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The Honorable Ken Schubert

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SEATTLE CHILDREN'S HOSPITAL., a)
Washington nonprofit corporation,)
)
) Plaintiffs,)
)
 vs.)
)
 KING COUNTY, a Washington municipal)
corporation; WASHINGTON STATE)
DEPARTMENT OF HEALTH; and KING)
BROADCASTING COMPANY and its affiliates,)
d/b/a KING 5, a Washington corporation,)
)
)
 Defendants.)
)

No. 19-2-26296-6 SEA
DECLARATION OF DR. JEFF
DUCHIN

I, Jeff Duchin, declare as follows:

1. I am over eighteen years of age, competent to testify and have personal knowledge of the matters herein.

2. I am a medical doctor trained in internal medicine, and subspecialty trained in infectious diseases. I received my medical epidemiology training at the US Centers for Disease Control and Prevention.

3. For the past 5 years, I have served as the Health Officer of Public Health – Seattle & King County, under the delegated authority of our Director, Patty Hayes.

1 4. Since 1998, I have also served as Chief of the Communicable Disease
2 Epidemiology & Immunization Section of Public Health.

3 5. Further, I currently sit on the CDC's Board of Scientific Counselors, Office of
4 Infectious Diseases, and on the Board of Directors for the Infectious Disease Society of America.

5 6. As the Health Officer for Public Health, it is my job to take action as necessary to
6 maintain public health within King County, to control and prevent the spread of any dangerous,
7 contagious or infectious disease, and to "inform the public as to the causes, nature, and
8 prevention of disease and disability and the preservation and improvement of health
9 within...[the] jurisdiction....." RCW 70.05.070(2) - (4)

10 7. Informing the public about health risks is an important part of my role as the
11 Health Officer of our department, Public Health.

12 8. In Washington State, hospitals are required to report to the local health
13 department outbreaks of diseases that occur within their facilities, including those caused by
14 aspergillus. Hospital infection outbreaks are a "notifiable condition".

15 9. After learning of an outbreak in a medical facility, we at Public Health gather
16 information in order to learn the cause and extent of the outbreak, evaluate any investigation and
17 response measures the facility has already instituted, determine whether the facility should
18 undertake additional measures, make recommendations as needed, and provide consultation to the
19 facility related to patient communications.

20 10. We view these activities as an investigation of a notifiable condition, but one in
21 which we seek to assist the facility in a cooperative manner to control the outbreak and prevent a
22 reoccurrence.

1 11. We often work closely with and include our counterparts in the Washington
2 Department of Health, Office of Communicable Disease Epidemiology, which assists in the
3 investigation of individual cases and infection outbreaks.

4 12. We also inform the Washington Department of Health's Health Systems Quality
5 Assurance (HSQA) Division of healthcare facility-associated outbreaks that we investigate.

6 13. The HSQA regulates hospitals and other health care facilities and enforces the
7 applicable regulations.

8 14. Public Health does not regulate hospitals or other health care facilities.

9 15. The purpose of our healthcare-associated investigations at Public Health is to
10 protect the public by identifying outbreaks and other cases of notifiable conditions, providing
11 guidance and assistance to healthcare facilities as necessary in investigating and remedying the
12 outbreak and in preventing a reoccurrence.

13 16. In 2018, with my colleague, Dr. Meagan Kay, we investigated three cases of
14 aspergillus infection reported by Seattle Children's Hospital.

15 17. During that period, we were in contact with Dr. Danielle Zerr of Children's staff.

16 18. Dr. Kay and I assisted Children's and concluded our work in late August 2018.

17 19. In May 2019, I learned from Dr. Kay of a of a new aspergillus case at Children's.

18 20. Dr. Kay contacted Dr. Zerr by e-mail on May 20, 2019 to gather information
19 about the new case and cc'ed me.

20 21. Dr. Kay asked Dr. Zerr for "an update on your findings and next steps, including
21 environmental and clinical test results, # patients affected, if any?"

22 22. Dr. Zerr responded quickly and provided us with the information Dr. Kay had
23 asked her for.

1 23. I then e-mailed Dr. Zerr and offered to facilitate a consultation with the CDC.

2 24. I understand that this e-mail exchange appears (in reverse order) in Bates # KC-
3 SCH000034 to KC-SCH000032 in this litigation.

4 25. Public Health does not have air handling experts on staff or experts on
5 environmental aspergillus, so we rely on the CDC for that expertise.

6 26. We at Public Health wanted to understand the extent of the problem, ascertain any
7 related relevant information, evaluate any response measures that Children's had already
8 instituted, and determine whether any additional measures might be useful. These are the steps
9 we typically undertake in outbreak investigations.

10 27. Via telephone calls with Dr. Zerr, we learned that Children's was already
11 conducting an aggressive investigation.

12 28. Dr. Zerr told us of the new case which they had recently identified, along with
13 recent environmental cultures that showed aspergillus in several of their operating rooms.
14 Subsequently, Children's identified two additional cases in late May 2019.

15 29. After consultation with her colleagues at Children's, Dr. Zerr accepted our offer
16 to facilitate assistance with the investigation from the CDC.

17 30. On July 15 – 16, 2019, Dr. Kay and I attended a meeting and site visit with
18 Children's staff, including Dr. Zerr, and representatives of the Washington Department of
19 Health, and the CDC.

20 31. At the start of the first day of the CDC meeting and site visit, hospital leaders at
21 Children's announced to us all that Children's viewed the meeting as part of their quality
22 improvement or QI process and that they considered the information that they were sharing to be
23 protected by the QI privilege.

1 32. In the course of approximately 20 years of conducting public health disease
2 investigations, this was the first time that a healthcare facility shared information relevant to the
3 investigation while also declaring it to be QI privileged.

4 33. The site visit and information sharing continued for two days with robust
5 discussions about the outbreak, Children's investigation and control measures to date, and
6 possible additional measures that could be taken to reduce the risk of aspergillus as much as
7 possible.

8 34. In subsequent phone calls related to the investigation, Dr. Zerr again told us that
9 Children's viewed the discussions as part of their QI process.

10 35. Information shared at the two-day July CDC site visit meeting and in subsequent
11 telephone calls were QI in Children's view but part of a public health investigation about a
12 notifiable condition to us at Public Health.

13 36. The CDC subsequently released a 7-page summary technical assistance report,
14 assessing aspergillus at Children's, the hospital's mitigation efforts to date, and recommending
15 additional mitigation efforts. The CDC report contains information shared at the two-day July
16 CDC site visit meeting.

17 37. I understand that Public Health recently provided a copy of the CDC report to
18 Children's counsel, along with other investigation-related documents, and that it is designated as
19 Bates numbers KC_SCHO003366-72.

20 38. On behalf of Public Health, I ask the court to rule that the CDC report, and our
21 other investigation-related documents, are records of a public health investigation, and therefore
22 not privileged.

1 CERTIFICATE OF FILING AND SERVICE

2 I hereby certify that on February 21, 2020, I electronically filed the foregoing document
3 with the Clerk of the Court using the KCSC E-Filing System.

4 On the same day, I also caused a copy of the foregoing document to be served on the
5 following parties in the manner noted below:

6 Adrian U. Winder, WSBA No. 38071
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15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct.

17 DATED this st 21 day February of 2020 at Seattle, Washington.

19 By: 
20 MARGARET FLICKINGER
21 Paralegal, Civil Division
22 Email: maggie.flickinger@kingcounty.gov