

December 28, 2007

File No. 06009.001

Via California Overnight

Andrea Hoch
Office of the Governor
State Capitol Building
Sacramento, CA 95814

Re: ***Gottesman et al. v. Cathedral Oaks Tennis, Swim and Athletic Club, et al.***
Santa Barbara Superior Court Case No.: 01246093

Dear Ms. Hoch:

This office represents Anat and Oded Gottesman, parents of the deceased minor child Jonathan "Yoni" Gottesman. Yoni was 4 years old when he died on August 15, 2005. He drowned in the Cathedral Oaks Athletic Club ("COAC") swimming pool within a few feet of two lifeguards and three camp counselors while attending an unlicensed day care program at the facility. We are writing to you because we know of the Governor's strong interest in the welfare and safety of children, and do not believe he is aware that the State's licensing requirements for day care facilities are not being enforced.

Although this case has been investigated by two local District Attorneys, and Attorney General Brown was kind enough to speak with us and Mr. Gottesman on the phone about the matter, no agency has examined the fact that the COAC facility ran an unlicensed day care program.

The COAC operated a child day care program called the "Summer Activity Camp" ("Camp") for children ages four to ten at the Club's facility located at 5800 Cathedral Oaks Road in Santa Barbara, from 1999 to the date of Yoni's death on August 15, 2005. Regardless of its name, the State of California Department of Social Welfare has determined that the Camp was a day care program within the meaning of Health & Safety Code section 1596.70 *et seq.*, requiring a license. Licensing ensures that day care programs will be inspected periodically by department personnel to insure compliance with, among other things, adequacy of staffing, staffing credential requirements, background checks and safety of facilities. Despite the licensing requirements, COAC had no license to conduct the Camp at the time of Yoni's death in August 2005, or at any other time.

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When it was cited by the Department of Social Services for this violation, COAC claimed that it was not required to be licensed. In denying each of COAC's three separate appeals of the citation, the Department of Social Services made it clear that: (1) the Camp was a "day care facility" as defined by Health & Safety Code section 1596.70 *et seq*; (2) that it therefore was required to be licensed; (3) that it was not licensed and therefore COAC violated Health and Security Code sections 1596.80, 1596.805 and California Code of Regulations, Title 22, Division 12, section 101157. Despite this fact, the District Attorney refused to consider COAC's violation of the law and its misrepresentations that it was licensed in his decision not to pursue charges.

In fact, it is highly questionable whether COAC could have met licensing requirements given the unqualified personnel hired, the inadequate training of personnel, the lack of required certifications, and poor supervision and unsafe pool conditions. We have detailed analyses of these matters if you would entertain our presentation of them.

Based on all of the pertinent facts in this case, COAC demonstrated a callous indifference toward the safety of the children left in its care. The facts supporting this include past incidents of near drowning, numerous complaints of inattentive lifeguards, non-responsiveness to complaints, and the lack of licensing. The latter deprived the parents of children left in COAC's care of Department of Social Welfare oversight regarding safety; appropriate credentials and facilities; and the propriety of young, untrained and unsupervised counselors. COAC's indifference rose to the level of criminal negligence when its conduct resulted in the death of a 4-year-old child – a little boy who repeatedly was dunked by a large male counselor who then swam away leaving him to drown under the "watchful eyes" of two lifeguards and three counselors. What happened to Yoni Gottesman was a crime. It should have been prosecuted as such.

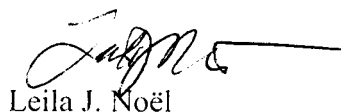
On behalf of the Gottesman family, we ask that the Governor's office review the lack of licensing at COAC, and take all steps necessary to ensure the equal application and enforcement of the laws of the State of California.

Very truly yours,

CAPPELLO & NOËL LLP



A. Barry Cappello



Leila J. Noël

cc: Oded and Anat Gottesman

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