

HB

182

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A PROFESSIONAL CORPORATION

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May 6, 1983

via Express Mail

Ms. Judy G. Knight  
Special Assistant to the Commissioner  
Department of Labor  
State of Alaska  
P.O. Box 1149  
Juneau, Alaska 99811

Re: CSHB 182

Dear Ms. Knight:

As you know, I currently represent Alaska Alcoholism Rehabilitation Services, the non-profit corporation which owns and operates a long-term residential alcoholism treatment center in Wasilla, Alaska known as Nugen's Ranch. I testified in favor of CSHB 182 before the House Committee on Health, Education and Social Services because Nugen's Ranch, as one of the treatment programs in the state which hopes to implement a work therapy program, will benefit from the legislation. With this letter I hope to clear up a few misconceptions that may have developed as a result of certain comments I made during my testimony.

The residents at Nugen's Ranch are most likely to be individuals who have a life-long history of alcoholism. A good number of these individuals will be skid-row alcoholics and public inebriates who have spent many years on the street drifting from one detoxification facility to another. They have few life management skills and, practically speaking, are unemployable. Their treatment will require institutionalization for as long as two years.

The Ranch hopes to engage these individuals in "work therapy" as part of their treatment. Work therapy is activity of a constructive nature which may be supervised or unsupervised, and which will require the resident to assume certain responsibilities. The work will involve housekeeping chores, agricultural work, and unskilled labor associated with minor renovation and maintenance at the facility.

Ms. Judy G. Knight  
May 6, 1983  
Page Two

You indicated a concern on the part of the Department based on the fact that during my testimony before the HESS Committee I referred to residents at the facility performing certain maintenance tasks that might involve electrical or mechanical skills. My comments were only for the purpose of explaining to committee members that residents would regularly perform work that was non-agricultural in nature. I certainly did not intend to give the impression that Nugen's Ranch planned to displace existing employee positions through work therapy, or that the Ranch planned to have residents engage in work such as might be done by an electrician or mechanic and which would require specialized skills and training. I am sure you realize that it would be foolish for the corporation to do so, and I would never recommend such a course of action. The potential liability of the corporation as a result of any negligent work performed by a resident working beyond his skill level is itself a sufficient deterrent that the Ranch would never consider engaging residents in such activity.

To be more specific, the following tasks are those likely to be performed by residents involved in work therapy. I have listed the activities without regard to whether 29 CFR 529 requires the payment of wages for the activity.

1. Personal housekeeping chores (making beds, cleaning rooms);
2. General housekeeping chores (sweeping floors, trash removal, etc.);
3. Kitchen detail (setting and clearing tables, etc.);
4. Feeding livestock (poultry and swine);
5. Cleaning animal pens and sheds;
6. Planting and cultivating vegetable crops;
7. Planting and tending to bedding plants grown in the greenhouse;
8. Assisting in the slaughtering of livestock and the harvesting of crops;
9. Minor maintenance (e.g., painting);
10. Care of the grounds;
11. Snow removal during winter;
12. General labor, such as erecting fences, tearing down sheds, hauling trash, stacking lumber, cutting firewood, etc.

Ms. Judy G. Knight  
May 6, 1983  
Page Three

In some cases I anticipate that residents will watch qualified personnel perform regular maintenance tasks which require specific training and skills. In all cases, the "work" performed by the resident would not involve activity requiring a special skill, but nonetheless will allow the resident patient to learn some basic aspects of the skill.

For example, the Ranch might have the need to build a small tool shed adjacent to one of the existing buildings. This is work for which the Ranch would use the services of one of its regular maintenance personnel, or contract with someone to do the construction. This work, however, also would present an excellent opportunity to prepare a work therapy program which involves training in some carpentry skills. Residents could be asked to stack and haul lumber while observing how framing is done and receiving instruction in the proper use of power tools. Similarly, the residents could watch how electrical conduit is laid, learn how to lay shingle on a roof, learn how windows and doors are hung, and how steps and railings are made, etc. Throughout all of this "work therapy" the residents may do nothing more than stack lumber and paint the building. Nonetheless, the experience will have taught them some basic lessons of carpentry and electrical work.

I want to make it clear that the work therapy program designed for the Ranch will not displace any employment positions that are filled from the private sector and which are paid at a rate considerably higher than the prevailing minimum wage. If you examine the grant-in-aid documents for Nugen's Ranch available at the State Office of Alcoholism and Drug Abuse, you will see that the Ranch has, and intends to keep, fully paid and qualified maintenance, kitchen, and night attendant positions. Work therapy is designed for the benefit of the patient; it is not a concept which will result in the displacement of regular employees at the Ranch.

I do not believe it is unreasonable for the Ranch to expect that the quality of "work" they will receive from an individual during the initial stages of treatment is work for which something less than the minimum wage is still fair compensation. I am sure you can appreciate that someone who has been unable to work in five or six years because of

Ms. Judy G. Knight  
May 6, 1983  
Page Four

daily intoxication has a productive capacity that is, at best, minimal, even with constant supervision. Although I understand that the Department is concerned because even the most basic entry level positions in the private sector pay at least the minimum wage, I hope that the Department appreciates the fact that residents who will be referred to Nugen's Ranch are individuals who are presently not even counted among the labor force because of their inability to work.

It is the intention of the Ranch to base the wage scale on the disability of the patient worker, as is required by federal regulation. It seems clear to me that the federal regulations concerning patient workers at 29 CFR part 529 contemplate wage scales between 50 percent of the minimum wage and the full minimum wage, or higher, depending on the disabilities of the various clients. I have anticipated that in the process of applying for a certificate under 29 CFR 529 the Ranch would seek approval for a number of classes of wage scales between the minimum permitted under the regulations (50 percent of the minimum wage) and the minimum wage itself. This would enable the Ranch to automatically move a patient worker into a higher paying classification as his treatment progressed. It also seems to me that it is entirely possible in the future for the Ranch to budget itself for certain positions (such as dishwasher or kitchen helper) which would be paid at a prevailing wage rate and which would be filled by patient workers who are no longer under a disability.

The Ranch is not intending, nor does it expect, to pay patient workers less than is required under federal regulations or law. Both the federal regulations and the leading federal court cases in the field make it clear that if a patient worker is not suffering from any disability, he must be paid a wage comparable to the wage paid in the private sector for the equivalent work. I have advised my clients of this fact and they recognize that for any non-disabled patient worker they may be required to pay the patient a wage comparable to that in the private sector. At this time, however, the Ranch does not anticipate treating patients who are not already suffering from a considerable disability.

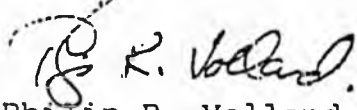
Ms. Judy G. Knight  
May 6, 1983  
Page Five

I hope this letter answers some of your concerns. I hope to be able to work with you and other representatives of the Department in order to ensure that you clearly understand what the Ranch intends to do through the work therapy program, and what is hoped to be accomplished by CSHB 182.

Please call me if you have any questions.

Sincerely,

REESE, RICE AND VOLLAND, P.C.

  
Philip R. Volland