EXHIBIT F

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TEHAMA

In re LARRY POHLSCHNEIDER, Petitioner, On Habeas Corpus.	Case No. **DECLARATION OF JAMES E. CRAWFORD-JAKUBIAK, M.D. IN SUPPORT OF PETITIONER LARRY POHLSCHNEIDER'S PETITION FOR HABEAS CORPUS.**

I, James E. Crawford-Jakubiak, M.D. declare the following under penalty of perjury:

1. I am a physician licensed by the State of California to practice medicine. I am Board Certified in both General Pediatrics and Child Abuse Pediatrics. My *curriculum vitae* is attached as Ex. 1 to this declaration.

2. I am one of approximately two dozen board-certified Child Abuse Pediatricians in the State of California (as of 1/12/15).

3. I am the Medical Director of the Center for Child Protection (CCP) at UCSF Benioff Children's Hospital Oakland, in Oakland, CA.

4. CCP is the designated site for forensic medical services for children in Alameda County. My colleagues and I at the Center evaluate between 800 and 1,000 cases of suspected child abuse a year.

5. I have testified in the Superior Court of the State of California on hundreds of occasions and have also qualified as an expert in the United States District Court for the Northern District of California several times.

6. Lawyers prosecuting and defending cases of childhood sexual abuse

routinely consult with me about their cases. I have great familiarity with the medical evidence admitted in criminal trials that involve allegations of childhood sexual abuse; and with the expert testimony proffered by the prosecution to make its case, and with the expert testimony proffered by the defense to rebut the prosecution's case.

7. During my career I have conducted, as well as reviewed, medical evaluations for thousands of children who have been suspected victims of child sexual abuse.

8. I am familiar with the requirements and official examination forms produced by the California Office of Emergency Services. These include the OES protocols and the 925 form for evaluations of alleged non-acute cases of childhood sexual abuse and the 930 form for evaluations of alleged acute cases of childhood sexual abuse. Acute cases are those in which the suspected childhood sexual abuse has occurred within approximately 72 hours prior to the physical examination. Cases involving suspected sexual abuse which has occurred more than 72 hours are classified as non-acute.

9. The 925 and 930 forms outline the standard protocols for collection of information, examination of minor patients, documentation of findings, collection of forensic material, laboratory studies and interpretation of findings in the state of California.

10. Taking images (photographs or videos) of the ano-genital region of the child is a routine, standard and expected component of these examinations. Documenting the physical examination with images is ***essential*** for a number of reasons. The primary purpose of the images is to allow for "photographic review" of the examination. At some time in the future, the examiner and/or others can compare the information contained in the images to the documentation completed at the time of the evaluation in order to determine if the preliminary opinion rendered by the examiner at the time of the examination is supported by the

images. In some instances, what may have initially appeared to be an abnormal finding and/or injury thought to be related to the alleged sexual abuse may, upon review of the images, be determined to be a normal and/or unrelated condition or other variant of the ano-genital area. In some instances, abnormal findings are missed at the time of the examination, but identified at the time the images are reviewed.

11. Images are essential in cases where it appears to the examiner that an injury potentially related to sexual abuse may be present. Review of the images in such cases allows for the greatest level of certainty in determining whether or not acute or non-acute injuries are truly present.

12. In cases where an examiner is of the opinion that a child has an abnormal examination (either an acute injury or something felt to be a non-acute injury), it is essential that the images from the examination are formally reviewed by someone with a high level of experience in interpreting physical findings in cases of possible sexual abuse. This ensures that investigators, and ultimately triers of fact, have information related to the interpretation of the examination findings that is as accurate as possible.

13. Images are extremely useful in cases where a comparison between the appearance of a relevant area on different dates might provide useful information. For example, if an examiner believes that a child has an acute injury from a recent sexual assault, the standard of care advises that the child return for a follow-up visit (typically a week or so later) to document the expected healing of the injury. Ano-genital injuries typically heal relatively quickly. If the child has an acute injury, a repeat examination (and the images from it) will show that the affected area has healed (or is actively healing), confirming the initial opinion of an acute injury. If, however, the subsequent photographs reveal no change, the lack of change supports a conclusion that the area in question was likely a mimic of trauma, rather than a true traumatic finding.

14. I have examined the reports, the 925 forms and the images prepared by Dr. Michael Vovakes and Physician Assistant Sandra Relyea in November 2000. I also have read the trial transcripts of the testimony of Dr. Vovakes and PA Relyea, including the direct examinations by Deputy District Attorney Woods and the cross-examinations by defense counsel Thomas Hilligan.

15. Physician Assistant Sandra Relyea examined David H. on November 3, 2000. Reviewing PA Relyea's qualifications, it is my understanding that she took a week-long intensive course in San Diego, followed by a week with a child sexual abuse team in Sacramento and subsequently attended meetings of medical examiners held bi-monthly. PA Relyea also testified that she had conducted 48-50 exams of children who had disclosed that they had been sexually abused.

16. In my opinion, PA Relyea was likely qualified to perform an examination but, given how early in her career she was with regard to sexual assault examinations, it would have been appropriate for her to defer interpretation of the sexual assault examination to the expert who supervised her work. Although Dr. Vovakes signed the report written by PA Relyea, he dated his signature 11/10/2000, seven days after the examination was conducted. It is not clear why there was such an abnormally long delay in signing the note. There is no record that Dr. Vovakes was actually present during the examination; nor is there any record to reflect that Dr. Vovakes independently reviewed any of the images after they became available.

17. There are a number of findings in PA Relyea's examination notes, and in her testimony at Mr. Pohlschneider's trial, which are, in my opinion, interpreted inaccurately. PA Relyea writes that David's "perianal skin is excoriated," that "rugae are flattened and somewhat asymmetrical," and that "tone is lax." On the 925 form she concludes that there is "anal trauma," and the "findings suggest recent trauma." The interpretation of these findings as evidence of recent injury, in my opinion, is incorrect.

18. My review of the images from David's examination demonstrates that a number of normal variants and common non-traumatic conditions were misidentified as being evidence of trauma. The area of "flattened and somewhat asymmetrical rugae" is actually an area of Diastasis Ani, a normal variant. The area with a "blue venous hue" is an area of venous engorgement, a normal variant.

19. PA Relyea decribed the anal tone as being "lax." This purported observation was a critical component of her ultimate conclusion that David had suffered recent, traumatic, sexual abuse. It is important to recognize that there are no images that show anything other than entirely normal anal tone. At the time of the examination, PA Relyea noted that David had "a small amount of stool at the perianal opening"; this is an extremely common finding in 8-year-old boys. The minor excoriation noted in the perianal area is also extremely common in children with the minor hygiene issues noted in David's examination. My review of the images does not identify any findings that are clearly traumatic in origin. In my opinion, David had an unremarkable examination. I strongly disagree with PA Relyea that there are findings that "confirm" that sexual abuse has occurred in the past. More importantly, PA Relyea's opinion that the physical findings independently establish that David had suffered sexual abuse more recently than July, 2000, was incorrect.

20. If PA Relyea had the opinion that David's physical examination showed evidence of recent injury, he should have been scheduled for a follow-up examination a week or so later, to assess whether the "acute" injuries were acting as acute injuries would be expected to act, i.e. whether they were healing/resolving or not.

21. PA Relyea testified that "continuing [stool] incontinence" was a sign of a "more recent molestation" (Preliminary hearing transcript page 200). Contrary to PA Relyea's testimony, there was no evidence that David suffered from any actual incontinence of stool. Instead, the only evidence about the presence of stool

was PA Relyea's observation that there was a small amount of stool present that had to be wiped away before she could complete David's exam. Again, such a finding is exceedingly common among 8-year-old boys. PA Relyea's trial testimony that David was experiencing incontinence of stool (encopresis) was itself not supported by the medical evidence. Moreover, even if he had been experiencing encopresis, such a condition is usually the result of medical/functional bowel issues, and not sexual abuse. However, PA Relyea testified that such incontinence was evidence of sexual abuse upon which she based her opinion. In my opinion, this conclusion was also inaccurate.

22. Dr. Vovakes examined Ethel J. and Ashley H. on November 1, 2000. Physician Assistant Relyea examined David H. on November 3, 2000.

23. With respect to Ashley H., Dr. Vovakes noted: "hymenal membrane is irregular in the 6 o'clock to 9 o'clock position with some decreased tissue present. She does have a deeper cleft-like irregularity at the 9 o'clock position but this does not go all the way through to the vaginal wall." He later wrote: "the appearance of the hymenal membrane is slightly irregular." His conclusion on the 925 form was that there was "hymenal trauma."

24. My review of the images from Ashley's examination demonstrates an unremarkable examination. I strongly disagree with Dr. Vovakes that there are findings that "confirm" that sexual abuse has occurred in the past.

25. With respect to Ethel J., Dr. Vovakes noted a "cleft-like irregularity at the 5'oclock to 6'oclock position in supine position." In knee-chest position, the "irregularity seemed to disappear and the hymen appeared to have thin, delicate edges". The report concludes that "Certainly her findings are somewhat suspicious and consistent with what this child has said, though no obvious scarring was seen." His conclusion on the 925 form was that there is "hymenal trauma."

26. My review of the images from Ethel's examination demonstrates an

unremarkable examination. I strongly disagree with Dr. Vovakes that there are findings that "confirm" that sexual abuse has occurred in the past.

27. With respect to both Ashley's and Ethel's examinations, it is unclear to me why the documentation for an examination that was reportedly conducted on November 1 was not completed until November 3. Standard of care is that medical notes are completed as quickly as is reasonably possible after the examination is completed.

28. It is important to recognize that there is a significant amount of variability in the appearance of normal, uninjured hymens, and it is quite common for the margins of hymens to have some irregularities present. The appearance of both Ashley's and Ethel's examinations is consistent with normal, uninjured genital anatomy. Their examinations do not "confirm" that sexual abuse has occurred in the past. Their examinations could also be consistent with children who have never been sexually abused. The physical findings identified during their exams certainly should not have been relied upon as evidence that Larry Pohlschneider had molested either girl.

29. Given my extensive experience in dealing with counsel trying cases involving allegations of childhood sexual abuse and my experience as a witness in numerous childhood sexual abuse trials, I am of the opinion that Mr. Hilligan failed to provide effective assistance to Mr. Larry Pohlschneider at trial.

30. Mr. Hilligan did not call any expert at trial to testify about the physical examination findings of the children or the opinions rendered by Dr. Vovakes and/or PA Relyea. Based on my review of the cross examination he conducted of these two witnesses, it does not appear that Mr. Hilligan even consulted with a physician familiar with the physical examination of children who have disclosed having been sexually abused.

31. By November, 2000, it was well known to physicians with experience providing evaluations to children who had disclosed sexual abuse that if the

examiner made an initial finding of an acute injury, it was advised to reexamine and re-image the child a week or so after the initial examination to confirm (or not) that the finding felt to represent an acute injury was healing in a manner consistent with an acute injury.

32. By November, 2000, it was well known to physicians with experience in examining children who were suspected victims of childhood sexual abuse that initial observations of venous engorgement, Diastasis Ani and a history of encopresis did not "confirm" recent molestation. Moreover, a qualified physician reviewing the purported medical findings of PA Relyea and Dr. Vovakes could have refuted their conclusions.

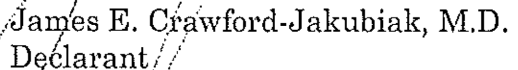
33. In order to become aware of the incorrect interpretations of the anatomic findings offered by Dr. Vovakes and PA Relyea, and to adequately cross-examine the medical witnesses in this case, it would have been necessary for Mr. Hilligan, at the very minimum to have consulted a physician experienced in evaluating children who had disclosed that they had been sexually abused. Mr. Hilligan's cross-examination indicated to me that he had obtained no such consultation. His cross-examination failed to bring to light the facts previously set forth which would have been recognized by a physician experienced in the evaluation of children who had disclosed sexual abuse.

34. Given my extensive experience in dealing with counsel trying cases involving allegations of childhood sexual abuse and my experience as a witness in such trials, it is my opinion that a competent attorney defending the sexual abuse charges brought against Larry Pohlschneider would have retained a physician who was experienced in the medical evaluation of possible sexual abuse. Such a physician would have been in a position to assert that the medical opinions of the prosecution witnesses were incorrect; the physician could have testified that David's examination disclosed no sign of recent trauma, contrary to the incorrect findings of the medical professionals called by the prosecution. A lay person such

as Mr. Hilligan does not have the requisite knowledge and/or medical training to recognize that the prosecution's witnesses were drawing unfounded, incorrect conclusions. Contrary to the evidence presented at trial, the medical evaluations in this case do not provide corroborative evidence that the children in this case were sexually abused by Mr. Pohlschneider. Specifically, there is absolutely nothing in David's examination to suggest that he had suffered sexual molestation more recently than June, 2000. The testimony of PA Relyea related to finding "evidence" of recent sexual abuse, therefore, was simply false.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that I am competent to make the statements made herein; and that if called upon to do so I would testify in court to the statements contained in this declaration.

Executed at Oakland, California, on April 10th, 2015.



James E. Crawford-Jakubiak, M.D.
Declarant