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LEGAL ARGUMENTS AND PRECEDENTS FOR TEEN LIBERTY

Tort/Civil Liability

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Additional Information—Precedents for Change

Torts Commonly Committed by Behavior Modification Programs:

(A Tort is a civil wrong for which damages can be recovered in compensation or injunctive relief against wrongful activity.) Printer-Friendly Version

The purpose of this packet is to provide victims of the teen "help" industry some information and examples regarding torts committed within these types of facilities/programs so that they can understand their rights and better prepare themselves for taking legal action or contacting an attorney for help.

Intentional Torts

Fraud (Tort Law)

Definition of Fraud-- Under the "common law" of all states, there is a body of definitions, including the definition of fraud, that have been developed and refined by judges and lawyers over the years. As more cases about fraud have been adjudicated, the definition of what constitutes fraud has become more precise. Fraud has a specific legal meaning. The following essential elements must be present before an actual finding of fraud will occur: Misrepresentation of a material fact consisting of a false representation, concealment or non-disclosure;

- Knowledge of the falsity (scienter);
- Intent to deceive and induce reliance;
- Justifiable and actual reliance on the misrepresentation; and
- Resulting damages.

Behavior modification programs typically knowingly (scienter) lie about their programs through false misrepresentation, concealment, and non-disclosure. They omit to tell parents that they use systematic brainwashing techniques and/or that their techniques have been repeatedly proven to be psychologically damaging, ineffective, and harmful. They conceal any and all reports of abuse at their facility. They fail to disclose their techniques and intentionally conceal the treatment and conditions of children in the program from their families. All of these coupled with the fact that often they do not have qualified staff (GED-level education/degree acceptable for most staff positions—including unit staff (unit staff spends the most time with the children in these facilities)) and sell their program through deceptive marketing practices (see congressional hearings), evidences the first three requirements of a fraud action. Of course they intend their deception to induce reliance, they want the thousands of dollars parents are willing to spend to not deal with their family's problems. Well, with websites like HEAL, ISAC, Teen Advocates USA, and even Fornits.com out there, it is getting more difficult for parents to prove that they did not know that this type of program is harmful and therefore will have to prove that their reliance on the misrepresentations of the program(s) was justifiable. Resulting damages are fairly easy to prove on this one since the parent will be out the expense of the program in most cases as well as be required to pay for any therapy required to repair the damage(s) caused by institutionalization in one of these facilities.

The Bethel Boys Academy lawsuit was settled out of court. However, we still have the complaint on file. The first charge in this class action was for fraud and breach of contract. Breach of contract is a separate cause of action, but, can be combined with fraud. However, only one recovery will be allowed under the same cause of action. The following causes of action are also listed in the Bethel lawsuits. We will be borrowing some of the causes of action from the Provo Canyon School lawsuits as well.

Assault

Definition: The intentional placing of another human being in fear or apprehension of a harmful or offensive touching without privilege or consent.

Programs will typically use the threat of force, up to and including the threat of serious bodily harm or death, to achieve the "desired" behavioral results. Assault of this nature is also a crime. For most civil jurisdictions assault need only cause apprehension of a harmful or offensive touching. Fear is not necessary in some jurisdictions for a finding of assault.

If you are a survivor of a program, you can sue the program without your parents' assistance. See www.heal-online.org/legal.htm for legal resources and statute of limitations for filing information.

Battery

Definition: The intentional harmful or offensive touching of another human being without privilege or consent.

Programs have, will, and do (or command upper-level "clients/students/prisoners" to) beat, restrain, and even drug children as a form of punishment. Provo Canyon School is notorious for using mind-altering drugs to punish young adults for arbitrary reasons (i.e. rolling eyes at staff or not putting a hair clip away). Provo Canyon will even punish children for wearing clothing that the program already approved. The rules are ever-changing, because the point is confusion and a nervous breakdown, not discipline and self-respect.

Parents also need to be aware that programs like The Walker School regularly participate in drug trials using the children in that program as guinea pigs for the pharmaceutical industry. Some programs run by Aspen Education Group admit to experimenting on the children right in the contract. SeaMar in Washington also admits to experimenting on the children.

False Imprisonment

Definition: The intentional confinement of one human being by another without privilege or consent.

In the United States, teenagers are recognized as having their own liberty interests that is separate from their parents'. In a recent case (2009), we received the following statement regarding a writ of habeas corpus for a California teen in a Utah-based facility:

"Logan River's capture and holding X, a 15 year-old woman, has deprived her of liberty and privacy interests that supersede any liberty interest her mother or anyone else has to hire surrogates to isolate X in a foreign state and there do what they would be prosecuted by the Los Angeles County Child Protective Service Agency for doing in California."

and

"Article I, Section 1 of the Constitution of the State of California and the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States guarantee against private encroachment upon X's rights to speech, liberty, and privacy."

It is illegal to confine an American citizen (minor or not) in a lockdown facility in violation of due process. These programs are also committing the criminal acts of conspiracy and solicitation by soliciting parents to conspire with the program to deprive children/teens/young adults of their liberty without due process of law.

Program "clients" are deprived of liberty by being held in a lockdown facility with no access to a telephone and under force or threat of force with the express purpose to prevent the "client" from leaving without risking unreasonable peril to him/herself.

Intentional Infliction of Emotional Distress

Definition: The intentional extreme and outrageous conduct by one person that is intended to cause and does cause severe emotional distress.

Whether a program is telling a teenage girl that any rape or sexual abuse she has suffered is her fault and she wanted it or simply depriving a human being of contact with the outside world knowing this is considered psychological torture; these programs regularly and purposely inflict severe emotional distress resulting in anxiety disorders, trust issues, psychological problems, and post traumatic stress disorder. These results are common and have been repeatedly reported by professionals and the victims of the teen "help" industry. There are many other practices within this industry that would be considered intentional infliction of emotional distress including forcing children to beat other children and forced false confessions (including forcing a young man to falsely confess to molesting a younger female relative). This also includes when the program staff tell a child that his parents are aware of the beatings and starvation diets and that they support this being done to the child.

Negligent Medical Care

Definition: Negligence is when a duty is owed by the party to be charged to the plaintiff, the duty is breached (either through not fulfilling a known duty or poorly/inadequately performing a duty), and the breach results in damages.

These programs claim to be "treatment" facilities and to have trained professionals on site. However, often children like Ashley DeBoer are neglected and nearly die or actually do die from lack of treatment or poor quality of care.

Child Labor Law Violations

Children are forced to work as "staff" when they reach higher levels/phases at most of these facilities/programs. Children at some programs are also farmed out to other area businesses, including farms, to labor as part of their behavior modification program. These children are not paid for their labor. At best, they earn what can barely be called a privilege (like an extra minute in the shower, or extra slice of bread or half peanut butter sandwich). Programs often use children as slave labor to reduce costs and keep profits high. The other problem with this practice is that it socializes American teenagers to think slavery is normal and that as long as they aren't the slaves when they "earn" their way out, they can rest easy because they believe it is something you have to work your way out of…Think about that and what it implies.

Often programs do not keep accurate work records and this has become a problem when trying to determine how many hours a child has labored and what pay is due. This issue becomes very

difficult because it requires proof of damages and if there are no records, well, it becomes an issue. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

For more violations, visit www.heal-online.org/teenrights.htm. The above are the most common causes of action against teen "help" programs. Of course, wrongful death and other actions can be filed and **all legal issues should be discussed with a licensed attorney.**

Crimes Commonly Committed by Behavior Modification Programs:

(A crime is a criminal act that it is defined as either malum in se (bad in itself) or malum prohibitum (bad only because proscribed by law).)

RICO Statute Violations

Definition: Racketeer Influenced and Corrupt Organizations (RICO) Statute Offenses:

Under the law, **racketeering activity** means:

> Any violation of state statutes against gambling, murder, kidnapping, extortion, arson, robbery, bribery, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in the Controlled Substances Act);
>
> Any act of bribery, counterfeiting, theft, embezzlement, fraud, dealing in obscene matter, obstruction of justice, slavery, racketeering, gambling, money laundering, commission of murder-for-hire, and several other offenses covered under the Federal criminal code (Title 18);
>
> Embezzlement of union funds;
>
> Bankruptcy or securities fraud;
>
> Drug trafficking;
>
> Money laundering and related offenses;
>
> Bringing in, aiding or assisting aliens in illegally entering the country (if the action was for financial gain);
>
> Acts of terrorism.

Pattern of racketeering activity requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity. (Information Source: http://en.wikipedia.org/wiki/Racketeer_Influenced_and_Corrupt_Organizations_Act#RICO_offenses)

Harassment
Importance of Acceptance
Prison Reform Links
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Prison Penpals
Support Inmate Artists!
Human Rights Links
Human Rights Agenda
Environmental Links
Environmental Agenda
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Animal Welfare Agenda

HEAL has received reports of fraud, kidnapping, obstruction of justice, slavery, and money laundering regarding multiple programs in this industry. Unfortunately, our feds are too busy to prosecute or don't have enough information available to build a case. If you have evidence that a crime has been committed or is being committed, you need to report it to the authorities immediately.

Assault

Definition: The intentional creation of fear of a harmful or offensive touching.

(Described supra under civil/tort section)

Battery

Definition: An intentional harmful or offensive touching of another person.

(Described supra under civil/tort section)

Kidnapping (Aggravated False Imprisonment)

Definition: The crime of unlawfully seizing and carrying away a person by force or Fraud, or seizing and detaining a person against his or her will with an intent to carry that person away at a later time. *(The "Escorts" would be guilty of kidnapping under this definition.)*

Conspiracy

Definition: An agreement between two or more persons to commit a crime or accomplish a legal purpose through illegal action.

The escort services, referral agents, behavior modification programs, and parents may all be guilty of criminal conspiracy for violating a minor's due process rights and thereby conspiring to commit a crime/tort (false imprisonment/kidnapping). Parents and the program can be held criminally liable for conspiracy.

Solicitation

Definition: To incite or entice another to commit an illegal act.

The program industry through deceptive marketing entices parents to commit an illegal act by violating the rights of their child and placing them in an unsafe and inhumane environment. Most behavior modification programs commit the crime of solicitation.

Additional Information—Precedents for Change

K.H. Through Murphy v. Morgan

914 F 2d 846, 849 (7th Circuit 1990) printer friendly version

States Are Responsible for Safekeeping of Children in Foster Care

"Once the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances when he was free." The distinction tracks tort law--there is no duty to rescue, but, having effected it, the "rescuer" is "not entitled to harm the person who he has rescued." Parents and guardians of minors have a legal duty to rescue and therefore a legal duty not to place their children in perilous situations like behavior modification programs.

Procanik by Procanik v. Cillo

97 N.J. 339, 478 A 2d 755

(Supreme Court of New Jersey, 1984)

Victim's Rights to Recovery

"We hold that a child or his parents may recover special damages for extraordinary medical expenses incurred during infancy, and that the infant may recover those expenses during his majority." The law typically defines all minors as "infants" for legal purposes.

Gavin W. v. YMCA of Metropolitan Los Angeles

131 Cal.Rptr 2d 168

106 Cal. App. 4th 662 (2003)

Limited Liability Clauses that Include Injuries Caused by Negligence or Employee Action are VOID/ILLEGAL

"Exculpatory agreement that purported to relieve child care provider of liability for its own negligence is void as against public policy." This means a limited liability clause that relieves the service provider of responsibility for negligent or intentional harms is void and illegal (against public policy).

Glomb v. Ginosky

366 Pa. Super. 206

530 A. 2d 1362 (1987)

Parents Liable for Retaining/Hiring Abusive Babysitter

If parents know or should have known that a caregiver is abusing their child and employs him/her anyway, the parents are liable for the damages suffered by the child.

Scott v. Pacific West Mountain Resort

119 Wash.2d 484

834 P. 2d 6 (1992)

Parents Cannot Waive the Rights of Their Minor Child

"Parents can waive their own rights, but, not their minor child's."

Mahnke v. Moore

197 Md. 61

77 A. 2d 926

77 A. 2d 923 (1951)

A Minor's Right to Sue Parents for Abandonment and Cruel and Inhumane Treatment

"When...the parent is guilty of acts which show complete abandonment of the parental relation, the rule giving him immunity from suit by the child, on the ground that discipline should be maintained in the home, cannot logically be applied, for when he is guilty of such acts he forfeits his parental authority and privileges, including his immunity from suit... Justice demands that a minor child shall have a right of action against a parent for injuries resulting from cruel and inhuman treatment or for malicious and wanton wrongs."

In 2002, a great article regarding case law and children's rights was published in the American Journal of Law and Medicine. Click here to read it.

For additional information, precedents, and legal arguments please see www.heal-online.org/teenrights.htm and search our site for lawsuits against programs. There are many available through our website against Bethel Boys Academy, WWASPS, Provo Canyon School, CEDU, and more. All of this will aid your attorney in the fight for justice for you and/or your family.

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