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| SUNRISE DETOX II, LLC, | SUPERIOR COURT OF NEW JERSEY LAW DIVISION, MERCER COUNTYDOCKET NO. MER-L-2465-12 |
| Plaintiff, |  |
| vs**.** | CIVIL ACTION |
| SIMONE INVESTMENT GROUP, LLC*, et al.* | **CERTIFICATION OF LESLIE HENDRICKSON, Ph.D.** |
| Defendants. |  |

Leslie Hendrickson, being of full age, hereby certifies as follows:

1. I am a consultant with expertise in health care and substance abuse treatment. I am submitting this Certification in connection with Plaintiffs’ reply papers in further support of their application for injunction relief in this lawsuit. I have also served as a consultant for Sunrise and am familiar with certain aspects of its business, management, and operations.
2. This Certification will address certain statements made in the Certification of Manuel Guantez, Psy.D., LCADC, which was submitted on behalf of Defendants.

## **Background**

1. By way of background, I earned an M.A. and Ph.D. in Sociology-Research Methods from the University of Oregon and have spent over 30 years in Medicaid and Medicare related health matters, including serving as Senior Medicaid Budget Analyst, Assistant Commissioner for the New Jersey Department of Health and a Visiting Professor at the Rutgers Center for State Health Policy.
2. I have performed approximately 90 needs assessment analyses studying whether a particular location, geographical region, or state would be appropriate for a specific type of health program. This location analytical work has included studies of assisted living programs, nursing homes, sub-acute bed expansions, Alzheimer programs, senior living apartments, methadone treatment programs, and both residential and outpatient substance abuse programs.
3. Since leaving state government, over the past 15 years my work has encompassed residential/inpatient treatment facility issues at local, state and national levels. For example, I have participated in state-wide assessments of mental health and substance abuse programs in Alaska, Oregon, Texas, Washington and West Virginia. These state-wide assessments are typically done for the legislature or Governor’s office. Additionally, I have worked on cost and reimbursement issues for behavioral health programs such as a study of substance abuse treatment provider cost reports for the Florida Department of Children and Families, provider network analyses including behavioral health providers for the Colorado Division of Insurance, a study of the impacts of privatizing the Utah State Mental Health Hospital for the Utah Legislature, a study of Medicaid behavioral health reimbursement rates for the state of Arkansas, and a cost analysis of Medicaid expansion options for the state of Utah. My post state government experience includes a year as a Visiting Professor at the Rutgers Center for State Health Policy.
4. In addition, I have presented testimony, certifications, or depositions on approximately eighteen different occasions for state legislative committees, local zoning and planning boards, administrative law judges, or Federal District Courts.
5. A copy of my most recent C.V. is attached hereto as Exhibit A.

## **Inaccuracies in Dr. Guantez’s Certification**

1. Dr. Guantez makes certain statements about Sunrise and the substance abuse treatment business that are not correct.
2. Contrary to Dr. Guantez’s statements, the detoxification business model developed by Sunrise is rare if not unique.
3. While Sunrise has developed other programs, including, for example, Intensive Outpatient Programs, I will focus my comments on the detoxification programs.
4. The Sunrise detoxification business model has a combination of five characteristics that distinguish it from other substance abuse business models:

#### It historically provided only one service, detoxification;

#### The patient marketplace consists of individuals that have private health insurance, a large addressable market;

#### The program size is considerably larger than other detoxification programs;

#### Within detoxification, it provides broad medical services; and

#### The intent was to build a business that could be replicated in multiple states.

1. First, the Sunrise detoxification business model provided one general service, medical detoxification. Detoxification is a precursor or gateway to treatment since residential and outpatient programs will not generally accept someone who is still using a substance. The contemporary substance abuse treatment business environment is extraordinarily competitive as the opiate epidemic has stimulated considerable business development activities. The focus on providing a single medical service has substantial competitive business advantages for Sunrise since it is **not** in competition with treatment programs and can present the business argument that it is a potential referral source for treatment providers. This model facilitates relationships and referral networks especially in states like New Jersey where existing treatment programs will actively lobby with local and state officials to prevent the development of a competitive program.
2. Providing only detoxification is a rare component of a business model. Statistics of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) show that the Sunrise emphasis on only detoxification is almost unique. Each year SAMHSA conducts the National Survey of Substance Abuse Treatment Services (N-SSATS).
3. The table below indicates that, in 2015, 13,873 separate facilities responded to its N-SSATS Survey. An analysis of the responses reveals that only 24 programs, about one-sixth of one percent, were free-standing, for-profit programs that provided only detoxification.[[1]](#footnote-1) Of these 24, some are existing Sunrise programs so the true percentage is lower. A business model that is different from 99.85% of other programs is a rare if not unique model.

**Figure 1: 2015 N-SSATS Data**

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| --- | --- | --- |
| Number of facilities in 2015 N-SSATS survey | 13,873 |   |
| Number of facilities providing detoxification  | 2,865 |   |
| Number providing detoxification but not treatment  | 176 |   |
| Number that were hospitals  |   | 71 |
| Number that were state government |   | 7 |
| Number that were local or county owned  |   | 7 |
| Number that were non-profits  |   | 67 |
| **Number of free standing, private non-profits providing detoxification but not treatment** | **24** |   |
| **Percent of all facilities**  | **0.17%** |   |

1. Second, the patient market the Sunrise program seeks to serve is persons with private health insurance. Approximately 133 million persons aged 18-64 have private health insurance in the country.[[2]](#footnote-2) This is a strong marketing component of a business model since a large addressable market maximizes the probability that a program will be financial stable.
2. The 2015 N-SSATS data show that only 33.6% of all substance abuse programs are private, for-profit programs.[[3]](#footnote-3) These programs have traditionally addressed the market of persons with private health insurance. The other two thirds of programs are nonprofits or governmental programs. Non-profit programs have traditionally relied on state funding, federal block grant pass-throughs, and charitable donations. In return, the nonprofits have primarily served safety net populations of individuals with lower income.
3. A company that takes the proven and successful business model of a for-profit company gains a significant economic good, especially when that model contains detailed procedures for marketing into a large and potentially profitable client population located in multiple states.
4. Third, the size of the Sunrise program is noticeably larger than other detoxification programs. When I conducted a needs assessment for Sunrise in 2011, it was regarding a proposed 38-bed detoxification program in Lawrenceville, New Jersey. Several years later, Sunrise built a 38-bed program in Toms River, New Jersey.
5. The average number of patients served per reporting detox facility on March 31, 2015 in detoxification programs in the United States was six persons.[[4]](#footnote-4) In my experience, one reason for this is that other providers have a residential program which is their major focus and operate a small detoxification unit to make it easier to admit persons to their residential beds. In contrast, because Sunrise, due to its business plan and model, initially solely focused on detoxification services, it constructed programs that were about six times larger than other detoxification programs.
6. Fourth, Sunrise provides a broad medical service. Unlike residential and outpatient programs, Sunrise employs physicians and nurses because detoxification is a medical service. Detoxification is serious and can be life threatening so Sunrise provides strenuous medical and medication management protocols to ensure patient safety and treatment efficacy.
7. Contrary to Dr. Guantez’s assertion that providers can simply use a ten-year old 2006 SAMHSA document on detoxification to establish these medical protocols, it actually takes time and professional skills to develop these protocols. Protocols are not static documents that are simply obtained from a source and remain unchanged. For example, currently providers are having to review their detoxification protocols to consider the serious problems of fentanyl and its derivatives. The protocols of an established provider such as Sunrise represent the collective distillation of years of professional experience and a competitor company that obtains these protocols has acquired a valuable economic asset.
8. Sunrise’s cumulative medical expertise is shown in the fact that it provides detoxification services for all types of substances. This is different from programs that only detox individuals from certain substances. The Figure below shows the percentage of programs nationally that detox selected substances.[[5]](#footnote-5) Given the opioid epidemic we are currently experiencing, it is noteworthy that only 87 percent of programs detox from Opioids. Given the widespread abuse of alcohol it is also surprising that only 70 percent of detoxification programs detox from alcohol. It is my understanding that the Sunrise business model encompasses detoxification from all the substances listed below. Sunrise also detoxifies persons from methadone and suboxone which are addictive drugs used to treat persons with opiate addiction.

**Figure 2: Percent of Detoxification Programs that Selected Substances**

|  |  |
| --- | --- |
| Type of Substance | Percent of Facilities that Detox |
| Opioids | 87 percent |
| Alcohol | 70 percent |
| Benzodiazepines | 62 percent |
| Methamphetamines | 53 percent |
| Cocaine | 53 percent |

1. Fifth, the business model contained the concept that the detoxification programs could be replicated in other states and the result is that Sunrise has now opened detoxification programs in three states: Georgia, Florida, New Jersey.
2. It is the competitor’s cumulative misappropriation of all parts of the Sunrise detoxification business model that creates the economic damage to Sunrise.
3. In paragraph 16 of his certification Guantez lists 13 New Jersey detoxification programs, other than the Sunrise and Summit facilities. My Exhibit B briefly describes these 13 programs. None of these programs are like Sunrise as all provide residential and/or outpatient programs and eight are non-profit programs. This finding highlights the uniqueness of what Sunrise has done in New Jersey.
4. Guantez draws a distinction between Summit and Sunrise because, in an insurance context, Summit is out-of-network and Sunrise is in-network. This is a distinction without a difference. All this means is that Summit has not yet been able to obtain a preferred provider status with most managed care companies. There are sound quality of care and business reasons why managed care companies may seek to create “narrow” networks that limit the providers the managed care company contracts with.[[6]](#footnote-6) The burden of proof is upon the provider to show they have a better quality of service. This status does not relate to a meaningful distinction between the substance abuse treatment services provided or the types of private patient populations served by these for-profit providers. Both Summit and Sunrise are marketing to private pay populations. The fact that Sunrise is an in-network provider simply means that Sunrise expended the time and effort involved to obtain in-network insurance contracts.
5. The substance abuse treatment business is intensely competitive and providers generally regard their internal information as confidential and proprietary. Policies & procedures (P&P’s), which providers develop over a period of years, are an example of information that is treated as confidential and proprietary.
6. A well-developed set of P&P’s is important in not only obtaining state licensing but also in obtaining accreditation from the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission). Dr. Guantez suggests that the similarity in language between Sunrise’s P&P’s and Summit’s P&P’s, can be explained by the fact that both Summit and Sunrise are accredited by the Joint Commission. This explanation does not account for the similarity because the Joint Commission does not require specific language in the P&P’s. Instead, P&P’s from different entities would be expected to have unique language based on the predilections and experience of staff preparing the paperwork. A more likely explanation for the similarity in language between Sunrise’s and Summit’s sets of P&P’s, suggests that Summit plagiarized Sunrise’s P&P’s.
7. In his paragraph 23, Dr. Guantez admits that Summit uses language that is identical to Sunrise’s in its application to the Joint Commission. This has the substantive appearance of plagiarism. This plagiarism was used to obtain a key accreditation from an accreditation agency. Obtaining accreditation is important to substance abuse programs, for example, insurance companies or state agencies often prefer accreditation be established as a condition of reimbursement. Accreditation logos are featured on company websites to reassure potential customers about the quality of the program. Companies that work in different states may need multiple accreditations depending on local requirements. The intellectual property theft involved in this plagiarism is economically important since it saves months of staff time in the preparation and submission of paperwork and data to obtain these essential accreditations.
8. In his paragraph 18, without offering any factual proof, Guantez takes the position that there is nothing unique or novel about P&P’s because they are dictated by State regulation and grounded in scientific principles, not by the “original thought” of any health service provider or facility. A textual analysis of the 2014 state regulations at N.J.A.C. 10:161A shows 150 references to the word “policies” and 97 references to the phrase “policies and procedures.” The majority of these are in regulatory language that requires the facility to develop specific policies and procedures.
9. For example, N.J.A.C 10:161A-3.6 has 15 references to specific types of policies and procedures the facility is to create. While state regulations require the facility to have policies regarding when patients may use or be precluded from using a telephone, it is up to the facility to identify what those situations are. Guantez’s assertion “that policies and procedures … are dictated by state regulation.” is overreaching and lacks factual value. Based on the text of state regulations, an accurate characterization of state regulations would be to say that the regulations dictate the topics that P&Ps are to cover, but do not dictate what the policies are to be.
10. While P&P’s do have to comply with State regulations and be consistent with applicable medical principles, a considerable amount of original thought goes into preparing them, which is why P&P’s are treated as highly confidential and proprietary. Programs are faced with endless problematical situations as they mature. Certain drugs used to aid detoxification are longer acting so how do you titrate their administration to prevent overmedicating the patient? What to do when law enforcement drops off an individual that just overdosed? What do you do with an individual who refuses to leave the program? What do you do with an individual who shows up intoxicated at admission? Over time policies are developed to address issues like these and the policies often contain state-specific information. For example, local or regional HIV/AID resources are identified in discharge policy that can help an individual with HIV/AIDS when they finish detoxification.
11. In general, misappropriating another provider’s P&P’s would give the misappropriating provider a substantive economic advantage and shorten the years of work necessary to develop a mature set of P&P’s. This would also undermine any competitive advantage the program that developed the P&P’s would obtain because of its capital and labor investments.
12. I have worked for two large consulting companies, Maximus and the Public Consulting Group, and had large organizations as clients, for example, the Service Employees International Union (SEIU) and the American Association of Retired Persons (AARP). In my experience, many providers work with consultants to prepare P&P’s, licensing applications, and for other business needs. The usual presumption is that the work done for the client is considered confidential and is theirs and theirs alone to release, discuss with the press, or not release. This is true even when working with a public or governmental entity. Working with a consultant does not nullify the proprietary nature of a provider’s internal information. That is a well-known and accepted practice within the consulting field.
13. In addition, the consulting process is not one-sided but rather is a collaborative and interactive process in which both the consultant and the client work together to develop the work product that is specifically tailored to the client’s needs.

 I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

 Leslie Hendrickson, Ph.D.

DATED: October 9, 2017

**Exhibit A**



**Exhibit B**

*Carrier Clinic*in Belle Mead

*Carrier*is a large diversified non-profit behavioral health provider providing both mental health and substance abuse treatment to a population spanning adults and adolescents. *Carrier* operates both a mental health hospital and outpatient programs.[[7]](#footnote-7)

*Core Health*in South Amboy

*Core Health* operates a 74-bed residential treatment program for adults. While Core Health’s website lists services such as family counseling, nutritional counseling and case management, the website makes no mention of detoxification.[[8]](#footnote-8) Non-*Core Health* websites list detoxification as a service it provides, however Core Health is not listed in state records as being licensed to provide detoxification services. A search of Internal Revenue Service (IRS) Forms 990s did not yield any non-profit with the name Core Health although it is listed in state records as a non-profit.

*Discovery Institute* *for Addictive Disorders* in Marlboro

The *Discovery Institute for Addictive Disorders* Discovery Institute is a private nonprofit offering d**etoxification, short and long term residential, vocational services, and outpatient programs** for adults seeking to overcome addiction or a co-occurring mental health disorder. It also operates a 16-bed sober living facility for men.[[9]](#footnote-9)

*Little Hill Foundation* in Blairstown

*Little Hill* is a non-profit foundation that operates Alina Lodge. The Lodge’s mission statement says **Our mission at Alina Lodge “…is to provide affordable residential treatment.”** The program provides and requires detoxification before a person can enter the residential program of the Lodge where a six-month length of stay is required.[[10]](#footnote-10)

*Maryville* in Williamstown

*Maryville*, a non-profit organization,provides detoxification as well as outpatient, residential and thirteen other services.[[11]](#footnote-11)

*Mount Carmel Center for Alcoholism and Other Chemically Addictive Diseases* in Paterson

*Mount Carmel,* also known as *Straight and Narrow*,is a Catholic Charities agency in the Diocese of Paterson. It provides detoxification, residential, outpatient, methadone, medical day care and intoxicated driver programs.[[12]](#footnote-12)

*New Hope Foundation* in Marlboro

*New Hope* is a non-profit comprehensive provider offering detoxification, residential, outpatient, half way houses, and intoxicated driver programs.[[13]](#footnote-13)

*New* *Jersey Addiction Treatment* (a.k.a.) *Sunrise* in Lafayette

Operated by the for-profit company known as the American Addiction Centers (AAC), *Sunrise* provides detoxification as well as residential and outpatient services including music therapy.[[14]](#footnote-14)

*Pinnacle Treatment Centers* (a.k.a.) *Endeavor House North* in Kearny

*Pinnacle* is a for-profit program operated by Pinnacle Treatment Centers. State licensing records show it is licensed to provide short-term residential and detoxification services.[[15]](#footnote-15)

*Prime Healthcare Services*(d/b/a) Saint Clare’s Hospital in Boonton

Prime is a private hospital chain that operates Saint Clare’s. Saint Clare’s offers outpatient and intensive outpatient substance abuse treatment and is capable of offering detoxification although a search of the Saint Clare website did not find a reference to detoxification. Nor is the Saint Clare program listed in the state records as being licensed to provide a stand-alone detoxification program.[[16]](#footnote-16)

*Recovery Centers of America* in Mays Landing

*Recovery Centers* is part of a national chain of for-profit substance abuse treatment programs. Service offered in Mays landing include short term residential, detoxification and outpatient.[[17]](#footnote-17)

*Seabrook House* in Seabrook

*Seabrook House* is operated by a non-profit foundation which in addition to detoxification also provides a 28-35 day residential program and outpatient services. Its website describes the Seabrook model as consisting of four phases: detoxification, inpatient, transitional and maintenance.[[18]](#footnote-18)

*Turning Point* in Paterson

*Turning Point* is a non-profit that, in addition to detoxification, provides family wellness, shorth-term residential, halfway houses, outpatient and transitional living services.[[19]](#footnote-19)

1. See 2015 SAMHSA data at <https://www.datafiles.samhsa.gov/study/national-survey-substance-abuse-treatment-services-n-ssats-2015-nid16964> [↑](#footnote-ref-1)
2. Calculated from U.S Census Table B27010 estimates and excludes adults with any Medicaid, Medicare or Tricare. [https://factfinder.census.gov/faces/tableservices/jsf/pages/ productview.xhtml?src=bkmk](https://factfinder.census.gov/faces/tableservices/jsf/pages/%20productview.xhtml?src=bkmk) [↑](#footnote-ref-2)
3. Ibid. SAMHSA p. 22 [↑](#footnote-ref-3)
4. See Table 4.4. Facility size, by type of care offered and facility operation at facilities without Opioid Treatment Programs (non-OTPs): Median number of clients, March 31, 2015. See https://www.samhsa. gov/data/sites/default/files/2015\_national\_survey\_of\_substance\_abuse\_treatment\_services.pdf [↑](#footnote-ref-4)
5. National Survey of Substance Abuse Treatment Services (N-SSATS): 2016 p. 24 [https://www.samhsa.gov/data/sites/default/files/2016\_nssats.pdf](https://www.samhsa.gov/data/sites/default/files/2016_NSSATS.pdf) [↑](#footnote-ref-5)
6. See Howard D. (August, 2014), Adverse Effects of Prohibiting Narrow Provider Networks” N Engl J Med, <http://www.nejm.org/doi/full/10.1056/NEJMp1402705#t=article>. See also Dafny, L. et al. (September, 2017), Narrow Networks On The Health Insurance Marketplaces: Prevalence, Pricing, And The Cost Of Network Breadth, HA, <http://content.healthaffairs.org/content/36/9/1606.abstract>

 [↑](#footnote-ref-6)
7. See Carrier website at <https://carrierclinic.org/about-us/> [↑](#footnote-ref-7)
8. See Core Health website at <http://www.corehealthnj.com/treatment-services/> [↑](#footnote-ref-8)
9. See Discovery website at <https://www.discoverynj.org/services/> [↑](#footnote-ref-9)
10. See Little Hill website at <http://www.alinalodge.org/about.html> [↑](#footnote-ref-10)
11. See Maryville website at <https://maryvillenj.org/the-programs/> [↑](#footnote-ref-11)
12. See Straight and Narrow website at <http://www.straightandnarrowinc.org/our_programs.php> [↑](#footnote-ref-12)
13. See New Hope website at <https://newhopeibhc.org/> [↑](#footnote-ref-13)
14. See AAC website at <http://americanaddictioncenters.org/treatment-centers/> [↑](#footnote-ref-14)
15. See Pinnacle website at <https://pinnacletreatment.com/treatment-therapies/who-we-help/> [↑](#footnote-ref-15)
16. See St. Clare’s website at [http://www.saintclares.com/site-search.aspx?c=detoxification](http://www.saintclares.com/Site-Search.aspx?C=detoxification) [↑](#footnote-ref-16)
17. See Recovery Center website at <https://recoverycentersofamerica.com/locations/lighthouse/> [↑](#footnote-ref-17)
18. See Seabrook website at <https://www.seabrook.org/about/the-seabrook-house-model/> [↑](#footnote-ref-18)
19. See Turning Point website at [https://www.turningpointnj.org/treatment-programs/halfway-house.aspx](https://www.turningpointnj.org/Treatment-Programs/Halfway-House.aspx) [↑](#footnote-ref-19)