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Attorneys for Defendants

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	Cause CDV 2020-307 Hon. Kathy Seeley DEFENDANTS' REBUTTAL EXPERT DISCLOSURE
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Pursuant to this Court's June 15, 2022, Scheduling Order and Mont. R. Civ. P. 26(b)(4),

Defendants State of Montana, et al. provide the following rebuttal expert witness disclosure:

1. Debra Sheppard, Ph.D.
ABPP Board Certified in Clinical Neuropsychology
PO Box 80108
Billings, MT 59108

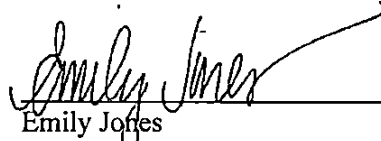
Dr. Sheppard is expected to offer rebuttal opinions to the conclusions and opinions of Dr. Lise Van Susteren. Dr. Sheppard's expert qualifications are set forth in her CV, attached as **Exhibit Q**. Dr. Sheppard's rebuttal opinions and conclusions are set forth in her report, which is attached as **Exhibit R**. Discovery is continuing in this matter, and Dr. Sheppard's opinions may be altered or amended based on new testimony and evidence. Accordingly, Defendants reserve the right to supplement this expert disclosure based on any new information.

2. Defendants reserve the right to supplement their expert witness designations as additional information is discovered and to call any expert named by any other party in this litigation, including Plaintiffs.

3. Defendants reserve the right to designate and call rebuttal experts necessary to refute the testimony of experts disclosed by any other party.

DATED this 30th day of November, 2022.

Austin Knudsen
MONTANA ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Emily Jones", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered by email to the following:

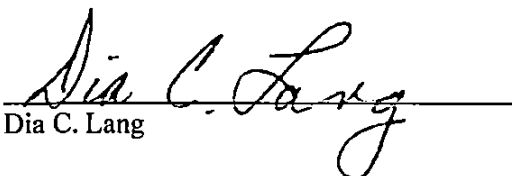
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Date: November 30, 2022


Dia C. Lang

CURRICULUM VITA

Debra Sheppard, Ph.D., ABPP, ABCN
Board Certified in Clinical Neuropsychology
American Board of Professional Psychology
PO Box 80108
Billings MT 59108
Voice (406) 238-6350
Facsimile (406) 238-6359

Education:

BS - Wayne State University, June, 1980
Major in Psychology

MA - Oakland University, June, 1982
Major in Clinical Psychology

Ph.D.- Wayne State University, August, 1987
Major in Clinical Psychology
Minor in Physiological Psychology
Specializing in Clinical Neuropsychology
Dissertation: "Tracing the Neuropsychological Deficits Associated with
Chronic Alcoholism: A Simultaneous Test of Three Hypotheses"

Specialist in Mental Health of Aging in the field of Clinical Psychology, Institute of Gerontology, Wayne State University, 1982

Licensure:

Montana License #201
Wyoming License #428

Specialty Board Certification:

Board Certified in Clinical Neuropsychology - Diploma Number 5784
American Board of Professional Psychology
Certificate of Professional Qualification in Psychology – Certificate 3942
Association of State and Provincial Psychology Boards

Professional Memberships:

American Board of Professional Psychology
American Board of Clinical Neuropsychology
American Psychological Association
APA - Division 40 (Clinical Neuropsychology)
APA - Division 22 (Rehabilitation Psychology)
International Neuropsychological Society
National Academy of Neuropsychology
Montana Psychological Association (Past-President)

Yellowstone Valley Psychological Association (Past-President)
Rocky Mountain Health Network (Board Member)
Committee on Rural Health (American Psychological Association)

Research Experience:

Research assistant in biopsychology laboratory, responsible for animal training, surgical procedures, injections, etc. (1979 - 1980)

Supervisor: Robert Berman, Ph.D.

Research assistant in schizophrenia research at Northville State Hospital and Lafayette Clinic, responsible for data collection on human subjects. (1979 - 1980)

Supervisor: Gerald Rosenbaum, Ph.D.

Research assistant in gerontological studies, responsible for coding of data and assisting in grant proposal writing. Funded through NIMH fellowship. (1980 - 1982)

Supervisors: Boaz Kahana, Ph.D. and Eva Kahana, Ph.D.

Research assistant in pharmacological research at Lafayette Clinic, responsible for data collection on human subjects and data analysis. (1981 - 1983)

Supervisors: Samuel Brinkman, Ph.D. and Robert Block, Ph.D.

Training Experience:

Intern in neuropsychology at the Allen Park VA Medical Center (1981) Assessment - neurological patients

Supervisor: Samuel Brinkman, Ph.D.

Intern in neuropsychology at Lafayette Clinic (1981 - 1983)

Assessment - psychiatric and neurological patients

Supervisors: Samuel Brinkman, Ph.D. and Ron Lewis, Ph.D.

Intern at Salvation Army Harbor Light (1981)

Assessment, group and individual psychotherapy, educational series - substance abusers

Supervisor: Edward Podany, Ph.D.

Intern at Sinai Hospital Rehabilitation Unit (1985)

Neuropsychological assessment - broad range of rehabilitation patients

Supervisor: John O'Leary, Ph.D.

Intern at Kingswood Hospital (1984- 1985)

Psychological and neuropsychological assessment, group therapy - psychiatric adults and adolescents

Supervisors: Lynn Pantano, Ph.D., Sylvia Voelker, Ph.D., and Patricia Moylan, Ph.D.

Intern at the Allen Park VA Medical Center (1985 - 1986)

Psychological and neuropsychological assessment, group and individual therapy-psychiatric patients, neurological patients, substance abusers

Supervisors: Manfred Grieffenstein, Ph.D., Darrel Dunkel, Ph.D., and Dale Jeffs, Ph.D.

Current Employment:

Private practice, Billings, MT (1990 - current)

Specializing in services to clients with head injury or other physical disabilities. Services include assessment, therapy, and cognitive remediation.

Previous Employment:

Neuropsychologist on the rehabilitation unit at St. Vincent Hospital and Health Center, Billings. (1989 - 1992) Responsible for assessment, individual psychotherapy, behavioral programs consultation to other staff, staff inservices, program development, supervision of post-doctoral staff and technicians.

Chief Psychologist on the Head Injury Unit at the Rehabilitation Institute of Michigan, Detroit (1987 - 1989). Responsible for neuropsychological assessment, individual and group psychotherapy, computer remediation programs, behavioral programs, supervision of interns and other staff, staff inservices, consultations to other services - head injured adults.

Private Practice, Psychological Systems, Inc. Huntington Woods, MI (1987 - 1989). Practice involved consultation to an inpatient head injury unit (neuropsychological assessment and treatment recommendations), as well as neuropsychological assessment and treatment of head injured individuals on an outpatient basis.

Papers and Publications:

Book Review "Mild traumatic brain injury and postconcussion syndrome: The new evidence base for diagnosis and treatment". *The Clinical Neuropsychologist*, 22: 1093-1094, 2008

Author on paper "Myth vs. Reality: Staff Beliefs About the Elderly Contrasted with the Characteristics of Institutionalized Aged." Presented at the Annual Scientific Meeting of the Gerontological Society of America, November 8 - 12, 1981.

Co-editor and contributing author of "Effective Substance Abuse Counseling with Specific Populations", published by the State of Michigan Office of Substance Abuse Services.

Sheppard, D., Smith, G.T., & Rosenbaum, G. (1988). "Use of MMPI Subtypes in Predicting Completion of a Residential Alcoholism Treatment Program", *Journal of Consulting and Clinical Psychology*, 56, 590 - 596.

Sheppard, D. & Greiffenstein, M.F. "Alcoholic Deficits on the Rey-Osterreith Complex Figure Test", poster presentation at the American Psychological Association 1992 Annual meeting, Washington, D.C., August, 1992.

Teaching Experience:

Instructor - Wayne State University (1984 - 1987)

Assistant Professor - Eastern Montana College (1991 - 1993)

objective measures of mental health because she wanted to avoid “pathologizing” these individuals. In spite of this claim, Dr. Van Susteren tells the reader that these individuals are suffering from significant mental health pathology. She also argues that diagnostic considerations are only used for insurance billing purposes. It has been my experience that diagnostic work assists in providing common terminology and agreed-upon descriptions of mental health conditions that allow communication regarding known disorders and whether the individual does or does not exhibit adequate symptoms to be characterized in such a manner. While these categories may be useful in insurance billing, it should be noted that a great deal of consideration is involved in formulating the diagnostic system that well exceeds any need for insurance billing.

The rationale for avoiding “objective measures” of mental health functioning is not well articulated. While there is certainly benefit to engaging in clinical interviews, this is only one source of information. In clinical practice, I find it very helpful to consider many other sources of information. In addition to the clinical interview, my evaluation would include gathering information regarding an individual’s family history, educational history, work history, mental health history, substance abuse history, and any other relevant factors that could be contributing to the current clinical concerns being reported. Medical reports and history are often an important factor. As a clinical psychologist/clinical neuropsychologist, I find well validated, objective measures to be critical. Such measures provide normative data that helps interpret an individual’s performance on these measures with regard to baseline expectations, as well as expectations associated with individuals with a known disorder. Multiple sources of data should converge in order to conclude with any degree of reliability that a certain condition exists or does not exist. Relying on only one source of data greatly limits the ability to have confidence in outcomes.

In following the scientific method, it is important that the researcher attempt to have working hypotheses. As it is never possible to “prove” a hypothesis, this method involves “disproving” a null hypothesis. By disproving the null hypothesis, the working hypothesis is more likely to be accepted. For example, in this case, the working hypothesis is that climate change has an impact in mental health. The null hypothesis would then state that climate change does not impact mental health. By disproving the null hypothesis, the working hypothesis would be a considered alternative. In Dr. Van Susteren’s approach, no such hypothesis testing is being rendered. Instead, Dr. Van Susteren opines that her conclusions are based on her training, experience, review of the literature, research, plaintiff self-report, observations of the plaintiff, a review of the plaintiff’s complaints, and developing psychological profiles on a select sample of plaintiffs.

Sample bias would definitely be a consideration in adhering to the scientific method. Attempts are made to obtain sample subjects that are reflective of the group of interests, as well as “control” subjects. If the group being studied is biased in only one direction, it would not be surprising that the outcomes fall in only one direction. It is just as important to study characteristics of those not suspected of a condition as it is to study those that claim to have the condition. Without such comparisons, it is not possible to describe which characteristics are unique to the group of interest. The result is that conclusions are based on “confirmatory bias”. In other words, you find what you are looking for in this method. Dr. Van Susteren admits that her “subjects” were chosen because of “convenience”, climate change consciousness, and claims of having mental health harm. This method of subject selection would not meet the requirements of sound research methodology.

One of the basic tenants of scientific research is that “correlation is not causation”. Simply put, just because two events may occur together, one cannot state with confidence that one of the events causes the other. For example, wearing summer clothing may correlate highly with eating ice cream. However, it would be absurd to say that eating ice cream causes wearing summer clothing or vice versa. Instead, one must consider other factors or sources of variance that may cause these two events to occur together at a higher level of probability. Examination of sources of variance is critical. Statistical methodology is very useful in identifying the sources of variance. Because very few things have a direct 1:1 correlation, we assume that there are other factors that are associated with the event being measured. We label these factors sources of variance. In evaluating any research study, efforts are made to measure and define the sources of variance. Often, factors that account for the “most” variance are considered to be a plausible explanation for events, but not the sole explanation. It does not appear that attempts were made in Dr. Van Susteren’s evaluation of the selected plaintiffs to investigate sources of variance or even to consider them. Without such consideration of sources of variance, conclusions are subject to the danger of “misattribution”. That is, an event is attributed to one factor while it may really be due to a different factor.

Dr. Van Susteren makes claims that climate change has the “potential” for affecting brain development. The basis for this claim is uncertain, as she does not present any objective findings to this effect. As a neuropsychologist, studying brain/behavior relationships, I find it necessary to investigate any potential brain changes with objective measures. Such measures would include, but not be limited to, neuroimaging and neuropsychological evaluation. Neuropsychological measures allow for the interpretation of whether an individual’s abilities are consistent or inconsistent with expectations for the individual at a particular age. While I would agree that the prefrontal cortex continues to develop well into the mid-20s, research information has well-established certain expectations for executive functioning to be developed at certain ages along the early lifespan. No comments related to this trajectory are noted in Dr. Van Susteren’s discussion of brain development.

In reviewing Dr. Van Susteren’s reports of her select sample, it does not appear that a great deal of objectivity was applied. For example, Dr. Van Susteren opines in one case that the individual is experiencing “the deepest, most gripping emotions directed at state government”. This is apparently not a quote from the individual being interviewed, but Dr. Van Susteren’s interpretation. At another point, she states that the plaintiff is “dark with fear and filled with anguish”. Again, this is not the plaintiff’s words, but Dr. Van Susteren’s interpretation. Claims of not introducing bias into these interviews have clearly not been supported. In each reported interview, Dr. Van Susteren diagnoses “psychological harms consistent with exposure to traumatic stressors and other unhealthy social forces brought on by climate change that destabilize society.” Although Dr. Van Susteren claims that she is avoiding pathologizing individuals, she assigns these individuals a diagnosis involving pathology. She further talks about these individuals suffering from “pre-traumatic stress” or what would more commonly be called anticipatory anxiety. This would involve anxiety evoked in individuals that are anticipating a particular outcome.

An important feature of the scientific research method is that studies are able to be replicated. In order to replicate one’s work, factors such as hypotheses, sample selection, methodology, analysis of data, and justifiable outcomes must be clearly stated. In the methodology under discussion, no such information is provided in such a manner that outcomes can be independently replicated and validated. In fact, Dr. Van Susteren does not actually appear to be very confident in her opinions

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as she consistently qualifies these opinions with “may” or “may not” happen. Such opinions could be asserted much more confidently if actual scientifically accepted research methodology had been incorporated.

In reviewing Dr. Van Susteren’s opinion, it is clear that she is a very enthusiastic, committed advocate for her position. However, absent sound methodology in researching such assertions, the conclusions are likely not very robust. Actually, they appear to have contributed more to the concept of “confirmatory bias”. Research was not conducted in an objective manner, hypotheses were not tested, statistical analysis was not provided, methodology and sample selection is suspect, and opinions are entirely consistent with Dr. Van Susteren’s advocacy. Absent sound research methodology, one is asked to accept that “the situation is this way because I say it is”. That is certainly not an opinion based on facts and science.

I hope this information is helpful to you in your work with this case. If you have any comments or concerns, please feel free to contact me at 238.6350.

Sincerely,



Debra Sheppard, Ph.D., ABPP
Board Certified in Clinical Neuropsychology
American Board of Professional Psychology