please call the National Domestic

Violence Hotline 1.800.799.7233/SAFE to find a hotline in your community.¹

Question: What is a restraining order?

Answer: A restraining order, also called a protective order, is an order issued by a judge forbidding a person (the "defendant" or "respondent") from going to certain places, committing certain acts (e.g., abuse), or contacting or coming within a certain distance of the person who asked for the order (the "plaintiff" or "petitioner").² An order can also exclude the defendant from his residence and may sometimes include temporary custody and visitation provisions if children are involved. A restraining order is a civil matter, not a criminal one, although a person who violates an order may be arrested.

Question: Who can get a restraining order?

Answer: A person who is a victim of domestic violence; the order may also cover any children under 18 of the person getting the order who are living with the victim. In some states, including California, children and dependent adults who are at risk of abuse by a family or household member, and children at risk of abduction by a relative, can also be independently protected by an order.³

Domestic violence is abuse by a family member, intimate partner, or household member. It affects millions of women and children every year across the country.⁴ The widespread nature of domestic violence makes it highly likely that child care providers and other child care professionals are serving or have

served families experiencing it.

The specific definition of domestic violence for purposes of getting a restraining order varies from state to state, but all require abuse by someone in a close relationship to the victim. In California, for example, the abuse can be physical, sexual or verbal, and may be actual or threatened. Under this definition, abuse includes:

- Physical injury or attempted injury
- Threats
- Molestation
- Attacks or hitting
- Harassment (including by telephone or message)
- Stalking
- Destroying the victim's personal property
- Disturbing her peace⁵

And in California, a close relationship means the person to be restrained is a:

- Current or former spouse
- Current or former cohabitant
- Someone with whom the petitioner has had a dating or engagement relationship (does not need to be sexual or intimate)
- Someone with whom the petitioner has had a child
- Relative by blood, marriage or adoption⁶

Question: How long do restraining orders last?

Answer: There are two kinds of orders—temporary and so-called permanent orders. The duration of each type varies from state to state.

Temporary orders (TROs) last until the date of the court hearing on

the permanent order, usually within several weeks.

Permanent orders usually last for a period of one or more years, again depending upon the state. In California, these orders last for three years unless the judge issues an order for a shorter amount of time, and may be renewed for another three years or longer.⁷

Question: How can someone get a restraining or protective order?

Answer: She or he must go to the local county courthouse, complete the form for obtaining a temporary order, and bring it to the judge. In most cases, the order will be issued the same day. When the temporary restraining order is issued, a hearing to decide whether a permanent order should be issued will be scheduled to take place within a few weeks. If the person seeking the order does not go to this hearing, the temporary order will expire and no permanent order will be issued. The restrained party has the right to come to the hearing for the permanent restraining order, and address the judge, but may not talk to the plaintiff (person seeking the order).

The party to be restrained must be served with the papers, or the police will generally not be able to arrest him if he violates the order. The person seeking the order may not serve the papers, but any other adult can. Fees for service by the sheriff or other law enforcement officer may often be waived for those who can't afford to pay, and in some counties or states, law enforcement will serve all restraining orders free of charge.

Although having a lawyer can be helpful, people seeking a restraining order are not required to have a

lawyer to do so. They are usually allowed to bring a support person with them to court; this can be a friend, local domestic violence advocate, or anyone else willing to accompany them and offer emotional support (including a parent's child care provider). In many areas assistance in obtaining restraining orders, whether from a lawyer or other advocate, is available; call the hotline at 1.800.799.7233/SAFE to learn whether help is available in your community.

Question: Can a family child care home or child care center be included in a protective order?

Answer: Yes. In some states, such as California,⁸ protective order forms explicitly include child care and schools as places that someone can be ordered to stay a certain distance away from. In other states, persons seeking an order can write in child care to include it as a protected place.

Question: How would a child care provider know if a parent in their program has a protective order?

Answer: It's a good idea for child care providers to ask all families in their programs for copies of all current custody, restraining, and other orders affecting who can contact and pick up the children. (This includes restraining orders from other states, because recent federal legislation makes protective orders legally binding in all states).⁹ Having this information is essential in order for providers to make the best decisions regarding the safety of themselves and the children they care for. Because domestic violence is a very personal and scary topic, child care

providers should be sensitive to this in talking to parents. Getting a protective order shows that the victim of domestic violence is taking steps to keep herself and her children, as well as those around her including people at the child care facility, safe.

Question: What should a child care provider do if someone who is restrained from coming to the child care facility, or from contacting or coming near the children, tries to do so?

Answer: If this situation arises, a provider should immediately call the police, as well as try and prevent the person from entering the premises or taking the child, if it is possible to do so safely. It is important for child care providers to have a safety plan ahead of time in case this situation arises, such as specifying who will lock the door, call the police, take the children away from windows, etc. The most important thing is for child care providers to keep themselves and those in their care safe, so they should not worry about offending the restrained party. Remember that the person is breaking the law by doing something that is prohibited by the restraining order.

Cynthia Godsoe is a Skadden Fellow at the Child Care Law Center. Fawn Gustin at Safe Start in San Francisco contributed to this article.

¹ Regarding restraining orders generally, see Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 388-391 (Special Issue 1994)

² See, e.g., Cal. Family Code §§ 6240 *et seq.* (governing emergency protective orders) and §§ 6300 *et seq.* (governing protective orders and other domestic violence prevention orders).

³ *Id.* § 6250.

⁴ Domestic violence occurs in all kinds of families and relationships, including in same-

At CCLC

In the last three months, CCLC:

- Co-organized a meeting, in conjunction with the Youth Law Center, of fifty participants on child welfare and child care issues, which resulted in numerous recommendations for action;
- Trained domestic violence and child welfare advocates on child care and family violence issues at the 5th International Family Violence Conference;
- Assisted a new mother in obtaining Cal WORKS child care for her infant;
- Provided trainings on the ADA, IDEA and CalWORKS to about 100 local child care providers, community resource parents and APP workers through the San Francisco Child Care Inclusion Challenge Project;
- Commented on the California MAP to Inclusive Child Care Plan to increase the inclusion of children with special needs in child care;
- Presented six sessions at the annual California Child Care Resource and Referral Retreat, including sessions on family violence, children with special needs, land use, legal rights and responsibilities, Cal WORKS, and complaint procedures;
- Revised CCLC materials for family child care providers
- Held two trainings on legal issues in family child care in San Francisco
- Attended the National Association of Regulatory Administrators conference

COUNTY ACTS ON CHILD CARE CRISIS

San Mateo County in California, south of San Francisco and part of the expanding Silicon Valley, has adopted a five part strategy to address its child care crisis, following a report that licensed child care slots were available to only one-quarter of the county's children. Not surprisingly, hardest hit by the shortage are infants and children in low-income households. The report said that only 12% of children in need of subsidized care have access to it and there are openings for only 4% of infants.

The county's tight rental market is a major factor in the shortfall in child care slots. Another element is the large proportion of parents who are employed. Overall, two-thirds of the children in the county live with two parents who both have jobs or with a single working parents. For children under age six, the rate is 63%, the highest in the state.

To begin to address the problem, the county plans to:

- Subsidize and build more child care centers using grants and donations from state and local government, foundations, and businesses
- Promote higher training standards for child care workers
- Recruit and retain child care workers by offering stipends to those who complete additional units of education and commit to staying in their jobs for at least a year
- Ensure that all county land use or development plans include child care facilities
- Minimize zoning restrictions and permit ordinances that make establishing child care facilities difficult.

sex relationships, and there are male victims abused by female partners. However, the vast majority of the victims of domestic violence are women abused by men. WELFARE AND DOMESTIC VIOLENCE TECHNICAL ASSISTANCE INITIATIVE, BUILDING OPPORTUNITIES FOR BATTERED WOMEN'S SAFETY AND SELF-SUFFICIENCY 4 (National Resource Center on Domestic Violence, 1997). A recent Department of Justice study found that each year between 1993 and 1998 over 937,000 women experienced violent crime at the hands of an intimate partner. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, INTIMATE PARTNER VIOLENCE table 6 (May 2000) available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf>. See also, LAWRENCE GREENFELD ET AL., U.S. DEP'T OF JUSTICE, VIOLENCE BY INTIMATES: AN ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS 3 (March 1998). It is estimated that slightly less than half of female victims of domestic violence live in households with children under the age of 12. U.S. DEP'T OF JUSTICE, *supra* at 6.

⁵ Cal. Family Code. §§ 6203, 6320.

⁶ *Id.* § 6211.

⁷ *Id.* § 6345.

⁸ See, e.g., DV-130, Restraining Order After Hearing (CLETS) (Form Adopted by the Judicial Council of California).

⁹ 18. U.S.C. § 2265.

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CHILD CARE ADVOCATE PROFILE: AMAN THIND, PUBLIC COUNSEL

BY SUJATHA JAGADEESH BRANCH

Several organizations across the country have legal advocates on staff who specialize in child care issues. To acquaint our readers with these advocates and highlight their work, Legal Update will periodically publish individual profiles of them. Contact us if you know someone we should profile.

Aman Thind became the newest attorney at Public Counsel of Los Angeles' three-attorney Child Care Law Project in July 2000. Her work is focused primarily in two areas: general service to the child care provider community, and general legal assistance to applicants and recipients of the Los Angeles County Child care Capacity Grant and Loan Program.

Aman staffs Public Counsel's legal intake line for family child care providers and nonprofit child care centers, assisting and advising them on their legal rights and responsibilities. Some of the issues of particular interest to Aman include land use and zoning, landlord-tenant, general contract, employment, and insurance. Among the services that she provides are representing child care providers before various administrative bodies, drafting contracts, presenting workshops (such as the Community Care Licensing workshops offered by the California Department of Public Social Services for people considering becoming family child care providers), and conducting negotiations. Public Counsel has an extensive network of Los Angeles attorneys in private practice who are interested in providing free (*pro bono*) assistance to child care providers; when cases require complex or lengthy assistance, Aman refers clients to these attorneys.

Aman is particularly excited about working on the Los Angeles County Child Care Capacity Grant and Loan Program. The program's goal is to expand child care capacity in areas of the county where there is a documented shortage of licensed child care, as indicated by an assessment conducted by Policy Analysis for California Education (PACE) at the University of California, Berkeley. It will do so by providing grants in amounts ranging from \$2,500 to \$100,000 and loans in amounts ranging from \$5,000 to \$1,500,000 to individuals and organizations providing child care or interested in providing child care. This program will help to remedy a current problem of lack of access to traditional market capital among child care providers. Aman will be providing general legal assistance to applicants and recipients of the program and conducting workshops on an array of topics, including zoning, legal rights and responsibilities, and contractual issues.

Aman is a 1998 graduate of Boalt Hall School of Law, University of California, Berkeley. Prior to joining the staff of Public Counsel, Aman practiced general corporate and tax law as an Associate at Greene Radovsky Maloney & Share, LLP. Prior to her work at Greene, Radovsky, she served on the staff of the City and County of San Francisco Office of the Treasurer.

Aman's motivation for switching gears and moving from private practice to working on child care issues was concern about the growing number of women in the workplace, especially due to the welfare-to-work programs required by Temporary Assistance for Needy Families (called CalWORKs in California). Seeing many women struggling with work and family, Aman knew that child care was an enormous barrier to employment. At Public Counsel, she is able to put her business and tax expertise – areas in which few public interest lawyers specialize – to good use in assisting the child care community. As she learns more about child care, Aman is becoming more and more passionate about it. Her career goal is to continue to work in public interest law, focusing on issues that affect low-income families and individuals, especially children.

Aman's interests include backpacking, playing basketball, and kickboxing. She speaks four languages: Spanish, Hindi, and Punjabi as well as English.

The Child Care Law Project of Public Counsel, established over 10 years ago to improve the quantity and quality of child care, is staffed by Aman and two other attorneys: Catherine Atkin (managing attorney) and Lilia Alvarez (staff attorney).

Sujatha Branch is a staff attorney at CCLC.

***CHILD CARE ADVOCATES
REFLECT ON LEGISLATIVE
SESSION, PREPARE FOR NEXT
ROUND***

BY NANCY STROHL

In California's most recent legislative session, which ended in August, child care issues were more prominent than they have been in recent years. CCLC played an active role in developing and advocating for a child care policy agenda, working with many partners, including the California Resource and Referral Network and the parents who have come together as Parent Voices. Since the end of the session we've had a little time to reflect on accomplishments and to regroup for the next round. The following are some thoughts and, it is hoped, some insights that may prove useful to colleagues in California and throughout the country.

CCLC Policy Agenda

Through the legislative agenda pursued by CCLC, we advocated the following policies:

- *Quality child care for low-income and working families, with subsidies for families with incomes at or below 75% of the state median*
- *Improved compensation and retention among the child care workforce*
- *Development of a comprehensive Master Plan for Child Care*

- *Increase in the supply, affordability, and quality of child care*
- *Adequate funding for CalWORKs child care for public assistance recipients moving into the workforce*

We made progress on several items (see "Legislative Report: Selected Child Care Wins and Losses" accompanying this article), and on others we will take up in the next session where we left off, as well as developing new initiatives. We are currently discussing legislation to set in motion the development of a Child Care Master Plan for California and new initiatives to increase access to quality care for children with disabilities.

Victories and Challenges

While a complete evaluation of legislative action affecting child care and low-income families is beyond the scope of this article, the experience on several issues will inform our work for the next round.

Child Care and the Working Poor

The distinction between the "working poor" and the "welfare poor" has long been somewhat artificial, since a significant percentage of welfare recipients have traditionally moved back and forth between public assistance and low-wage jobs. In fact, whether an individual had access to child care often determined which category she was in at a given moment. In the post-welfare reform era, however, as

welfare recipients move into the labor market, the distinction has lost virtually all meaning.

In California, the combined approximate cost of licensed child care for one infant and one pre-school child equals the *entire gross pay* of a full-time, year-round worker earning minimum wage. Thus, a single parent of these two small children seeking licensed child care would have to pay *more* than her entire take-home pay. If we as a society expect everyone to work, even at wages as low as those at the bottom end of the scale, it is indisputable that providing quality child care for all our children is impossible without increasing public subsidies dramatically. This fundamental principle informs our advocacy on this issue.

State and federal funds that are currently available are far from sufficient to ensure that all families eligible for subsidies (those at 75 per cent of state median income, or just under \$30,000 annually for a family of three) actually receive them. In California, over 200,000 eligible families are on waiting lists. In fact, anecdotal evidence indicates that families earning over 30 per cent of state median income rarely receive a child care subsidy. The Child Care Law Center supported initiatives to provide child care subsidies for all eligible children by 2005.

In this effort we worked closely with the United Child Care Campaign (UCCC), an affiliation of eight statewide organizations: Calif. Alternative Payment Programs Association (CAPP), Calif. Association for the Education of Young Children (CAEYC), Calif. Child Development Administrators Association (CCDAA), Calif. Child Care

Resource and Referral Network (R&R Network), Calif. Child Development Coalition (CCDC), Child Development Policy Institute (CDPI), and CDPI Education Fund (CDPIEF), as well as CCLC. UCCC's mission is to increase access to quality child care and early childhood education, with a special focus on system-wide issues and the needs of low-income families. We also worked with a wide range of new partners, including Fight Crime Invest in Kids, organized labor, Council of Jewish Women, Mexican-American Legal Defense and Education Fund, Children Now, the California Council of Churches, National Organization of Women, Parent Voices, and many others. The Children's Roundtable, a coalition of over 150 child advocacy organizations, made child care one of its top priorities. From our perspective, the extremely broad support garnered for legislation calling for significant investment and dramatic change is evidence of the extent to which the importance of child care is becoming more fully understood.

SB 1703 was the bill that would have provided full funding for subsidies for all eligible children. The

first hearing held on it was an amazing experience. Not only did support come from a variety of organizations; more than 100 parents and child care providers organized by Parent Voices and the California Child Care Resource and Referral Network attended. At a key point they stood up in the audience holding cardboard dolls to symbolize children on the awaiting list. The previous evening, a vigil on the Capitol steps had drawn attention to the children on the waiting list and the teachers who had left child care careers. Legislators and supporters read the names of these children and teachers from 4-9 p.m. It was clear that there were enough names for the reading to have continued all night. Many legislators were moved by the magnitude of the numbers.

In response to the events at the Capitol, the work of advocates at the state and local level, and the personal experiences of many women legislators as mothers of young children, the Legislative Women's Caucus became engaged in the battle. The Caucus took on child care as its primary legislative priority and took a position that the Governor's budget had to

include increased funding. They remained firm into the final hours of the legislative session and were the reason Governor Gray Davis was willing to add any additional resources to child care. (See "Women's Caucus Comes Through for Child Care" accompanying this article.)

Despite the staunch support from the Caucus and a broad array of advocates, however, the child care community ran up against fundamental disagreements with the Governor. His approach is to guarantee equity and quality accessible care and education within current resources – a goal those knowledgeable about the field believe impossible — and he was unwilling to go beyond a \$133 million child care budget augmentation package. He also was unwilling to approve initiation of programs that would involve significant ongoing costs or that he believed would interfere with the private child care market. However, \$133 million in additional funds is significant, and these monies will be well used while advocates develop further strategies to achieve full funding for subsidized care.

The Need for a Child Care Master Plan

CCLC believes any significant change in state child care policies should be part of a statewide Child Care Master Plan, which would bring with it a number of advantages in moving toward quality, accessible child care for all children. First, by highlighting the disconnect between the abysmally low pay of child care workers and the inability of most parents to afford licensed care, a Master Plan could address head-on

LOBBYING AND NON-PROFITS

CCLC is a tax-exempt non-profit organization and, as such, is subject to the same restrictions on lobbying activities as many *Update* readers. We account carefully for all lobbying expenses and report them each year to the IRS. As a 501(c)(3) organization the Internal Revenue Code places some limits on the extent of such activity but certainly does not prohibit it altogether. Tax-exempt organizations are allowed to spend as much as 20 percent of their budgets on lobbying, while for other types of non-profits, notably 501(c)(4) organizations, there is no limit. For more information on the laws governing nonprofit organizations and lobbying, a good resource is the Alliance for Justice website: www.afj.org.

the fantasy that the need for child care can be met by the “private market.” In addition, a Master Plan could focus on the important links between child care and the entire education system. The K-12 education community is moving toward consensus that making early childhood education more widely available is a critical component in helping to equalize the resources with which children begin kindergarten, and a Master Plan could highlight these connections. Moreover, a Master Plan could make clear the potential for an integrated child care system to be the center of comprehensive services for young children and their families.

The Child Care Law Center and UCCC co-facilitated a series of meetings over the last several months with the Child Development Policy Advisory Committee (CDPAC) to develop a framework for creation of a Master Plan, and we supported legislation to this end. Over 100 people from throughout the state participated in at least one of the meetings. This process will proceed as we continue to support Master Plan legislation.

The Governor was unwilling to support a Master Plan process and asked that we suspend efforts pending the completion of an administrative review he has directed the Department of Consumer Affairs to undertake. That review, however, is taking place behind closed doors and is totally different from the Master Plan process envisioned by child care advocates. We have seen no evidence that the Consumer Affairs review of the child care subsidy system “has drawn ... from the views of a broad cross section of non-profit groups and state agencies,” as the Governor promised. In fact, parents, teachers

and other members of the child care work force, child care advocates, and child care supporters have had no real opportunity to participate in the process or to review conclusions. Even legislators have not had access to the recommendations being developed.

Despite the Governor’s opposition in the last session, we are hopeful there will be an opening next year. Senator Escutia has indicated her willingness to sponsor legislation again. In addition, the California Children and Families Commission (Prop. 10 Commission) has been asked by the Joint Legislative Committee to Develop a Master Plan for Education Kindergarten through University to lead a process to develop an early learning component. We have submitted testimony and are asking the Commission to expand the scope of this project to complement efforts already underway, link its recommendations to legislative initiatives, and take care not to supplant development of a comprehensive Child Care Master Plan.

Compensation

One of the most blatant contradictions posed by the child care dilemma is that child care workers, being among the lowest paid workers of all, cannot afford child care. The need to lower child care costs for parents always runs headlong into the need to raise compensation for workers. While CCLC strongly supported the initiatives to increase compensation and promote retention, others were the primary advocates. Some were disappointed that the final bill only benefited workers in the subsidized child care system, but we feel that it was a major victory that

the Governor signed an ongoing compensation initiative

In addition, many county Prop. 10 Commissions have designated staffing as a critical aspect of their strategic plans. The state Prop. 10 Commission has allocated funds over a three-year period to be used by counties as matching funds, and these have no restrictions.

Lessons Learned

- Investing time in building relationships and developing a broad range of partners is essential to sorting out the most critical issues and to maintaining cohesiveness as the legislative process unfolds. Ongoing communication is imperative. Through the Child Development Policy Institute, CCLC and the UCCC had access to a California e-mail list of over a thousand people that was a key communication mechanism. But E-mail and fax communication has to be coupled with face-to-face discussion with key partners.
- Big ideas and initiatives can lead to significant change. The original version of the subsidy bill sponsored by CCLC and the Resource and Referral Network called for funding for all eligible children. While the bill did not pass in its original form, we were able to make headway on the issue of child care generally by painting a picture for legislators and potential partners of the 200,000 children on the waiting list. While the need for a Master Plan is a hard sell, it is essential to envision the system we want to create.

- Local advocacy is absolutely key.

Continued on page 14



LEGISLATIVE REPORT: SELECTED CHILD CARE WINS AND LOSSES

With the support of the Women’s Caucus and key legislators, a \$133 million child care budget augmentation package was included as part of the final budget signed by the Governor. The budget includes:

- \$40 million (half-year) to expand child care services for children birth through five years old from low-income working families (originally \$75 million)
- \$33 million to increase funds to state funded child care centers to partially make-up for past years when no cost of living (COLA) increase was received. (This is in addition to the 3.17% COLA in the May Budget Revision- for a total 7.7% increase for child development programs)
- \$15 million for the retention of child care workers (AB212)
- \$3 million (half-year) to increase funding for migrant education services
- \$42 million for facility grants and loans and local initiatives to increased capacity for children with special needs.

The budget also includes:

- \$47 million to expand state preschool for 3 and 4 year olds. This includes annualization of funding from last year and expansion funds for FY2000-01
- \$15 million for quality improvement initiatives
- Expanded funding for CalWORKS stages 2 & 3
- Facility expansion funds

SIGNIFICANT BILLS

New Child Care Tax Credit AB480 (Ducheny), passed and signed by Governor Davis: One of the numerous budget trailer bills this year, it provides a refundable child care tax credit based on a percentage of a taxpayer’s federal child and dependent credit. The percent of credit increases from 8.4% to 18.9% as income decreases. If a family’s credit is larger than the amount of tax owed, the difference will be paid in the form of a refund, creating the state’s only refundable tax credit.

Staff Retention AB 212 (Aroner), passed and signed by Governor Davis: In the last days of the legislature, AB212 was amended significantly in an effort to gain the Administration’s support for the bill. It passed the Assembly on a 47 – 13 vote with 20 members not voting. The bill’s \$15 million appropriation may only be used for staff working in state-subsidized centers. In order to encourage the leveraging of local Proposition 10 funds and other local funding sources, Local Planning Councils (LPC’s) will develop distribution plans that must be approved by the State Department of Education to encourage increased compensation and staff training. The LPC will administer the AB212 funds locally.

Master Plan for Child Care SB 845 (Escutia), died: CCLC and the United Child Care Campaign strongly supported this bill, which would have mandated a broad inclusive process to look a child care as a system and to develop a comprehensive plan to ensure the best possible opportunities for children. The Governor did not support the development of a comprehensive plan.

Full Funding for Eligible Children SB 1703 (Escutia): This bill was amended to serve as the vehicle for the \$42 million set-aside by the Governor for one-time expenses. After considering input from the United Child Care Campaign, the Women’s Caucus chose to direct the funds to child care facility grants and loans and an initiative to include children with disabilities in child care. SB 1703’s original focus of providing child care subsidies for low-income working families was partially accomplished through the budget act which included \$40 million in half year child care subsidy expansion.

Adapted from the California Child Care Resource and Referral Network Alert Final California Budget and Legislative Highlights

Legislators heard from advocates in the Capitol and in their own districts. Statewide organizations such as the California Child Development Administrators Association, the California Alternative Payment Agencies, the California Child Development Coalition, the Network, and CDPI, who had active member communication mechanisms, generated letters and visits to legislators. The California Association for the Education of Young Children sponsors a public policy symposium early in the session each year, and

hundred of child care teachers from throughout the state flood the halls of the Capitol.

- One can never spend too much time with legislative staff members. In California, key decisions are made in the middle of the night in the final days of the legislative session. It is critical that Legislators and their staff members become partners in advocacy efforts, as they will be the ones making the final recommendations to legislative leadership.

Nancy Strohl is Executive Director of CCLC.

WOMEN'S CAUCUS COMES THROUGH FOR CHILD CARE

At 2:00 a.m., SB 1703 passed on the Senate floor following Herculean efforts by the Women's Caucus. Shortly before midnight, things began to look bleak. Adhering to its constitutional deadline, the Senate was going to adjourn leaving many critical bills unheard and set to die- including SB 1703. Only bills with "Urgency clauses" can be acted on after midnight on the last day of the session. The Women's Caucus pulled a rabbit out of the hat and sent SB 1703 back to the Assembly to be amended to include an Urgency clause that would allow the bill to be heard in the Senate. Our champion in the Assembly, Dion Aroner, received approval to hear the bill with an Urgency clause amendment. Drama began, however, when Republican Assembly members challenged acceptance of the amendment and quickly called for a Republican Caucus. In response the Women's Caucus, with members from both the Senate and Assembly and joined by key leaders Speaker Robert Hertzberg and Darrell Steinberg, huddled on the Assembly floor and began to chant "child care, child care, child care." When the Republicans came back in, Assemblymen Rod Pacheco and Robert Pacheco made impassioned pleas to vote in favor of the bill with the Urgency clause. The bill then passed the Assembly on a vote of 55-8 with 17 not voting. It quickly moved to the Senate floor and passed as one of the final bills of the session by a 31 – 2 vote.

Excerpted from the California Child Care Resource and Referral Network Alert by Patty Siegel, Executive Director and Donita Stromgren, Public Policy & Membership Services Manager.

FINAL RULE ON TANF PERFORMANCE BONUS MEASURES INCLUDES CHILD CARE PROVISION

On August 30th, the Department of Health and Human Services (HHS) released the final rule for the Temporary Assistance for Needy Families (TANF) High Performance Bonus Measures. While the original rule did not include child care, the Department responded to advocates' concerns by including a \$10 million child care measure in the rule, which will reward up to 10 states that choose to compete in this category starting in FY 2002.

The performance measure will include the following:

1. Accessibility measure: percent of children eligible under Federal Child Care and Development Block Grant rules currently served;
 2. Affordability measure: family co-payment compared to income;
 3. Quality measure: state reimbursement rates compared to the market rate (due to data collection issues, this measure will not be used in the first year);
- The data and collection methodology to be used for each is still under discussion.

For a complete text of the performance measures, visit <http://www.acf.dhhs.gov/programs/opre/hpb/index.htm>

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A VOICE FOR PARENTS WITH CHILD CARE CONCERNS

BY WILLOW LANCASTER

A few months ago, I received a letter in the mail notifying me that my child care contract had expired and that my child care payments would no longer be covered through Children's Council beginning with the upcoming month. The letter worried me because I did not know what I would do if I could no longer afford child care. If I were unable to find someone to look after my baby, I would not be able to continue working. I called my social worker at Children's Council right away and she informed me that all I had to do was renew my application so they could assess changes from the previous year. It turned out that since the Family Fee schedule had changed, I was required to pay more per month for my child care. This news upset me because they calculate the Family Fee by gross income, rather than what families actually bring home. I wanted to express my concerns, yet I did not know where to start.

As an employee at the Child Care Law Center, whose mission is to use legal tools to make high quality, affordable child care available to all children and their families, I approached Nancy Strohl, our Executive Director, to discuss my concerns. Specifically, I inquired about ways in which CCLC can build stronger relationships with low-income parents in the community who feel silenced by bureaucratic welfare systems. Nancy then introduced me to an organization known as Parent Voices (PV), and suggested that I join PV, both as a concerned parent and as a CCLC representative. As I learned more about Parent Voices, I found that PV provided a forum where parents like me could be heard and our concerns addressed.

In my first discussion with Maria Luz Torre of Parent Voices, I learned more about the organization and about its specific projects. I discovered that PV had recently convinced the state to revise the Family Fee Schedule according to new guidelines; the state had not updated the old guidelines in years. As a result, many families' payments decreased. Mine increased because my salary had been raised since I began working. Fortunately, thanks to the hard work of Parent Voices, instead of paying \$40-\$50 extra per month, as would have been required under the old guidelines, I now only pay about \$20-\$30 more per month.

Parent Voices (PV) has been able to provide similar help to many people. It was founded in 1994 to allow parents' voices to be heard on issues that affect the lives of young children and their families. During the first year of the program, Children's Council of San Francisco gathered information and stories from parents on issues that were important to them. Concerns raised included the need for high quality, affordable child care, the safety of their children, violence in their communities, the need for additional supervised after school programs, and support services for parents and grandparents.

In 1996, the need for a strong parents' voice became even more urgent with the passing of welfare reform, known in California as CalWORKS, which set time limits on receipt of benefits and required nearly all parents on welfare to go to work. Low-income working parents whose children were in subsidized child care feared that their children would be displaced by children of parents moving off welfare. Parents receiving aid feared there would not be enough subsidized slots and they would be unable to afford child care or would have to settle for lower quality because they would be earning low wages or marginal employment. Parents increasingly needed a way to communicate and take collective action over their concerns.

Parent Voices is a parent led and run organization that focuses exclusively on the needs of young children. Every day millions of parents go to work and leave their children either in school or in child care programs. However, because of the high cost of care, they often must leave their children in substandard care or have them return from school to an empty house. Parent Voices offers a way for parents to help increase child care funding, educate other parents and policy makers on important issues affecting youth, and engage in public debate over the quality and affordability of child care. The organization assumes that every parent is a leader and a potentially powerful advocate for children.

In order to build a strong and viable organization, Parent Voices needs support from the community. Thus, they encourage every concerned parent to join. Service providers, advocates and community leaders are also encouraged to become involved as mentors and partners. Parent Voices meets every other Thursday from 6-8 pm at 575 Sutter Street at Powell, 2nd Floor in San Francisco. To join or for more information contact Maria Luz Torre at (415) 276-2941 or email her at luztorre@aol.com. Parent Voices also has offices in Alameda County, Contra Costa County, and in Sacramento.

Willow Lancaster is the administrative assistant at the Child Care Law Center. She is a consumer of child care services for her son Rafael, who is two years old.

THANK YOU!

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