

<p>DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address:100 Jefferson County Parkway Golden, Colorado 80401-6002 Phone Number: 303- 271-6136</p> <hr/> <p>Plaintiff(s): TRISHA J. A. FISHER, by and through E. JANEAL TOLAND, her next friend; and COLORADO CROSS-DISABILITY COALITION, d/b/a CENTER FOR RIGHTS OF PARENTS WITH DISABILITIES, a Colorado Corporation.</p> <p>Defendant(s): CRAWFORD, SAUNDERS, M.D., P.C., a Colorado Corporation; WESTSIDE WOMEN’S CARE, a Colorado Partnership; DANIEL TIMOTHY SAUNDERS, M.D., an individual; and EXEMPLA, INC., d/b/a EXEMPLA LUTHERAN MEDICAL CENTER, a Colorado Corporation.</p> <hr/> <p>Attorney or Party Without Attorney: Carrie Ann Lucas Center for Rights of Parents with Disabilities Colorado Cross-Disability Coalition 655 Broadway, Suite 775 Denver, CO 80203 Phone Number: 303.839.1775 Fax Number: 303.839.1782 E-mail: lucas@ccdconline.org Atty. Reg. #: 36620</p>	<p style="color: red;">EFILED Document CO Jefferson County District Court 1st JD Filing Date: Mar 17 2009 2:16PM MDT Filing ID: 24252666 Review Clerk: Andrea E Hattan</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>2008CV3702 Div.: 6 Ctrm.:</p>
SECOND AMENDED COMPLAINT	

Plaintiff Trisha J. A. Fisher brings this Second Amended Complaint against Crawford, Saunders, M.D., P.C.; Westside Women’s Care; Daniel Timothy Saunders, M.D.; and Exempla, Inc., d/b/a Exempla Lutheran Medical Center for violations of the Colorado Developmental Disabilities Act, C.R.S. § 27-10.5-101, et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and for negligent failure to secure informed consent.

JURISDICTION

1. This Court has jurisdiction over this action pursuant to article 6, section 9 of the Colorado Constitution.

2. Venue is proper within this District pursuant Rule 98 of the Colorado Rules of Civil Procedure for the following reasons: the principal place of business for two of the defendants, Westside Women's Care and Crawford, Saunders, M.D., P.C., are in Jefferson County, Colorado.

PARTIES

3. Plaintiff Trisha J. A. Fisher ("Ms. Fisher") is and was at all times material hereto a resident of Colorado. Due to a brain injury as an infant, Ms. Fisher has a developmental disability. Ms. Fisher receives developmental disability services from the State of Colorado pursuant to C.R.S. § 27-10.5-101 *et seq.* Ms. Fisher was under disability at all times material hereto and until April 27, 2007. Ms. Fisher is a Colorado Cross-Disability Coalition member.

4. Plaintiff E. Janeal Toland, as next friend for Trisha J. A. Fisher, ("Ms. Toland") is and was at all times material hereto a resident of Colorado. Ms. Toland is Ms. Fisher's former emergency substitute guardian and is her representative payee for Social Security Administration benefits.

5. Plaintiff Colorado Cross-Disability Coalition, d/b/a Center for Rights of Parents with Disabilities ("CRPD") is a Colorado non-profit corporation whose members are persons with disabilities and their nondisabled allies.

6. Defendant Crawford, Saunders, M.D., P.C. ("Crawford-Saunders") is a Colorado Corporation. Its principal place of business is at 7950 Kipling Street, Suite 201, Arvada, Colorado 80005. The corporation provides obstetrics and gynecology services for women. On information and belief, Crawford-Saunders is a recipient of federal financial assistance.

7. Defendant Westside Women's Care ("Westside") is a Colorado Partnership. Its principal place of business is at 7950 Kipling Street, Suite 201, Arvada, Colorado 80005. Crawford, Saunders, M.D., P.C. is a partner in Westside Women's Care. Defendant provides comprehensive obstetrics and gynecology services for women. On information and belief, Westside is a recipient of federal financial assistance.

8. Defendant Daniel Timothy Saunders, MD. ("Dr. Saunders") is Board Certified in Obstetrics and Gynecology. Dr. Saunders is licensed to practice medicine in the State of Colorado.

9. Exempla, Inc. is a Colorado nonprofit corporation with a principal office address of 2420 W. 26th Avenue, Suite 100-D, Denver, Colorado, 80211. Exempla does business, in part, under the trade name of Exempla Lutheran Medical Center ("Lutheran"), which is located in the City of Wheat Ridge (Jefferson County), Colorado. On information and belief, Lutheran

is a recipient of federal financial assistance.

FACTS

10. Plaintiff Trisha J. A. Fisher is an individual with a developmental disability as that term is defined in C.R.S. § 27-10.5-102(11). She receives developmental disability services through a Home and Community Based Services Supported Living Services Medicaid waiver provided by North Metro Community Services, Inc. (“NMCS”). NMCS is a Community Centered Board designated pursuant to C.R.S. § 27-10.5-105 to provide services pursuant to the Colorado Developmental Disabilities Act.

11. Ms. Fisher gave birth to a son at Exempla Lutheran Medical Center in Wheat Ridge, Colorado on July 27, 2006. A few hours later, at Lutheran, Dr. Daniel Saunders performed a tubal ligation upon Plaintiff, rendering her incapable of reproduction.

12. This procedure was performed for the primary purpose of rendering Ms Fisher incapable of reproduction.

13. Dr. Saunders is an owner of Crawford-Saunders, which is a partner in Westside Women’s Care.

14. Crawford, Saunders, M.D., P.C.’s and Westside Women’s Care’s employees and/or representatives were involved in the care and treatment of Plaintiff Fisher.

15. Ms. Fisher received post-surgical follow-up care from Westside Women’s Care.

16. Ms. Fisher’s then guardian, and parent, Mary French, requested the tubal ligation procedure and coerced Ms. Fisher into confirming the request. Ms. Fisher, who at the time lived with her guardian, was fearful of her safety if she refused the procedure due to her guardian parent’s actions and statements.

17. Defendants had a duty to comply with the Colorado Developmental Disabilities Act prior to performing any sterilization procedures upon Plaintiff.

18. On information and belief, Defendant Saunders sterilized Ms. Fisher based upon a consent signed by her then guardian, Mary French.

19. Defendants’ employees and representatives knew of Ms. Fisher’s developmental disability prior to the procedure, but failed to comply with the requirements of the Colorado Developmental Disabilities Act, and never obtained the informed consent of Plaintiff prior to the procedure.

20. Ms. Fisher has the capacity to participate in the decision-making process about sterilization.

21. Defendants' employees and representatives and Defendant Saunders, who performed the sterilization procedure, did not obtain informed consent or assurance that any consent was voluntarily and freely given pursuant to C.R.S. § 27-10.5-128(2)(a) from Ms. Fisher prior to the procedure.

22. Defendants were required to have a psychiatrist, psychologist, or physician, who did not provide services or supports to Ms. Fisher, consult with and interview Ms. Fisher to provide informed consent and assure that such consent was voluntarily and freely given pursuant to C.R.S. § 27-10.5-128(2)(a)(I). Defendants did not do so.

23. Defendants were required to have a developmental disabilities professional who does not provide services or supports to Ms. Fisher consult with and interview Ms. Fisher to provide informed consent and assure that such consent was voluntarily and freely given pursuant to C.R.S. § 27-10.5-128(2)(a)(II). Defendants did not do so.

24. Ms. Fisher wanted to have more children, and continues to want more children, and would not have consented to the procedure had she been provided with informed consent.

25. Had Defendants sought informed consent or assurance that any consent was voluntarily and freely given, Defendants would have known that any consent was not voluntarily or freely given.

26. But for Ms. Fisher's intellectual disability, Defendants would not have sterilized Ms. Fisher upon the behest of a third party.

27. On information and belief, Defendant Lutheran is a recipient of federal financial assistance and state public funds.

28. On information and belief, Defendant Westside is a recipient of federal financial assistance and state public funds.

29. On information and belief, Defendant Crawford-Saunders is a recipient of federal financial assistance and state public funds.

30. On information and belief, at all times material hereto, Defendant Lutheran did not have a policy requiring its employees, contractors, member, partners, and or other individuals using its facilities to comply with the Colorado Developmental Disabilities Act.

31. On information and belief, at all times material hereto, Defendant Westside did not have a policy requiring its employees, members, partners, contractors, and or other individuals using its facilities to comply with the Colorado Developmental Disabilities Act.

32. On information and belief, at all times material hereto, Defendant Crawford-Saunders did not have a policy requiring its employees, members, partners, contractors, and or other individuals using its facilities to comply with the Colorado Developmental Disabilities Act.

33. Dr. Saunders breached his duty of care by failing to obtain informed consent.

34. Dr. Saunders' failure to obtain informed consent was approximate cause of Plaintiff's decision to consent to the sterilization procedure. Defendant's negligence is a direct and proximate cause for Plaintiff's unwanted sterility.

35. As a direct and proximate result of the acts, omissions, and violations alleged above, Ms. Fisher has suffered damages, injuries, pain and suffering, inconvenience, emotional distress, impairment of quality of life, past and future economic losses, including, but not limited to, reasonable and necessary medical, hospital and other expenses.

36. CRPD's purpose is to promote independence, self-reliance, and full participation for people with all types of disabilities and to combat discrimination that impacts parenting for parents with disabilities, through direct services, education, research and training. As part of that purpose, CRPD seeks to ensure that parents with disabilities have access to -- and do not encounter discrimination in -- obtaining gynecological and obstetrical care.

37. CRPD engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against parents with disabilities. This effort and this purpose have been and continue to be adversely affected by the Defendants' violations of the Rehabilitation Act.

38. Defendants' actions have caused and continue to cause distinct, palpable, and perceptible injury to CRPD. Those injuries include but are not limited to those described herein.

39. CRPD has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to educate members and others who have been injured by Defendants' discrimination.

40. The Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CRPD's ability to achieve full inclusion for persons with disabilities. For example:

- a. Defendants' discrimination, in and of itself, deprives disabled women the right to control reproductive decisions;
- b. Defendants' actions send the message that such discrimination continues to be acceptable at this time and discourages other women with disabilities from becoming parents;

41. Defendants' discrimination has required and continues to require CRPD to make a greater effort -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CRPD's counseling, advocacy, educational, and training missions.

42. CRPD also has devoted and continues to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Defendants.

43. CRPD's injuries -- including, without limitation, those described herein -- are traceable to Defendants' discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

44. CRPD's members include women with developmental and intellectual disabilities.

45. CRPD's members have been injured and will continue to be injured by Defendant's discrimination described above.

46. The elimination of discrimination, such as that of Defendants, and the integration of persons with disabilities into the community are at the core of CRPD's organizational purpose.

47. The participation of individual CRPD members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

FIRST CLAIM FOR RELIEF
(Violations of the Colorado Developmental Disabilities Act, C.R.S. § 27-10.5-101, et seq.)
(Against all Defendants on behalf of all Plaintiffs)

48. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

49. Defendants' actions described above violate the Colorado Developmental Disabilities Act.

50. These violations include but are not limited to the failure to obtain informed consent, and an assurance that such consent was voluntarily and freely given.

51. Plaintiffs have been damaged and will continue to be damaged by Defendants' violations of the Colorado Developmental Disabilities Act.

SECOND CLAIM FOR RELIEF

**(Violations of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*)
(Against Defendants Crawford, Saunders, M.D., P.C.; Westside Women's Care; and
Exempla, Inc., d/b/a Exempla Lutheran Medical Center on behalf of all Plaintiffs)**

52. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

53. Defendants receive federal financial assistance as that term is used in 29 U.S.C. § 794.

54. Defendants have discriminated against Plaintiffs on the basis of disability in violation of 29 U.S.C. § 794 and its implementing regulations as more fully described above.

55. Defendants have acted with deliberate indifference to the strong likelihood that pursuit of Defendants' questioned policies would likely result in a violation of federally protected rights.

56. Plaintiffs have been injured and aggrieved by and will continue to be injured and aggrieved by Defendants' discrimination.

THIRD CLAIM FOR RELIEF

**(Negligent Failure to Secure Informed Consent)
(Against Defendant Daniel Timothy Saunders, M.D. by Plaintiff Trisha J. A. Fisher)**

57. Plaintiff realleges and incorporates by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

58. Defendant had a duty to obtain informed consent prior to the sterilization procedure upon Plaintiff.

59. Defendant breached that duty by failing to secure informed consent.

60. Plaintiff would not have consented to the procedure had she been provided with an opportunity to provide informed consent.

61. As a direct and proximate result of Defendant's actions, Plaintiff has been damaged and will continue to be damaged by Defendant's negligent failure to secure informed consent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an order declaring the Defendants to be in violation of the Colorado Developmental Disabilities Act, Section 504 of the Rehabilitation Act, and that Defendants failed to secure informed consent prior to the procedure on Plaintiff Trisha J. A. Fisher as set forth in this complaint;
3. That this Court award Plaintiffs compensatory damages in amounts to be determined at trial;
5. That this Court award Plaintiffs their reasonable attorneys' fees and costs; and
6. That this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiffs demand a jury on all issues which can be heard by a jury.

Respectfully submitted,

s/ Carrie Ann Lucas #36620
Attorney for Plaintiff

Dated: March 17, 2009

Address of Plaintiff Trisha J. A. Fisher:

5345 W. 79th Avenue
Arvada, CO 80003

Address of Plaintiff E. Janeal Toland, next friend of Trisha J. A. Fisher

127 Cedar Drive
Bailey, CO 80421

Address of Plaintiff Colorado Cross-Disability Coalition, d/b/a Center for Rights of Parents with Disabilities

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Suite 775
Denver, CO 80203