

# Forced Psychiatric Drugging in Alaska

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“Today we can be certain of only one thing: The day will come when people will look back at our current medicines for schizophrenia and the stories we tell to patients about their abnormal brain chemistry, and they will shake their head in utter disbelief.”

*Mad in America* (2002) by award winning medical/ science writer  
Robert Whitaker

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## Objectives:

- ♦ Education
  - Large Amount of Info on Website:  
<http://psychrights.org>
- ♦ Recruit *Pro Bono* Attorneys
  - Will Provide Technical Assistance
  - Some \$ for costs available
  - Covered by E&O Insurance

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- ♦ Myth: Once a Schizophrenic always a schizophrenic.
  - Reality: **Half to two thirds of patients, including very chronic cases can recover.**

- ♦ Myth: Patients must be on Medication all their lives.

- Reality: **A small percentage at most may need medication indefinitely.**

*Empirical Correction of Seven Myths About Schizophrenia with Implications for Treatment.*

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## Psych Drugs: Toxic Waste?

- ♦ No Proven Efficacy
  - Outcomes have worsened since their introduction
  - Living in an Industrial Country Best Predictor of not Recovering from Schizophrenia -- World Health Organization
- ♦ Exacerbate Psychiatric Problems
- ♦ Addictive – Cause Permanent Brain Changes
- ♦ Extremely Harmful
- ♦ Shorten Lives
- ♦ Can be Fatal

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## Representation

“Traditionally, lawyers assigned to represent state hospital patients have failed miserably in their mission”

*Houston Law Review January, 1991 Health Law Issue  
COMPETENCY, DEINSTITUTIONALIZATION, AND  
HOMELESSNESS: A STORY OF MARGINALIZATION*  
Michael L. Perlin

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## Before PsychRights Appealed *Myers* (Pending) No Appeal had Ever Been Prosecuted on Behalf of Any Patient at API.

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## Civil Forced Drugging Standards

- ♦ State Laws may define Federal Rights (*Mills v. Rogers*)
  - Incompetent to Decline (Refuse)
  - “Professional Judgment” (*Youngberg v. Romeo/Rennie v. Klein*)
  - “Best Interests”
    - Where Junk Science Comes In
  - “Substituted Judgment”
  - “Least Restrictive Alternative”
- ♦ But *see Sell*

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## The Faces of Forced Medication in Alaska

- ♦ Civil Commitment
- ♦ Kids
- ♦ Parents
- ♦ In Prison
- ♦ Competence to Stand Trial
- ♦ Outpatient Commitment

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## The Reality

Courts accept . . . testimonial dishonesty, . . . specifically where witnesses, especially expert witnesses, show a “high propensity to purposely distort their testimony in order to achieve desired ends.” . . .

Experts frequently . . . and openly subvert statutory and case law criteria that impose rigorous behavioral standards as predicates for commitment . . .

This combination . . . helps define a system in which (1) dishonest testimony is often regularly (and unthinkingly) accepted; (2) statutory and case law standards are frequently subverted; and (3) insurmountable barriers are raised to insure that the allegedly “therapeutically correct” social end is met . . . In short, the mental disability law system often deprives individuals of liberty disingenuously and upon bases that have no relationship to case law or to statutes.

The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone? by Michael L. Perlin, *Journal of Law and Health*, 1993/1994, 8 JLHEALTH 15, 33-34.

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## Civil Commitment/Forced Drugging

- ♦ Forced Drugging Petition Along with Commitment
- ♦ Assembly Line Forced Drugging Decisions
  - 10 to 15 minutes per
- ♦ Decline Medication → Deemed Incompetent → Court Order
  - *Myers* Case – Best Interests
- ♦ No Expert on Patient’s side
- ♦ No Legitimate Science on State’s

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## Kids

- ♦ The ultimate in powerlessness
- ♦ Virtually none of the drugs approved for kids
  - No One Knows Implications of Polypharmacy
- ♦ Damaging Developing Brains
- ♦ Parents Not Told the Truth About Drugs
- ♦ Disability Law Center Currently Investigating Drugging Practices at North Star.

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## Parents

### Kids Taken Away:

- If Don't Take The Drugs
- If Do Take The Drugs

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## Competence to Stand Trial

♦ *Sell v. U.S.*, 539 U.S. 166, 123 S.Ct. 2174 (2003)

### – Court Must Decide:

1. "Important governmental interests at stake."
2. "Involuntary medication will significantly further those concomitant state interests."
3. "Involuntary medication is necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results."
4. "Administration of the drugs is medically appropriate, i.e., in the patient's best medical interest in light of his medical condition. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of antipsychotic drugs may produce different side effects and enjoy different levels of success."

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## What is Happening to Our Kids in State Custody?

•Studies in Other States Show High  
Percentage Inappropriately Drugged and  
Some Have Died as a Result.

Have a Case Where Grandmother Wants to  
Know if Grandaughter Being Drugged

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## *Sell* Criteria are General Constitutional Principles that Ought to Apply Across the Board

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## In Prison

- ♦ *Washington v. Harper*, 494 U.S. 211, 110 S.Ct. 1028 (1990): Allows Administrative Proceeding but Right to:
  1. An unbiased, independent decision maker.
  2. Notice.
  3. Be present at an adversary hearing.
  4. Present and cross-examine witnesses.
- ♦ Must Be Medically Appropriate (except Emergency)
- ♦ *Bavilla v. State of Alaska*
  - Got Department Dead to Rights Violating *Harper*
  - Dismissed on Sovereign Immunity Grounds
    - Admissions waiting for new case (Bavilla declined to pursue appeal or new case)

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## Outpatient Commitment

- ♦ Legal Outpatient Commitment Not Used Much Here (as far as know)
- ♦ Non legal coercion pervasive
  - Housing
  - SSDI
  - Medicaid
  - APA
  - Other Services
  - Etc.

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### *Pro Bono Attorneys Needed*

#### ♦ Psych Rights Will:

- Provide E&O Insurance
- Pick Cases
- Provide Great Deal of Technical Assistance
  - Memos, Pleadings, Studies, Strategy, Etc.
- Some Funding
  - Depositions (unheard of)
  - Expert Witness Fees
- Help With or Even Take the Appeals

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### *Pro Bono or . . .* Send Money Tax Deductible

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### Suggested Reading

- ♦ *Mad in America* by Robert Whitaker
- ♦ *Toxic Psychiatry* by Peter Breggin
- ♦ *The Hidden Prejudice* by Michael Perlin
- ♦ *Schizophrenia: A Scientific Delusion?* by Mary Boyle
- ♦ *Escape From Psychiatry* by Clover
- ♦ *How to Become a Schizophrenic* by John Modrow

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