

HONORABLE JOHN C. DOUGHENOUR

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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY)

COMMISSION,)

Plaintiff,)

vs.)

AMERICAN SEAFOODS CO.,)

Defendant)

CONNIE L. MARTIN)

Plaintiff in Intervention)

Case No : C00-1596C

PLAINTIFFS' MOTION IN LIMINE TO
EXCLUDE THE TESTIMONY OF DR.
PHILLIP LINDSAY



CV 00-01596 #00000046

Plaintiffs Connie Martin and EEOC hereby move the Court pursuant to Federal Rules of Evidence 103(c), 104(c), and *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984), for an order in limine forbidding the defendant at trial from causing or permitting the jury to hear, read or otherwise become aware of the testimony or opinions of Dr. Phillip Lindsay in any way, whether through the testimony of defendant's witnesses, in cross examination of plaintiffs' witnesses, in colloquy or argument, or otherwise. In the alternative, plaintiffs' move that Dr. Lindsay's testimony be limited, to exclude his opinions as indicated below.

ORIGINAL

PLAINTIFFS' MOTION IN LIMINE
Re: Dr. Lindsay

1

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206-860-0260 Fax: 206-860-0269

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RELEVANT FACTS

Dr. Phillip Lindsay was retained by defendant American Seafoods Company (ASC) to perform a psychological examination, pursuant to Fed R Evid. 35, of plaintiff Connie Martin. The examination was performed on September 18, 2001. Dr. Lindsay is a physician of internal medicine and psychiatry. Dr. Lindsay's report is attached to this Motion. Dr. Lindsay reports the reason for the referral.

Ms. Martin was referred due to her lawsuit against American Seafood Company with allegations of wrongful termination *I have been asked to evaluate causation and damages issues in this case.*

Dr. Lindsay Report, p. 1 (emphasis supplied).

Dr. Lindsay's report indicates that he reviewed the following records:

Howard Carroll (counselor) treatment notes and deposition;
Pamela Baglien, Ph.D. treatment notes and deposition;
"The summary judgment motion of August 7, 2001. The memo in support of the summary judgment motion of August 7, 2001, in which it was noted that on January 5, 1999, Ms. Martin's scheduled (sic) an abortion for January 15, 1999, in Missoula, Montana. Therefore, Ms Martin could not have reported to work in Seattle on January 14, 1999."

Dr. Lindsay report, page 5 (emphasis supplied)

Defendant's Motion for Summary Judgment and Memorandum indeed were filed August 7, 2001. It is apparent that Dr. Lindsay reviewed and relied upon only defendant's motion for summary judgment and memorandum and did not review plaintiff's response to that motion. If he had reviewed plaintiff's Opposition to this motion and supporting materials, he no doubt would have noted the factual disputes associated with this motion.¹

¹ The Court denied Defendant's Motion by Memorandum Decision and Order dated October 12, 2001

1 Dr. Lindsay does not specify what aspect of "causation" defense counsel requested he
 2 evaluate. However, in his report, Dr. Lindsay inserts himself into the role of trier of fact in this
 3 case and opines:

4 [Connie Martin] alleges that the loss of her job precipitated not only the depression but
 5 also the decision to have an abortion in January 1999. She presented to me that she and
 6 her boyfriend had wanted to have a child, that she had wanted to get pregnant and get
 7 married, and that, but for the loss of her job, all of these things would have likely been
 8 unable (sic) to occur. She indicated that because of economic constraints she made an
 appointment for an abortion because she would have missed an entire year of work on the
 boats had she not had the abortion, *as if to say that the loss of her job triggered an
 economic crisis that led to the decision for the abortion.*

9 *Further discovery has revealed another reality. that she indicated to Audrey Ann*
 10 *Triantafyllidis that in December 1998 she was considering getting an abortion, and she*
 11 *scheduled her abortion for January 15, 1999, on January 5, 1999.² The notes indicate that,*
 12 *"Patient is requesting an abortion. She is clear in her process of decision-making. She*
 13 *cites, age, relationship status, lack of desire to parent as factors in her decisions. She*
reports no moral conflict with abortion." In addition, a secondary gain factor is evident
when she told Howard Carroll that she had filed suit against the company and expected
to receive a settlement.

14 It is also apparent that she was having multiple stressors in and around the time of
 15 January 1999, including ambivalence about her relationship with her boyfriend Craig, her
 16 awareness of her drinking too much and how it was affecting her, and economic
 problems of her own as well as those of her boyfriend Craig.

17 *It is my opinion with reasonable medical certainty that she had already made the*
 18 *decision about the abortion in December of 1998, confirmed it with scheduling an*
 19 *abortion in a phone call of January 5, 1999, and that she then retrospectively*
 20 *misattributed her depression to be related to the loss of her job rather than to the*
 21 *abortion itself. Support for this is that the other episode of depression that occurred in*
 22 *1986 was also triggered by an abortion.*

23 Dr. Lindsay Report, p. 7. (emphasis supplied).

24 ///

25 ///

ARGUMENT

Federal Rule of Evidence 702 provides:

Testimony by Experts

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

If the evidence is within the jury's knowledge, expert opinion testimony may be excluded by the court. *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 666 F.2d 393 (9th Cir. 1982). The court may exclude expert testimony utilized as a tactic to introduce hearsay or information not disclosed during discovery. *Hutchinson v. Groskin*, 917 F.2d 722 (9th Cir. 1991). Legal opinion or testimony on applicable principles of law may also be excluded. The judge, not expert witnesses, will advise the jury on the law. *Marx & Co. v. Diner's Club, Inc.*, 550 F.2d 505 (2d Cir. 1977).

In a case directly on point, *Nichols v. American National Insurance Co.*, 154 F.3d 875 (8th Cir. 1998), a former employee sued her former employer for sexual harassment and constructive discharge. Nichols sought damages for emotional distress and offered the testimony of a licensed psychologist, Dr. Tyndall, in support of those damages. Dr. Tyndall concluded that Nichols developed Post Traumatic Stress Disorder and suffered from low grade depression and generalized anxiety disorder. In her opinion, the sexual assault that Nichols experienced by her co-worker was a major traumatic event that could have precipitated her depression. Dr. Tyndall was not permitted to mention this basis for her diagnosis at trial.

² As Dr. Lindsay did not actually review the complete discovery in this case, including the deposition of Ms

American National also offered expert testimony from a psychiatrist, Dr. Pribor, who conducted an independent evaluation and interview of Nichols. One of the central issues on appeal was whether Dr. Pribor was permitted to testify, over plaintiff's objections, beyond the proper scope of expert opinion by testifying about plaintiff's veracity and credibility. Dr. Pribor testified that Nichols had "poor psychiatric credibility". She defined this as "poor ability to assess the cause of her own psychological state or to report her psychological symptoms accurately." Dr. Pribor also gave her opinion that "Nichols had recall bias and that her statements were affected by secondary gain and malingering." *Id.* at 882. Dr. Pribor also testified that Nichols' violated her religious beliefs by having an abortion. *Id.* at 885.

On review, the Court reversed and remanded for a new trial. The Court relied upon the reliability factors set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94, 113 S. Ct. 2786, 125 L.Ed. 2d 469 (1993):

- (1) whether the reasoning or methodology underlying the testimony can be and has been tested,
- (2) whether it has been subjected to peer review and publication,
- (3) what the known or potential rate of error is, and
- (4) the degree of acceptance within the relevant scientific community.

citing *Gier v. Educational Service Unit No.*, 16, 66 F.3d 940, 943-44 (8th Cir. 1995) (upholding exclusion of expert psychiatric testimony under *Daubert*).

The relevancy of the testimony depends upon whether it can properly be applied to assist the trier of fact to decide facts in issue. Such evidence is not helpful if it draws inferences or reaches conclusions within the jury's competence or within an exclusive function of the jury.

The challenged testimony impugning Nichols' psychiatric credibility and suggesting that recall bias, secondary gain, and malingering had influenced her story was not a proper subject of expert testimony under Fed. R. Evid. 702. The record does not show that these

Triantifillides, his reference to "further discovery" actually refers to his review of defendant's summary judgment papers.

theories met the *Daubert* criteria, and in her testimony Dr. Pribor sought to answer the very question at the heart of the jury's task – could Nichols be believed? She testified that she needed “to interpret and weigh” what Nichols said or she could “get a very skewed and inaccurate view of what actually happened” and that Nichols was a malingerer motivated by financial gain. *Opinions of this type create a serious danger of confusing or misleading the jury, see Fed. R. Evid. 403, causing it to substitute the expert's credibility assessment for its own common sense determination.* Dr. Pribor was permitted to comment on Nichols' reliability “in the guise of a medical opinion” and this “impressively qualified expert's stamp” of untruthfulness on Nichols' story went beyond the scope of proper expert testimony.

Because “[e]xpert evidence can be both powerful and quite misleading,” a trial court must take special care to weigh the risk of unfair prejudice against the probative value of the evidence under Fed. R. Evid. 403. It is plain error to admit testimony that is a thinly veiled comment on a witness' credibility, ...”.

Nichols, 154 F.3d at 883-84 (citations omitted, emphasis supplied).

Dr. Lindsay's opinions and conclusions are almost identical to those offered by the defense psychiatrist in *Nichols*. Like Dr. Pribor in *Nichols*, Dr. Lindsay has opined that Ms. Martin has a “secondary gain factor”; that “further discovery has revealed another reality”³; and that “she [Martin] had already made the decision about the abortion in December of 1998, confirmed it with scheduling an abortion in a phone call of January 5, 1999, and that she then retrospectively misattributed her depression to be related to the loss of her job rather than to the abortion itself”. See Dr. Lindsay's report, p. 7. Here, as in *Nichols*, Dr. Lindsay is impugning plaintiff Martin's “psychiatric credibility” by suggesting that “secondary gain” has influenced her, and by his statement that “[f]urther discovery has revealed another reality”. Dr. Lindsay has gone so far as to state his self-serving opinion “with reasonable medical certainty” that Ms. Martin,

had already made the decision about the abortion in December of 1998, confirmed it with scheduling an abortion in a phone call of January 5, 1999, and that she then

³ Again, Dr. Lindsay accepts defendant's version of the facts as true without consideration of the testimony of plaintiff's witnesses or review of plaintiff's summary judgment papers

1 retrospectively misattributed her depression to be related to the loss of her job rather than
2 to the abortion itself.

3 Dr. Lindsay report, p. 7.

4 Dr. Lindsay does not specify what medical evidence he relied upon to reach his opinion
5 "with reasonable medical certainty". No medical specialty, including psychiatry, permits a
6 physician to determine disputed issues of fact including what an individual was thinking or
7 deciding on a particular occasion three years earlier. While Dr. Lindsay's review of his client's
8 ASC's Motion for Summary Judgment no doubt assisted him in his "medical" conclusion, his
9 opinion is improper and inadmissible.

10 The Eighth Circuit found in *Nichols* that Dr. Pribor's testimony regarding plaintiff's
11 "psychiatric credibility" and motivation "denied Nichols the 'right to untainted jury deliberations
12 and . . . a verdict which is based on admissible evidence'" *Nichols*, 154 F.3d at 890. Likewise,
13 admission of Dr. Lindsay's testimony in this case would deny plaintiff Martin the right to a fair
14 trial, untainted jury deliberations and a verdict based on admissible evidence.

15 Conclusion

16 For the above cited reasons, Plaintiffs respectfully urge this Court to exclude the testimony
17 and report of Dr. Phillip Lindsay in their entirety. In the alternative, Plaintiffs request that Dr.
18 Lindsay's testimony be strictly limited to include only his diagnoses of major depressive disorder,
19 recurrent, and alcohol dependence. Furthermore, if Dr. Lindsay is permitted to testify, Plaintiffs
20 request that the Court strictly limit his testimony to exclude any references to his opinions regarding
21 Plaintiff Martin's "psychiatric credibility", motivation (including 'secondary gain'), decision-
22 making, causation, and any other matter that may comment on her reasons to proceed with an
23 abortion on January 15, 1999, and the factors that contributed to that decision. Finally, pursuant to a
24
25

1 previous Motion in Limine filed by Plaintiffs, Dr. Lindsay should not be permitted to comment
2 upon a previous abortion in 1986


3 Respectfully submitted this 24 day of Oct, 2001.

4 Nevin, Herzfeld, Benjamin & McKay, LLP
5 Scott McKay

A. Luis Lucero, Jr.
Regional Attorney

6 Law Office of Reba Weiss

Kathryn Olson
Supervisory Trial Attorney

7
8 

9 By: REBA WEISS

SCOTT MCKAY

10 Attorneys for Plaintiff in Intervention
11 Connie Martin



By: CARMEN FLORES
Trial Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of October, 2001, I caused a true and correct copy of the foregoing document to be:

☐ mailed

☐ faxed

☐ hand delivered

☒ legal messenger

to: Jay H. Zulauf, John Chun, Mundt, MacGregor, 999 3rd Avenue, Suite 4200, Seattle, WA 98104-4082.


Reba Weiss

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WONDER WORKS

INDEPENDENT PSYCHIATRIC EXAMINATION

PATIENT'S NAME: Connie Martin

DATE OF EVALUATION: September 18, 2001

IDENTIFICATION: A 45-year-old white female, single, highway flagger, living in Salmon, Idaho.

REFERRAL SOURCE: Jay Zulauf and John Chun, defense attorneys

REASON FOR REFERRAL: Ms. Martin was referred due to her lawsuit against American Seafood Company with allegations of wrongful termination. I have been asked to evaluate causation and damages issues in this case.

PRESENT ILLNESS: Ms. Martin is referred for independent psychiatric examination.

PROBLEM #1: Major depressive disorder, recurrent.

Ms. Martin had an episode of depression when having relationship difficulties and an abortion in 1986 while living in Ketchum, Idaho. She was diagnosed as having depression and had significant weight gain and weight loss and saw a physician there who prescribed an antidepressant that helped. She recalls her depression lasting for two to three months and recalls the antidepressant gave her a side effect of insomnia.

She stated that she has been depressed for years and, on clarification, indicated that her current depression began in January 1999 that she related to losing her job and having an abortion. In her November 15, November 22, and November 29 visits with Howard Carroll, M.Ed. in Salmon, Idaho, she cited her pregnancy, abortion, her boyfriend's unfaithfulness and deceitfulness as stressors. In her visits with Pamela J. Baglien, Ph.D., a psychologist in Salmon, Idaho, from November 29, 2000 to March 5, 2001, she was thought to be depressed and cited being in a relationship that she knew she should have gotten out of some time back, being in the middle of a wrongful termination suit, having a bad experience with contractors coming to work on her house and bringing too large a piece of equipment, and breaking a bridge. She cited being stood up by her boyfriend as an additional stressor.

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Dr. Baglien also noted her excessive drinking of alcohol. She was also concerned about a cabin that had been burned down on her property. Dr. Baglien diagnosed her with adjustment disorder with depressed mood but agreed that she could have had a diagnosis of major depression. Mr. Carroll diagnosed her as having major depression.

Her symptoms of depression have included self-hatred, inactivity, anhedonia, social withdrawal, depressed mood, a sense of emptiness, excessive guilty thoughts, excessive self-criticism, anergia, crying spells, disinterest, diminished appetite but a weight gain of 12-14 pounds and then a weight loss of 12-14 pounds, insomnia, a sense of worthlessness and helplessness but not hopelessness, thoughts of giving up, passive death wishes, suicidal thoughts, and at times suicidal plans involving ropes, guns, and knives (all of which she has at home). There is no known family history of depression and no history of manic symptoms. She was briefly tried on Zoloft in December 2000 and then on Wellbutrin in January 2001. She stopped and then again started the Wellbutrin in March of 2001 but has not continued it. She has not had further psychological or medical follow-up noted since March 5, 2001, and is not now taking an antidepressant despite the significant continuation of her symptoms. When seen on November 15, 1999 by Mr. Carroll, he performed a Beck Depression II Inventory on Ms. Martin, and the score was 26 which is a moderate level of depression. She appears to have similar symptoms currently as at that time. She reports repetitious voices in her head during the period of time that she has been depressed.

PROBLEM #2: Alcohol dependence.

She began to have a problem with binge drinking in 1992, although was drinking significantly since even 1990 as she would come and go off the fishing boats. She described that time as a "party." She also would occasionally binge-drink at home since 1990, but the pattern worsened in 1992 and has continued. She had only occasional alcohol overindulgence before 1990 with an occasional hangover. She currently uses two to five or six beers per day after getting off work and finds that it relaxes her, makes her feel numb in the head. She states that she has abused alcohol in binges, would stay at a bar too late, and sometimes have to have someone drive her home. She occasionally has amnesia and at times ataxia. She recalls falling off the barstool twice on one occasion, followed by a friend driving her home.

She was diagnosed as having alcohol dependence by Howard Carroll, M.Ed. in 1999. He thought that she met more than the minimum criteria for alcohol dependence and that she had a minimal support network and thought that perhaps disulfiram might be useful. He noted that she had not done well in Alcoholics Anonymous and was not motivated for an in-patient stay. In addition, she had no insurance coverage. She was noted to have tolerance using larger amounts than intended, having a desire or efforts to cut down, and having a reduction in her social and occupational and recreational activities as a result of her drinking. Dr. Baglien also obtained a history that she was drinking more than she should.

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PAST MEDICAL HISTORY:

Diseases: See present illness.

Surgeries: She had a prior abortion in 1986

Habits: Alcohol: see present illness Tobacco: she smokes one pack of cigarettes per day.

FAMILY HISTORY:

Her father died of myocardial infarction. A younger brother and a paternal grandfather had alcoholism.

PERSONAL HISTORY:

Ms. Martin was born on August 15, 1956 in San Antonio, Texas (Lackland Air Force Base). She grew up in Idaho Falls. Her father died at age 58 in 1989 and had hypertension and died of a myocardial infarction. He was a physical therapist and very involved in sports and umpired and refereed and was well loved. Her mother is 66, alive and well in Corvallis, Oregon. She views her mother as smart, beautiful, and she runs a home health care business. Her relationship with her mother has been more superficial. Ms. Martin was the third of six children. She has a 50-year-old sister Cindy, a 47-year-old brother Chuck, a 44-year-old sister Carol, a 42-year-old sister Collette, and a 40-year-old brother Craig.

She described her childhood as one in which she felt "overlooked" but that that had an advantage in that she got less blame when things went wrong. They had a brick house, two to a room, and went to church on Sunday.

She went to Idaho Falls High School, graduating in 1974, and describes herself as a good student but does not recall her G.P.A. She went to one semester at Boise State University but could not continue for financial reasons. She had thought of forestry as a career.

She began her work at about age 12 when she did swimming pool work and taught swimming to younger children. She was with the U.S. Forest Service for 15 years with the fire crew and working timber. She then worked nine years on fishing boats, five years of which was as a cook. She has also worked driving a truck for a mining company and currently works as a highway flagger since March of 2001. She indicated that she had three more weeks of that work. It was recommended that she take the Post Office test and is applying for other work as well.

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She has never married although she has had a series of boyfriends, two of whom lived with her for about two years. She reflected that she felt sad about a relationship with Craig ending. However, they still have some contact. Howard Carroll, M.Ed. viewed her pattern of relationships as a series of dysfunctional relationships and that she often struggled to maintain boundaries with her relationships with men. He viewed the history of her relationships as being one that was "somewhat flawed."

She described her activities as bicycling, river rafting, and planting trees. She has a home that she has owned since 1992 and lives on three acres of land. She does very little reading.

She describes herself as "pretty content," reliable, honest, trustworthy, and capable, but always slightly pessimistic, half dyslexic, resilient, but thinks of herself as "stupid" and a "loser."

She described the recent addition of stressors as the bridge leading to her property which was broken a year and a half ago, and this has been a problem since January of 2000. As a result, she has to go across her neighbor's property to access her own, and while the neighbor has been gracious, it has been an embarrassment and frustration for her. In addition, in the year of 2000, her guest cabin burned down when a friend who was staying there used a propane torch to thaw out the pipes. Other stressors included her boyfriend, Craig, going out on her in July and again in September of 1999. As a result of the September infidelity, she moved his things out. When asked to look to the future as to what she wants, she indicated it would be having a job she could enjoy.

REVIEW OF SYSTEMS:

Positive in that she has some presbyopia requiring reading glasses. She has had occasional alterations of heartbeat and weight loss.

MENTAL STATUS EXAMINATION:

Revealed a middle-aged, white female. Her affect was sad and constricted, and she was frequently tearful. She described derealization and amnesia with alcohol abuse. She was able to retain 3/3 items in three minutes, and her concentration was normal as manifested by ability to spell "world" backwards. She was oriented in all four spheres. Her recent memory was good. Her judgment seemed intact. There was a tendency for her to reverse numbers. She talked about feeling paranoia when on the boat "American Eagle" in the year 2000. She felt that the whole crew was talking about her negatively.

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RECORDS REVIEWED:

Howard Carroll's treatment notes of November 15, 1999, November 22, 1999, and November 29, 1999. He diagnosed alcohol dependence and major depression and on November 15, 1999 noted her beady eye II to be 26.

Pamela Baglien, Ph.D.'s treatment notes of November 29, 2000, December 4, 2000, December 12, 2000, January 26, 2000, February 16, 2000, and March 5, 2001. She diagnosed adjustment disorder with depressed mood and recommended antidepressant treatment which was done by Suzanne Nebecker and Dr. Gardner in the form of Zoloft and Wellbutrin. She also noted her alcohol problem.

The deposition of Howard Carroll, June 21, 2001, in which he discussed her alcohol and depression problems as well as her multiple stressors and noted his observation, "has history of working on fishing boats in Alaska, was denied due to her pregnancy, has filed suit against the company and expects to receive settlement. He reviewed additionally the stressors including the unemployment, boyfriend's house burning down, his moving in, pregnancy termination, and the break-up of their relationship. He also talked about her alcohol dependence and that alcohol is a depressant. He opined that the loss of the relationship with Craig Baxter was a stressor. He also viewed Connie Martin as codependent, that she had a series of dysfunctional relationships with men, and that she was struggling to maintain boundaries with men.

Pamela J. Baglien, Ph.D., deposition of June 22, 2001. She noted that Ms. Martin was seriously depressed, had stressors including unemployment and relationship problems, legal problems, damage to her property, and noted that she had been drinking more. She noted a cabin on Ms. Martin's property having been burned and the stormy relationship with Craig Baxter. She talked about diagnosis of adjustment disorder with depressed mood but also indicating that she might justify a diagnosis of major depression. She speculated that she could have been given that diagnosis but did not provide any foundation for that opinion.

The summary judgment motion of August 7, 2001. The memo in support of the summary judgment motion of August 7, 2001 in which it was noted that on January 5, 1999, Ms. Martin's scheduled an abortion for January 15, 1999 in Missoula, Montana. Therefore, Ms. Martin could not have reported to work in Seattle on January 14, 1999. In the background comments, it was noted, "ASC is a Seattle-based fishing company. Connie Martin was scheduled to work as a cook aboard an ASC fishing vessel, the *KATIE ANN*, during the 'A' fishing season of 1999."

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On December 21, 1998, ASC sent a memo to its crew members including Ms. Martin, indicating where and when to report to work for the 1999 Al season. It was also noted that on or about December 28, 1998, Ms. Martin learned that she was pregnant. That month, Ms. Martin began to consider terminating her pregnancy. She scheduled an abortion for January 15, 1999 at the Blue Mountain Clinic in Missoula, Montana. Ms. Martin testified that she had decided to terminate the pregnancy when she called the abortion clinic. Because she had scheduled her abortion for January 15 in Missoula, Ms. Martin was unable to report for work in Seattle by January 14. ASC placed someone other than Ms. Martin in the cook's position aboard the *KATIE ANN*. Ms. Martin kept her abortion appointment and, on January 15, 1999, she had her pregnancy terminated. Later that year, on November 15, 1999, Ms. Martin filed a charge of discrimination with the EEOC, alleging a violation of title VII on the basis of pregnancy.

DIAGNOSTIC IMPRESSION AND PROBLEM LIST:

Axis I: 1. Major depressive disorder, recurrent.
 2. Alcohol dependence.

Axis II: No diagnosis.

Axis III: No diagnosis.

Axis IV: Abortion, end of relationship with boyfriend.

Axis V: GAF 35.

OPINIONS AND RECOMMENDATIONS:

What is clear is that Ms. Martin has major depressive disorder, recurrent, and that she marks the onset of her current episode beginning in January of 1999. What is also clear is that she has had alcohol dependence for many years, probably at least a decade, and that it has resulted in substantial social, occupational, and recreational limitations, that she has used larger amounts than intended, that she has had a desire or made repeated efforts to cut down unsuccessfully, and that she has continued her alcohol use despite it causing her significant symptoms and problems. What is also clear is that she has had serially a set of dysfunctional and codependent relationships with men who also had alcohol abuse problems. It is likely that her alcohol abuse has played a predisposing role to her episodes of depression. She clearly has a significant problem with self-esteem that likely affects her occupational and social relationships.

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Against this backdrop, she alleges that the loss of her job precipitated not only the depression but the decision to have an abortion in January 1999. She presented to me that she and her boyfriend had wanted to have a child, that she had wanted to get pregnant and get married, and that, but for the loss of her job, all of these things would have likely been unable to occur. She indicated that because of economic constraints she made an appointment for an abortion because she would have missed an entire year of work on the boats had she not had the abortion, as if to say that the loss of her job triggered an economic crisis that led to the decision for the abortion.

Further discovery has revealed another reality: that she indicated to Audrey Ann Triantafillidis that in December 1998 she was considering getting an abortion, and she scheduled her abortion for January 15, 1999 on January 5, 1999. The notes indicate that, "Patient is requesting an abortion. She is clear in her process of decision-making. She cites age, relationship status, lack of desire to parent as factors in her decision. She reports no moral conflict with abortion." In addition, a secondary gain factor is evident when she told Howard Carroll that she had filed suit against the company and expected to receive a settlement.

It is also apparent that she was having multiple stressors in and around the time of January 1999, including ambivalence about her relationship with her boyfriend Craig, her awareness of her drinking too much and how it was affecting her, and economic problems of her own as well as those of her boyfriend Craig.

It is my opinion with reasonable medical certainty that she had already made the decision about the abortion in December of 1998, confirmed it with scheduling an abortion in a phone call of January 5, 1999, and that she then retrospectively misattributed her depression to be related to the loss of her job rather than to the abortion itself. Support for this is that the other episode of depression that occurred in 1986 was also triggered by an abortion.

Her treatment has been minimal and her antidepressant trials have themselves been terminated prematurely, and she continues to have a moderate level of depressive symptoms that need appropriate treatment. She also needs alcohol treatment. The prognosis for recovery from her depression remains poor while she continues her alcohol dependence.



PHILIP G. LINDSAY, M.D.

bh