

IN THE SUPERIOR COURT OF THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETTA BAVILLA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STATE OF ALASKA, Department of )  
 Corrections, )  
 )  
 Defendant. )

FILED  
IN THE CHAMBER OF  
PETER A. MICHALSKI  
Superior Court  
State of Alaska, Third Judicial District  
Time 3:40  
Date 4/2/04  
Initials WSS

Case No. 3AN-04-5802 CI

**OPPOSITION TO MOTION FOR  
TEMPORARY RESTRAINING ORDER**

COMES NOW defendant State of Alaska, Department of Corrections (DOC), by and through Assistant Attorney General John K. Bodick and hereby opposes plaintiff Etta Bavilla's motion for a temporary restraining order.

**FACTS**

Plaintiff Etta Bavilla is an Alaska prisoner incarcerated at the Hiland Mountain Correctional Center in Eagle River, Alaska convicted of the first-degree murder of her son. Pursuant to a plea agreement, Bavilla was sentenced on August 14, 2000 to 60 years with 20 suspended. *State v. Bavilla*, 3DI-S98-362 Cr. Judge Torrisi found her to be guilty but mentally ill. *Id.* During the course of her incarceration, which began in July of 1998, medical officials at both the Alaska Psychiatric Institute (API) and DOC

DEPARTMENT OF LAW  
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
310 K STREET, SUITE 407  
ANCHORAGE, ALASKA 99501  
(907) 269-6379

have medicated Bavilla with the antipsychotic medications Zyprexa and Thorazine to treat her chronic paranoid schizophrenia condition.

On July 21, 1998 Ms. Bavilla stabbed her infant son with a kitchen knife. See the affidavit of Laura Brooks attached. She told emergency personnel at the scene that "white people were out to do away with the native race;" "I took my son's life because white doctors had injected him with STDs;" and "I took my son out of this world because I did not want him growing up under mind control." Ms. Bavilla also attempted to commit suicide by stabbing herself twice in the chest. One of the wounds punctured and collapsed one of her lungs.

Although Ms. Bavilla had benefited from treatment with antipsychotic medication in the past, she has a history of poor medication compliance and was not taking the prescribed antipsychotic medications at the time she murdered her son. Ms. Bavilla was diagnosed with a mental illness at the age of 17 and prior to her arrest had been treated with antipsychotic medications with good success. She is noted to have experienced paranoid ideation, delusions of reference, thought broadcasting and special powers. There have been several reports of suicidal ideation and attempts prior to her crime. Ms. Bavilla has been admitted to Alaska Psychiatric Institute three times, 7/17/97-7/28/97, 7/24-7/28/98 and 2/23/99-5/1/00. API diagnosed Ms. Bavilla with Schizophrenia, paranoid type; Cannabis Abuse; Personality Disorder Not Otherwise Specified and Status Post self-inflicted stab wound to the chest. Ms. Bavilla was last at API on a Title 12 Order to assess competency, and based on a court finding of

incompetence, remained there for 14 months and was treated with antipsychotic medications to restore her to competency.

Department of Corrections' psychiatrists diagnosed Ms. Bavilla with Chronic Paranoid Schizophrenia. Ms. Bavilla has a fixed delusion that she has a sexually transmitted disease. She maintains this belief despite multiple medical examinations that have failed to find any physical basis for her complaint. Ms. Bavilla had been taking psychotropic medications in DOC until 2003. At her request, medications were decreased April 5, 2003 and she started refusing all medications June 1, 2003. There was a noticeable decline in her mental functioning and she was placed on involuntary medications August 18, 2003. She continued taking the antipsychotic medications until February 27, 2004. When not taking medications, Ms. Bavilla has exhibited increased delusional thinking and maintains she has been injected with a manipulated sexually transmitted disease designed to keep her sick. She has claimed she is vulnerable to spirits and those spirits are responsible for her having been diagnosed with a mental illness. She becomes increasingly hostile toward staff, making nonsensical statements, gesturing talking to "spirits" in her cell. Ms. Bavilla adamantly denies she has a mental illness and blames mental health staff for "covering up and lying about persevere practices of forcing people to live diseased and then labeling them mentally ill." Ms. Bavilla has also expressed suicidal ideation in journal entries and has stated that she cannot think of her son or she will "give in to the destroyer" and die.

Ms. Bavilla is scheduled for a hearing on Monday, April 5, 2004 to consider whether she should be involuntarily medicated with Thorazine. This hearing will be conducted pursuant to Department Policy No. 807.16. Dr. Stallman will testify and Dr. Rappaport's second opinion will be read into the record. Ms. Bavilla will be allowed to call several witnesses including another prisoner and her attorney via telephone. Department mental health staff will also testify at the hearing. The decision will be made by a committee made up of myself and psychiatrist Dr. Holliday. I will chair the hearing which will be tape recorded. She will have the opportunity to submit an appeal of the decision to the Department's medical director Dr. John Robertson.

Dr. Stallman reports that Ms. Bavilla has been treated with the antipsychotics Zyprexa and Thorazine. See attached affidavit of Dr. Stallman. In the past she has been treated with Navane. Zyprexa is not available for injection so if she refuses this medication, Thorazine would be administered by injection. Ms. Bavilla has voluntarily taken Zyprexa in the past and it has been helpful in controlling her illness. Zyprexa is preferable to Thorazine and Navane because it has less side effects and is better tolerated by patients. Ms. Bavilla is aware of the medications she has been taking and has been verbally told that the medications Zyprexa and Thorazine will be considered at her involuntary medication hearing. Antipsychotic medications can have many potential side effects the most common are sedation, weight gain, muscular stiffness, anxiety, and a dry mouth. The most serious potential side effects are that they can cause

neuroleptic malignant syndrome which causes the patient to become ill, experience muscle tension, decrease in consciousness, and potential life-threatening seizures. This is however, quite rare. Another potential side effect tardive dyskinesia which causes rhythmic involuntary movements of some part of a person's body, most commonly the mouth or the hands. Tardive dyskinesia is relatively rare with Zyprexa but is more common with Thorazine.

Ms. Bavilla's behavior has been improved with the medication. Since she has refused to take the Zyprexa, she has become more and more agitated which indicates she is beginning to decompensate. Department staff has experience with previous decompensation by Bavilla and report behavior consistent with her decompensation such as calling them "freaks." Although Bavilla's decompensation is not especially serious yet, the longer she goes untreated, the more likely her delusions will worsen. Ms. Bavilla was previously held in open population and due to the lack of medication, Dr. Stallman is uncomfortable in allowing her to remain in this setting because he thinks that she poses a risk of harm to herself and others. Thus, Dr. Stallman has directed that Ms. Bavilla be placed in the acute treatment unit. In order for her to be in a less restrictive setting, like open population with other prisoners, Ms. Bavilla will have to be treated with medication.

Dr. Stallman determined that the antipsychotic medications Zyprexa and Thorazine are necessary to prevent Ms. Bavilla from imminent harm to herself or others. Ms. Bavilla suffers from a mental disorder namely chronic paranoid schizophrenia. Since she has discontinued these medications, Ms. Bavilla had decompensated and is exhibiting

the same delusional behavior that lead to the homicide for which she was convicted. Ms. Bavilla is capable of consenting to this medication but refuses to voluntarily consent. Dr. Stallman has thus requested that involuntary medication proceeding be instituted in accord with Department Policy No. 807.06. Dr. Stallman considered less restrictive forms of treatment for Ms. Bavilla but his medical opinion is that no such treatments will be effective to alleviate this risk of harm. Ms. Bavilla has been examined by a second psychiatrist, Dr. D. Rappaport, who agrees with the above diagnosis and the need for her to be medicated.

It is Dr. Stallman's medical opinion that Ms. Bavilla should receive the above medications and that delay will result in further decompensation and danger to herself and others. Although Ms. Bavilla is currently being held in the acute mental health treatment unit at HMCC, Dr. Stallman still believes that she poses a significant danger to herself or others without medication. The longer Ms. Bavilla does not receive the medications, the worse her decompensation will likely get and the greater the risk she will present to herself or others. Repeated episodes of decompensation tend to make each episode more severe. Thus, additional delay in providing the medications could well result in irreparable harm and Dr. Stallman is not willing to subject Ms. Bavilla to this risk.

Despite her long history of mental illness Ms. Bavilla does not believe that she is mentally ill. Ms. Bavilla presents as a bright, intelligent woman who may appear to be well to untrained lay persons. However, her documented history of significant

mental illness and Dr. Stallman's examinations, clearly reveal to him that she has a serious mental illness that requires medication.

Judge Torrasi recently recited the facts surrounding Bavilla's criminal conviction and her mental health issues in a post-conviction proceeding. See *In re Etta Bavilla*, 3DI-02-81 Civil, Findings of Fact, Conclusions of Law and Order on Application for Post-Conviction Relief attached. In 1999, Judge Torrasi found Bavilla to be incompetent to stand trial. *Id.* at para. 3. Judge Torrasi found that, as of January of 2004, "it appears as if the system functioned as intended [and] that she has been given effective treatment." *Id.* at para 11.

### ARGUMENT

Bavilla's motion for a temporary restraining order should be denied because she has failed to satisfy the requirements for this extraordinary relief. Alaska courts apply a balancing of hardships approach to injunctions which entails a three part test: 1) the plaintiff must be faced with irreparable harm; 2) the opposing party must be adequately protected; and 3) the plaintiff must raise serious and substantial questions going to the merits of the case, that is the issues raised cannot be frivolous or obviously without merit. *Maintenance Serv. v. Kenai Peninsula Bor.*, 850 P.2d 636, 639 (Alaska 1993). The "serious and substantial question" standard applies only when the injury which will result from the granting of the injunction is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted. *Id. citing State v. United Cook Inlet Drift, Assn.* 815 P.2d 378-79 (Alaska 1991).

Where the injury from the injunction is not inconsiderable and cannot be adequately indemnified by a bond, a showing of probably success on the merits is required before a temporary restraining order can be issued. *Id.* Bavilla's motion should be denied because she has not established that she is subjected to a threat of irreparable harm due to the medications, that the Department will be adequately protected from harm if this court enjoins the medications, or that she has a probability of success on the merits of her claims.

**A. Bavilla Has Not Demonstrated Irreparable Harm**

Bavilla has not proven with competent evidence that she will suffer irreparable harm if the hearing goes forward without her due process demands being met and she is involuntarily medicated. It appears to be Bavilla's contention that the hearing should not proceed because she has been denied due process in the form of alleged lack notice of the medications that may be involuntarily administered, the denial of the opportunity to prepare for the hearing, and the lack of counsel to represent her at the hearing. These due process arguments will not result in irreparable harm to Bavilla. Dr. Stallman states in his affidavit that Bavilla has been given verbal notice of the medications which are the subject of the hearing and that these are the same medications which she has previously taken. Next, Bavilla has had months to prepare for this hearing and has had the opportunity to secure counsel to assist her in doing so. It is clear from opposing counsel's letter Ms. Brooks that both Bavilla and her attorney have been cognizant of the involuntary medication issue since February of 2004.



Last, the absence of counsel at Bavilla's hearing will not deny her due process. There is no legal authority which requires counsel to be present in such a hearing. There are no legal issues involved that need to be presented or argued; the issues at the hearing are entirely medical in nature and the presence of counsel will add little to this medical decision. The procedures set forth in DOC Policy 807.16 provide all the due process to which Bavilla is entitled and proceeding with the hearing under these procedures will not cause her irreparable harm.

Bavilla has also not proven that she will be subjected to irreparable harm if the injunction is not entered. It is important to note that the final decision to medicate her has not yet been made so she cannot demonstrate any likelihood of harm at this time. Although Bavilla has presented lengthy articles that assert antipsychotic medications can result in side effects, she presents no evidence that she is suffering from such side effects or will suffer from them at some point in the future.

**B The Department Will Incur Harm if the Hearing is Enjoined**

Under AS 33.30.011(4)(B), the Department is charged with providing necessary psychiatric treatment for prisoners if the prisoner exhibits symptoms of a serious disease that may be substantially alleviated. Both the federal and state constitutions also give the Department the responsibility to provide prisoners with necessary medical care. To fulfill this statutory and constitutional duty, the Department, through its medical staff and independent consultants, has determined that Bavilla

requires the administration of antipsychotic medications. The order Bavilla seeks will prevent the Department from carrying out its duties to provide medical care.

The order will also prevent the Department from its general duty to maintain Bavilla's health as provided in AS 33.30.011(3) and to protect her and other prisoners from harm. Dr. Stallman states in his affidavit that Bavilla presents a significant risk of harm to herself and others without the medications. Bavilla's mental illness is so serious that due to the delusions it cause she stabbed her son to death and tried to kill herself. Bavilla was so ill that she could not stand trial without medication. Dr. Stallman states that since Bavilla has been off the medications she has decompensated. Thus, he believes that, without the medication, Bavilla is a significant danger to herself and others. The lack of medication also has great potential for irreparable harm to Bavilla. Dr. Stallman states that every time Bavilla goes off the medication her level of decompensation is likely to get worse.

The due process Bavilla demands will also cause harm to the Department. With the exception of prison disciplinary hearings where a felony prosecution is pending, the Department does not allow attorneys to participate in administrative hearing. Allowing counsel to appear in prison administrative hearings would cause a more adversary proceeding instead of a fact-finding proceeding which could cause a situation where facts could be distorted or obscured for strategic purposes. The presence of counsel would also cause the hearings to be more lengthy, cause medical providers to be intimidated by the threat of litigation, and often disrupt the scheduling of such hearings

to fit counsel's schedule. It is the position of the Department that the injection of counsel into such hearings would result in a less productive and meaningful exercise to determine the best medical treatment for a prisoner. See *McGinnis v. Stevens*, 543 P.2d 1221, 1232 (Alaska 1975).

The remainder of the procedures Bavilla demands would only serve to delay her receipt of necessary medical care. There is simply no good reason to allow an attorney the opportunity to depose Department officials prior to such a hearing. Such a requirement would only cause lengthy delay in the proceedings and take Department officials away from performing other important duties such as providing for the care of prisoners. There is also no good reason to allow counsel the enhanced access to Bavilla he seeks. Counsel has the same access to her that any attorney has with a prisoner client involved in litigation. Bavilla can telephone him. To grant Bavilla enhanced access would create a precedent regarding access to counsel which the Department simply could not sustain in regard to all litigation.

Last, Bavilla has offered no reason to believe the Department can be protected from the above harm if the hearing and her medication are enjoined.

**C. Bavilla Has Not Shown Any Probability of Success on the Merits**

Because the Department's harm is not insignificant, Bavilla must demonstrate a probability of success on the merits. Bavilla asserts violations of civil rights in the form of procedural due process violations. These claims are without merit.

First, the state is not a proper defendant in a civil rights action so Bavilla has failed to

state a claim upon which relief can be granted. *Vest v. Scafer*, 757 P.2d 588, 594 (Alaska 1988). Second, Bavilla has failed to even attempt to effect proper service on the Department under Civil Rule 4(d)(11) not named a proper defendant. Bavilla and her attorney have had notice since February that the Department was intending to commence involuntary medication proceedings. Bavilla's failure to diligently pursue her claims should not be an excuse to avoid compliance with the civil rules.

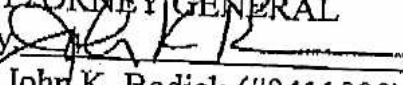
Next, Bavilla has stated no legal authority in support of her demands for counsel to be present, "unhindered access to her", or to delay the proceedings until she can depose the Department's witnesses. The Supreme Court did not require counsel to be present at such hearings in *Washington v. Harper*, 110 S.Ct. 1028 (1990). No other case states any requirement that counsel be present. The Supreme Court and Alaska Supreme Court have recognized that the presence of counsel can be detrimental to prison administrative hearings. *McGinnis v. Stevens*, 543 P.2d 1221, 1232 (Alaska 1975) citing *Wolff v. McDonnell*, 94 S.Ct. 2963, 2981 (1974). There is no legal authority for an administrative hearing to be delayed for purposes of depositions. In fact, the Alaska Supreme Court has recognized that prison administrative hearings do not include the full panoply of rights afforded litigants in regular litigation. *McGinnis* at 1226. Bavilla has not demonstrated a probability of success on the merits.

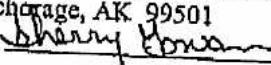
### CONCLUSION

Bavilla has not satisfied the requirements for a temporary restraining order to issue. She has not established any likelihood that she will be subject to irreparable

harm as result of the procedures employed at the hearing or her involuntary medication. On the other hand, the Department has demonstrated significant harm to its important duties to provide for the health and well being of Bavilla. Any decision to involuntarily medicate Bavilla will be based on the opinions of three psychiatrists and several other mental health professionals. Bavilla has not demonstrated any likelihood of success on the merits of her claim and importantly, she has provided no evidence that the medications are not medically appropriate treatment for a person with the serious mental illness she has. Thus, Bavilla's motion should be denied.

Dated this 2 day of April, 2004, at Anchorage, Alaska.

GREGG D. RENKES  
 ATTORNEY GENERAL  
 By:   
 John K. Bodick (#8411098)  
 Assistant Attorney General

I hereby certify that a true and correct copy of the foregoing and all attachments were served by mail and fax on James Gottstein, 406 G Street, Ste. 206 Anchorage, AK 99501  
 By:  Date: 4-2-04

DEPARTMENT OF LAW  
 CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
 310 K STREET, SUITE 407  
 ANCHORAGE, ALASKA 99501  
 (907) 269-6379

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETTA BAVILLA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
STATE OF ALASKA, Department of	)
Corrections,	)
	)
Defendant.	)

---

Case No. 3AN-04- 5802 CI  
STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT )

Laura Brooks, being first duly sworn, deposes and states:

1. I am the Director of Mental Health Services for the Alaska Department of Corrections. In this position I oversee and coordinate the provision of mental health services for all Alaska's correctional facilities. As director, my duties include making arrangements for involuntary medication of mentally ill prisoners. I am a licensed Psychological Associate and have been so licensed for four years. Before I became the director I was a mental health clinician for the Department for five years and have worked in the mental health field for ten years.

2. I have not been personally involved in Ms. Bavilla's treatment except for my involvement with making arrangements for this involuntary medication hearing. I have reviewed Etta Bavilla's file and summarize her history and care as follows. On July 21, 1998 Ms. Bavilla stabbed her infant son with a kitchen knife. She told

emergency personnel at the scene that "white people were out to do away with the native race;" "I took my son's life because white doctors had injected him with STDs;" and "I took my son out of this world because I did not want him growing up under mind control." Ms. Bavilla also attempted to commit suicide by stabbing herself twice in the chest. One of the wounds punctured and collapsed one of her lungs.

3. Although Ms. Bavilla had benefited from treatment with antipsychotic medication in the past, she has a history of poor medication compliance and was not taking the prescribed antipsychotic medications at the time she murdered her son. Ms. Bavilla was diagnosed with a mental illness at the age of 17 and prior to her arrest had been treated with antipsychotic medications with good success. She is noted to have experienced paranoid ideation, delusions of reference, thought broadcasting and special powers. There have been several reports of suicidal ideation and attempts prior to her crime. Ms. Bavilla has been admitted to Alaska Psychiatric Institute three times, 7/17/97-7/28/97, 7/24-7/28/98 and 2/23/99-5/1/00. API diagnosed Ms. Bavilla with Schizophrenia, paranoid type; Cannabis Abuse; Personality Disorder Not Otherwise Specified and Status Post self-inflicted stab wound to the chest. Ms. Bavilla was last at API on a Title 12 Order to assess competency, and based on a court finding of incompetence, remained there for 14 months and was treated with antipsychotic medications to restore her to competency.

4. Department of Corrections' psychiatrists diagnosed Ms. Bavilla with Chronic Paranoid Schizophrenia. Ms. Bavilla has a fixed delusion that she has a sexually

transmitted disease. She maintains this belief despite multiple medical examinations that have failed to find any physical basis for her complaint.

5. Ms. Bavilla had been taking psychotropic medications in DOC until 2003. At her request, medications were decreased April 5, 2003 and she started refusing all medications June 1, 2003. There was a noticeable decline in her mental functioning and she was placed on involuntary medications August 18, 2003. She continued taking the antipsychotic medications until February 27, 2004. When not taking medications, Ms. Bavilla has exhibited increased delusional thinking and maintains she has been injected with a manipulated sexually transmitted disease designed to keep her sick. She has claimed she is vulnerable to spirits and those spirits are responsible for her having been diagnosed with a mental illness. She becomes increasingly hostile toward staff, making nonsensical statements, gesturing and talking to "spirits" in her cell. Ms. Bavilla adamantly denies she has a mental illness and blames mental health staff for "covering up and lying about perverse practices of forcing people to live diseased and then labeling them mentally ill." Ms. Bavilla has also expressed suicidal ideation in journal entries and has stated that she cannot think of her son or she will "give in to the destroyer" and die.

6. Ms. Bavilla is scheduled for a hearing on Monday, April 5, 2004 at 0800 to consider whether she should be involuntarily medicated with Thorazine. This hearing will be conducted pursuant to Department Policy No. 807.16. Dr. Stallman will



testify and Dr. Rappaport's second opinion will be read into the record. Ms. Bavilla will be allowed to call several witnesses including another prisoner and her attorney via telephone Department mental health staff will also testify at the hearing. The decision will be made by a committee made up of myself and psychiatrist Dr. Worrall, and psychiatric nurse Theresa Warfield. I will chair the hearing which will be tape recorded. She will have the opportunity to submit an appeal of the decision to the Department's medical director Dr. John Robertson.

Further your affiant sayeth naught.

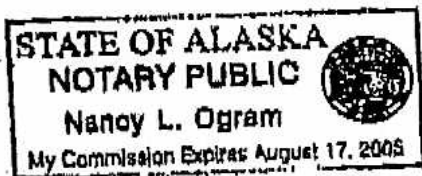
James Gottstein, MS, LPA

SUBSCRIBED AND SWORN TO before me April 2, 2004.

Nancy L. Ogram

Notary Public

My comm'n expires: 8-17-05



I hereby certify that a true and correct copy of the foregoing was served by mail on James Gottstein, 406 G Street, Ste. 206 Anchorage, AK 99501

By: \_\_\_\_\_ Date: \_\_\_\_\_

ORIG A

**Involuntary Psychotropic Medication**

Page: 1 of 8

Policy #807.18

Chapter:

Health Care Services

**Policy**

- A. Except as otherwise directed or approved by a court, psychotropic medication may be administered involuntarily only in compliance with the provisions of this policy.

**Procedures****A Definitions**

1. **Gravely Disabled.** A condition in which the prisoner, as a result of a mental disorder: (1) is in danger of serious physical harm resulting from his or her failure to provide for essential human needs of health or safety, or (2) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.
2. **Likelihood of Serious Harm.** Evidence of substantial risk of physical harm to self or others, or to the property of others.
3. **Medical Advisory Committee (MAC).** A Commissioner-appointed panel that makes Department decisions regarding non-emergency hospitalizations, some specialty referrals, complex clinical cases, special studies or treatments, and reviews prisoner health care grievance appeals (see policy #807.01, Health Care Organization and Administration). MAC includes health care staff and selected collaborating and consulting physicians.
4. **Mental Disorder.** Any organic, mental, or emotional impairment according to the DSM-IV that has a substantial adverse effect on an prisoner's cognitive or volitional functioning.
5. **Psychiatric Emergency.** A situation in which the prisoner poses an imminent threat of serious physical harm to self or others due to a mental disorder.
6. **Psychiatric Order.** A medical order issued by a licensed psychiatrist providing psychiatric services for the Alaska Department of Corrections.

**B. Order for Involuntary Administration of Psychotropic Medication**

1. Except as provided in section D below (psychiatric emergency), if involuntary administration of psychotropic medication appears necessary, the prisoner must be referred to and evaluated by a psychiatrist. A psychiatric order for involuntary administration of psychotropic medication may only be given if it is demonstrated that the prisoner suffers from a mental disorder, and as a result of the disorder, constitutes a likelihood of serious harm to self or others, property destruction or is gravely disabled.

---

**Subject: Involuntary Psychotropic Medication****Page 2 of 8****Policy #807.15**

---

2. A psychiatric order for involuntary administration of psychotropic medication and the clinical evidence and diagnosis to support that order must be fully documented in the prisoner's medical file. Documentation will include the patient's history of (in)voluntary medication compliance, prognosis, history of side effects, and treatment plan (including prescription).
3. A mental health professional shall meet with the prisoner to discuss the reasons that the medication was ordered and to address any concerns the prisoner may have about complying with the psychiatric order for the medication. A full discussion of the medication side effects, risks, benefits, and alternatives shall also be provided and documented at this time.

#### C. Right to Refuse Psychotropic Medication

1. In the absence of a psychiatric emergency or a court order directing or approving the administration of psychotropic medication, a prisoner has the right to refuse to comply with a psychiatric order for psychotropic medication unless the involuntary administration of that medication has been reviewed and approved by a Mental Health Review Committee at the conclusion of a due process hearing where it is determined that:
  - a. the prisoner suffers from a mental disorder;
  - b. the medication is in the best interest of the prisoner for medical reasons; and
  - c. the prisoner is gravely disabled or poses a likelihood of serious harm to self, others, or the property of others.

#### D Psychiatric Emergencies

Notwithstanding section B above, if, in the opinion of a licensed health professional with prescriptive authority, a prisoner is suffering from a mental disorder, and as a result of that disorder, presents an imminent likelihood of serious harm to self or others, a psychiatric emergency exists. In such cases, the prisoner may be administered psychotropic medication over his or her objections for a limited time, if medically appropriate. Justification for emergency involuntary psychotropic medication must be documented in the prisoner's medical file.

- a. The prescribing health care professional shall notify the Department's Mental Health Clinician Supervisor as soon as practicable after involuntary psychotropic medications are initiated.
  - b. When medication is prescribed in a psychiatric emergency, consultation with a licensed psychiatrist must be obtained within 24 hours. The consultation and any recommendations from the consulting psychiatrist must be documented in the prisoner's medical file.
-

---

**Subject Involuntary Psychotropic Medication****Page 3 of 8****Policy #807.16**

---

- (1) If the psychiatrist does not concur in the administration of psychotropic medication, it may no longer be administered.
  - (2) If the psychiatrist concurs in the continued administration of psychotropic medication, such medication may be continued for up to 72 hours, excluding weekends and holidays.
    - (a) Health care staff shall initially offer all involuntary medication in its oral form, paying particular attention to insure the patient's compliance. This may include a complete mouth check.
    - (b) If the patient refuses the oral medication, appropriate security staff should be notified for assistance in administering intramuscular medication.
    - (c) Health care staff shall monitor and document the patient's condition at least every four hours on day and swing shifts. Night shift staff shall check the patient at least once while the patient is awake.
- c. Any involuntary administration of psychotropic medication beyond the time periods described in Section D(1)(b) above requires the approval of the Mental Health Review Committee following a due process hearing.

#### E. Mental Health Review Committee

- 1 Except for the involuntary administration of psychotropic medication during a psychiatric emergency, involuntary administration of psychotropic medication may occur only at the Cook Inlet Pre-Trial Facility's Mike Module Unit in the case of male prisoners, and the Hilland Mountain Correctional Center in the case of female prisoners.
  2. A Mental Health Review Committee shall be established within the Department in order to conduct due process hearings to review psychiatric orders for involuntary administration of psychotropic medication.
    - a The committee shall be comprised of two members appointed by the Health Care Administrator.
      - (1) Both members shall be licensed Mental Health Professionals.
      - (2) At least one member shall be a psychiatrist.
      - (3) One member of the committee shall serve as the Chairperson as designated by the Health Care Administrator.
    - b. Neither of the members of the committee may have been involved in the prisoner's current treatment or the prescribing of the psychotropic medication under review, but clinicians are not disqualified from sitting on the committee if they have treated or diagnosed the prisoner in the past.
-

---

**Subject: Involuntary Psychotropic Medication**

Page 4 of 8

Policy #807.16

---

**F Right to a Hearing**

- 1 Upon completion of the order for involuntary administration of psychotropic medication, the prescribing psychiatrist shall, by use of the attached form (807.16A), request the scheduling of a due process hearing to occur within 72 hours.
2. The Mental Health Review Committee shall conduct a tape recorded due process hearing to review the psychiatric order for involuntary administration of psychotropic medication.

**G. Prehearing Activities**

- 1 A member of the institutional staff independent of the prisoner's treatment team shall be assigned by the institutional Superintendent to assist the prisoner in the due process procedure. The staff assistant must be able to understand and interpret the prisoner's rights and hearing proceedings, act in the prisoner's best interest, and have some understanding of the psychiatric diagnosis and the issues that a case may present.
    - a. The role of the assisting staff member is to facilitate the understanding and participation in the hearing by the prisoner.
    - b. The assisting staff member must have completed a training program approved by the Attorney General's Office and the Mental Health Clinician Supervisor of the Department regarding the relevant legal and medical issues.
  2. The prisoner and the assisting staff member shall be provided written notice (form 807.16B), of the time and place of the hearing at least 24 hours prior to the hearing.
    - a. The notification must also include the:
      - (1) diagnosis; and
      - (2) reasons that the psychiatrist and other mental health services staff believe the medication is necessary.
  3. At least four hours prior to the hearing, the prisoner and the assisting staff member may request in writing to the Chairperson of the Committee that certain witnesses be present at the hearing or that specific questions be asked of certain witnesses outside of the hearing or telephonically during the hearing if they are unable to personally appear.
    - a. The request shall be made using page 2 of form 807.16B.
  4. Prior to the hearing, the Mental Health Review Committee shall conduct any investigation and/or examination as it deems necessary regarding the administration of psychotropic medication to the prisoner.
-

---

**Subject: Involuntary Psychotropic Medication****Page 6 of 8****Policy #807.16**

---

- a Any information obtained during an investigation must be presented at the hearing in order to be considered by the Committee in reaching its' decision and to give the prisoner an opportunity to respond.
5. Absent a psychiatric emergency requiring that a prisoner be involuntarily medicated, the prisoner has the right to refuse involuntary medication or psychiatric care 24 hours preceding the due process hearing, and until the hearing adjourns. If a psychiatric emergency requires that the prisoner be medicated, the Chairperson of the Mental Health Review Committee shall make findings at the hearing whether the administration of medication caused the prisoner any difficulties with cognition and communication which prevented the prisoner from actively participating in the hearing.

#### H. Due Process Hearing

- 1 The prisoner must be provided the opportunity to be present at the hearing unless the prisoner's attendance poses a substantial risk of serious physical or emotional harm to self or poses a threat to the safety of others.
    - a. The assisting staff member shall appear at the hearing on the prisoner's behalf whether the prisoner is present or not.
  2. At the hearing, the Mental Health staff are obligated to disclose to the prisoner the evidence relied upon for the proposed involuntary treatment.
  3. The prisoner and the assisting staff member may present relevant evidence, including statements, testimony of witnesses, and written documents and may cross examine witnesses who testify at the hearing in support of involuntary medication.
    - a. The presentation of evidence or questioning of witnesses by the prisoner or the assisting staff member may be limited or disallowed only when the Chairperson of the Committee finds the evidence or questions to be irrelevant, repetitious, or a threat to the safety of those involved in the proceedings or the security of the facility.
      - (1) Any denial of a request to make statements, present witnesses or documents, or cross examine witnesses must be explained orally at the hearing and in the hearing summary (form 807.16C).
      - (2) Upon a showing of good cause, written statements of witnesses, or telephonic testimony may be permitted by the Chairperson in lieu of live testimony.
  - 4 Any information obtained outside of the hearing must be made available at the hearing so that the prisoner has the opportunity to respond to or comment upon it.
-

---

Subject: Involuntary Psychotropic Medication

Page 6 of 8

Policy #807.18

---

- 5 Although the documentation in the medical file of the prisoner must be reviewed by the committee, the committee may also require that the psychiatrist responsible for the psychiatric order under review appear in person at the hearing.

#### Decision of the Committee

- 1 The Committee shall consider all relevant information and material which has been presented at the hearing in deciding whether to approve or modify the psychiatric order for involuntary administration of the psychotropic medication. Any decision to approve involuntary administration of psychotropic medication must be unanimous.
- 2 A written decision must be prepared by the Chairperson of the Committee and provided to the prisoner, (form 807.16C).
  - a. The written decision must be signed by both members of the Committee.
  - b. The written decision must contain a summary of the hearing, including the following:
    - (1) the evidence presented; and
    - (2) the rationale for approving, modifying, or disapproving the involuntary administration of the psychotropic medication.
3. The original of the written decision shall be placed in the prisoner's institutional file, and copies distributed to the following:
  - a. the prisoner;
  - b. the prisoner's medical file;
  - c. the prisoner's mental health file;
  - d. the Health Care Administrator;
  - e. the Mental Health Clinician Supervisor; and  
the Committee Chairperson.

#### J Appeal Process

1. If the Committee approves the involuntary administration of the psychotropic medication, the prisoner shall be advised of the right to appeal the decision to the Medical Advisory Committee for the Department by filing a written notice of appeal within 48 hours of the prisoner's receipt of the Committee's written decision (form 807.16D).

---

**Subject: Involuntary Psychotropic Medication****Page 7 of 8****Policy #807.16**

---

- a. If the prisoner decides to appeal the decision to approve the involuntary administration of the psychotropic medication, the assisting staff member shall promptly forward or assist the prisoner in preparing and forwarding the prisoner's written appeal, within the 48 hour time limit. The prisoner may request to listen to the tape recording of the due process hearing to assist in the appeal.
- b. If the prisoner appeals a decision to approve the involuntary administration of the psychotropic medication, the Medical Advisory Committee shall review the decision of the Mental Health Review Committee.
  - (1) The Medical Advisory Committee shall, within five *working days*, either:
    - (a) approve the continued involuntary administration of the psychotropic medication as ordered by the prescribing psychiatrist or as modified by the Mental Health Review Committee; or
    - (b) order it to cease.
  - (2) The decision of the Medical Advisory Committee shall be in writing.
2. Department of Corrections' nursing staff shall enforce the administration of the medication as ordered by the psychiatrist and approved by the Mental Health Review Committee while awaiting the decision of the Medical Advisory Committee on the appeal.
3. The original of the written appeal decision shall be placed in the prisoner's institutional file, and copies shall be distributed to the following:
  - a. the prisoner;
  - b. the prisoner's medical file;
  - c. the prisoner's mental health file;
  - d. the Mental Health Clinician Supervisor; and
  - e. the Chairperson of the Mental Health Review Committee.

#### K. Monitoring and Periodic Review

1. Once initiated, the involuntary administration of psychotropic medication must be reviewed by the prescribing psychiatrist within seven calendar days.
    - a. If the order for medication is renewed, it must continue to be reviewed at least every 14 calendar days by the prescribing psychiatrist.
-



Subject: Involuntary Psychotropic Medication

Page 8 of 8

Policy #807.16

- b. Full documentation supporting the decision to continue to administer the medication must be provided in the medical and mental health file by the psychiatrist.
  2. The prisoner must be interviewed by the prescribing psychiatrist at least once every 30 days while the prisoner is receiving involuntary psychotropic medication.
    - a. Full documentation (including side effects) supporting the continuation or discontinuation of involuntary medication must be provided by the psychiatrist in the medical file.
    - b. When the prisoner becomes compliant with his medications, his willingness to voluntarily take the medication is to be fully documented in the medical file.
    - c. The involuntary medication treatment may be discontinued when the psychiatrist feels the patient has insight into his mental illness and is at a point in his treatment where he is able to continue taking his medications on a voluntary basis or is no longer in need of medications.
  3. The Mental Health Review Committee shall conduct a hearing and review the need for continued involuntary medications every six months if the involuntary administration of the medication continues or occurs on a regular basis during that time; and shall review the treating psychiatrist's choice of both the type and dosage of medication to be administered. The Committee may recommend suitable changes in the type and dosage if deemed medically appropriate. If the treating psychiatrist, in his or her professional judgment, does not accept the Committee's recommended changes, the Committee may disapprove the continued involuntary administration of medication subject to the psychiatrist's right to seek review by the Medical Advisory Committee. Unless a review hearing occurs before the Mental Health Review Committee, a prisoner may not be involuntarily administered psychotropic medication after a six-month period has expired.

Date

July 9, 1995

OR

*Margaret M. Pugh*  
 Margaret M. Pugh, Commissioner  
 Department of Corrections

## Authority:

*Washington v. Harper*, 494 U.S. 210 (1990)  
 Cleary Final Order, 3AN-81-5274 CIV (Sept. 1990)  
 22 AAC 05.122  
 22 AAC 05.253

## Forms Applicable:

807.16A  
 807.16B  
 807.16C  
 807.16D

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

**MEMORANDUM**

DATE:

TO: Medical Advisory Committee

FROM: \_\_\_\_\_ and \_\_\_\_\_  
(Prisoner) (Assisting Staff Person)

SUBJECT: Appeal of Mental Health Review Committee's Decision Approving  
Involuntary Administration of Psychotropic Medication

Dr. \_\_\_\_\_, has diagnosed \_\_\_\_\_,  
(Prisoner)

OTIS Number \_\_\_\_\_ as \_\_\_\_\_,  
(Diagnosis)

And on \_\_\_\_\_ ordered psychotropic medication to be administered on an  
(Date)  
involuntary basis.

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

On \_\_\_\_\_, the Mental Health Review Committee concurred that

\_\_\_\_\_ Was in need of involuntary medication.  
(Prisoner)

\_\_\_\_\_ Is appealing the Committee's decision to you and this  
(Prisoner)  
written notice of appeal is submitted for your review. Attached are all related Mental Health Review Committee forms, medical records, tape recording of the hearing before the Mental Health Review Committee, and the prisoner's appeal statement regarding the Committee's decision approving involuntary administration of psychotropic medication.

The reasons in support of this appeal are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cc: Medical File  
Mental Health File  
Mental Health Supervisor

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

Mental Health Review Committee  
Hearing Notice

Facility: \_\_\_\_\_

Prisoner's Name and OTIS Number: \_\_\_\_\_

On \_\_\_\_\_ at \_\_\_\_\_ o'clock, the Mental Health Review Committee shall conduct a hearing to give you the opportunity to contest the administration of psychotropic medication without your consent.

Dr. \_\_\_\_\_ has diagnosed you as \_\_\_\_\_  
*Name* *Diagnosis*

And ordered that involuntary psychotropic is necessary \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Rationale*

You have the right to appear at this hearing unless your attendance would likely post a substantial risk of serious harm to you or a threat to the safety of others. \_\_\_\_\_

Has been appointed to assist you, meet with you prior to the hearing, and appear at the hearing whether or not you appear.

\_\_\_\_\_  
Prisoner's Signature

\_\_\_\_\_  
Prisoner Refusal to sign

\_\_\_\_\_  
Serving Employee's Printed Name

\_\_\_\_\_  
Serving Employee's Signature

\_\_\_\_\_  
Date Served

\_\_\_\_\_  
Time Served

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

The prisoner is to detach this page from page one (1) and submit it to the Mental Health Review Committee in advance of the hearing.

I, \_\_\_\_\_, OTIS Number, \_\_\_\_\_ request

Name

that the following witnesses be interviewed by the Mental Health Review Committee at the hearing

on \_\_\_\_\_.

Date

1. Name of Witness: \_\_\_\_\_

Question: \_\_\_\_\_

2. Name of Witness: \_\_\_\_\_

Question: \_\_\_\_\_

3. Name of Witness: \_\_\_\_\_

Question: \_\_\_\_\_

4. Name of Witness: \_\_\_\_\_

Question: \_\_\_\_\_

- Distribution: Medical File
- Mental Health File
- Mental Health Review Committee
- Prisoner
- Staff Assistant
- Treating Psychiatrist

### Mental Health Review Committee Hearing Summary

Prisoner: \_\_\_\_\_

OTIS Number: \_\_\_\_\_

Assisting Staff Person: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

Time: \_\_\_\_\_ am / pm

Facility: \_\_\_\_\_

**Requested Witness #1**

Name: \_\_\_\_\_

Interviewed:  YES  NO

If NO, check reason:

Request not timely

Unavailable

Irrelevant

Threat to Safety

Other (specify): \_\_\_\_\_

**Requested Witness #2**

Name: \_\_\_\_\_

Interviewed:  YES  NO

If NO, check reason:

Request not timely

Unavailable

Irrelevant

Threat to Safety

Other (specify): \_\_\_\_\_

**Requested Witness #3**

Name: \_\_\_\_\_

Interviewed:  YES  NO

If NO, check reason:

Request not timely

Unavailable

Irrelevant

Threat to Safety

Other (specify): \_\_\_\_\_

**Requested Witness #4**

Name: \_\_\_\_\_

Interviewed:  YES  NO

If NO, check reason:

Request not timely

Unavailable

Irrelevant

Threat to Safety

Other (specify): \_\_\_\_\_

*Please attach summary of proceedings and evidence.*

**Basis for Decision (Check appropriate items):**

All of the following factors are present:

- A. The prisoner suffers from a mental disorder.
- B. The medication is in best interest of the patient for medical reasons.
- C. The prisoner is either gravely disabled or poses a likelihood of serious harm to self or others because, as a result of a mental disorder, one or more of the following determinations has been made:

The prisoner is in danger of serious harm resulting from his or her failure to provide for his or her essential human needs of health or safety.

The prisoner manifests serious deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions that is likely to jeopardize the prisoner's health and safety.

A substantial risk exists that the prisoner will inflict physical harm upon his or her own self as evidenced by, among other things, threats or attempts to commit suicide or inflict physical harm on him or herself.

A substantial risk exists that the prisoner will inflict physical harm upon others as evidenced by, among other things, behavior that has caused such harm or that placed another person or persons in reasonable fear of sustaining such harm

A substantial risk exists that the prisoner will inflict physical harm upon the property of others as evidenced by, among other things, behavior which has caused substantial loss or damage to the property of others.

**Action:**

Do Not Concur with Involuntary Administration of Psychotropic Medication.

Concur with Involuntary Administration of Psychotropic Medication as prescribed by Dr. \_\_\_\_\_

Concur with prescribing psychiatrist's order for medication, with the following modification:

\_\_\_\_\_  
\_\_\_\_\_

Chairperson:

(Printed Name)	(Title)	(Signature)	(Date)
----------------	---------	-------------	--------

Member:

(Printed Name)	(Title)	(Signature)	(Date)
----------------	---------	-------------	--------

Notice: The prisoner has the right to appeal this decision to the Medical Advisory Committee by filing a written appeal (form 807.16D) within 48 hours of receipt of this report. The assisting staff member shall assist in the appeal process if so requested by the prisoner. The prisoner may request to listen to the tape recording of the hearing before the Mental Health Review Committee to assist in the appeal.

\_\_\_\_\_  
(Employee Serving Copy to Prisoner)

\_\_\_\_\_  
(Date/Time Served)

Distribution:

- Medical File
- Mental Health File
- Prisoner
- Mental Health Review Committee
- Mental Health Supervisor



STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

Memorandum

DATE:

TO: Chairperson - Mental Health Review Committee

FROM:

SUBJECT: Involuntary Psychotropic Medication Administration

The following prisoner was found to be in need of psychotropic medication on an involuntary basis by \_\_\_\_\_ on \_\_\_\_\_.

The following information is submitted in order for you to schedule the prisoner for a Mental Health Review Committee due process hearing within 72 hours or as soon as thereafter possible.

Prisoner's Name and OTIS Number: \_\_\_\_\_

Diagnosis: \_\_\_\_\_

Reasons for Involuntary Medication: \_\_\_\_\_

Cc: Medical File  
Mental Health File  
Mental Health Supervisor

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETTA BAVILLA,

Plaintiff,

vs.

STATE OF ALASKA, Department of  
Corrections,

Defendant.

Case No. 3AN-04- CI

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Dr. Dwight Stallman, being first duly sworn, deposes and states:

1. I am the chief psychiatrist for the Alaska Department of Corrections. My duties include the provision of psychiatric services for prisoners in Alaska's correctional facilities. I have held this position for ten months. I have been a licensed psychiatrist for ten years and before working for the Department of Corrections, I practiced at LifeQuest which is the communitymental health center for the MatSu Borough.

2. I have been monitoring the psychiatric status of prisoner Etta Bavilla for several months. Ms. Bavilla had previously been treated by Dr. Elaine Fitzgerald who was responsible for providing psychiatric care at the Hiland Mountain Correctional Center until she left the employment of the state in March of 2004. Dr. Fitzgerald

STATE OF ALASKA  
DEPARTMENT OF LAW  
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
310 K STREET, SUITE 407  
ANCHORAGE, ALASKA 99501  
(907) 259-6378

consulted with me regarding Ms. Bavilla's treatment needs. Since Dr. Fitzgerald's departure I have treated Ms. Bavilla.

3. I have personally examined Ms. Bavilla twice in the last month and once several months ago and have reviewed her medical and mental health file. My review of her file indicates Ms. Bavilla's diagnosis is Chronic Paranoid Schizophrenia and I agree with this diagnosis. Generally, a person suffering from this disease will experience delusional thinking and/or hallucinations which sometimes result in harm to themselves or others. Ms. Bavilla reports having something she calls "manipulated STDs". She suffers from a delusion that she is medically ill with a myriad of symptoms from a sexually transmitted disease that was inadequately treated years ago. She believes she was purposely inadequately treated by a physician so that she would not be able to be properly diagnosed in the future but would continue to suffer from this illness. She reported to me that she had killed her son because he also had contracted the "manipulated STD" and she did not want him to have to suffer from this. I believe that

at this same time Ms. Bavilla tried to commit suicide by stabbing herself. *Ms. Bavilla also has a history of hearing spirits telling her that she is evil.*

4. Ms. Bavilla has been treated with the antipsychotics Zyprexa and Thorazine. In the past she has been treated with Navane. Zyprexa is not available for injection so if she refuses this medication, Thorazine would be administered by injection. Ms. Bavilla has voluntarily taken Zyprexa in the past and it has been helpful in controlling her illness. Zyprexa is preferable to Thorazine and Navane because it has less side effects and is better tolerated by patients. Ms. Bavilla is aware of the medications she

STATE OF ALASKA  
DEPARTMENT OF LAW  
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
310 K STREET, SUITE 407  
ANCHORAGE, ALASKA 99501  
(907) 259-6378

has been taking and has been verbally told that the medications Zyprexa and Thorazine will be considered at her involuntary medication hearing. Antipsychotic medications can have many potential side effects the most common are sedation, weight gain, muscular stiffness, anxiety, and a dry mouth. The most serious potential side effects are that they can cause neuroleptic malignant syndrome which causes the patient to become ill, experience muscle tension, decrease in consciousness, and potential life-threatening seizures. This is however, quite rare. Another potential side effect tardive dyskinesia which causes rhythmic involuntary movements of some part of a person's body, most commonly the mouth or the hands. Tardive dyskinesia is relatively rare with Zyprexa but is more common with Thorazine.

5. Ms. Bavilla's behavior has been improved with the medication. Since she has refused to take the Zyprexa, she has become more and more agitated which indicates she is beginning to decompensate. Department staff has experience with previous decompensation by Bavilla and report behavior consistent with her decompensation such as calling them "freaks." Although Bavilla's decompensation is not especially serious yet, the longer she goes untreated, the more likely her delusions will worsen. Ms. Bavilla was previously held in open population and due to the lack of medication, I am uncomfortable in allowing her to remain in this setting because I think that she poses a risk of harm to herself and others. Thus, I have directed that Ms. Bavilla be placed in the acute treatment unit. In order for her to be in a less restrictive setting,

STATE OF ALASKA  
 DEPARTMENT OF LAW  
 CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
 510 K STREET, SUITE 407  
 ANCHORAGE, ALASKA 99501  
 (907) 268-8379

like open population with other prisoners, Ms. Bavilla will have to be treated with medication.

6. I have determined that the antipsychotic medications Zyprexa and Thorazine are necessary to prevent Ms. Bavilla from imminent harm to herself or others. Ms. Bavilla suffers from a mental disorder namely chronic paranoid schizophrenia. Since she has discontinued these medications, Ms. Bavilla had decompensated and is exhibiting the same delusional behavior that lead to the homicide for which she was convicted. Ms. Bavilla is capable of consenting to this medication but refuses to voluntarily consent. I have thus requested that involuntary medication proceeding be instituted in accord with Department Policy No. 807.06. I have considered less restrictive forms of treatment for Ms. Bavilla and my medical opinion is that no such treatments will be effective to alleviate this risk of harm. Ms. Bavilla has been examined by a second psychiatrist, Dr. D. Rappaport, who agrees with my diagnosis and the need for her to be medicated.

7. It is my medical opinion that Ms. Bavilla should receive the above medications and that delay will result in further decompensation and danger to herself and others. Although Ms. Bavilla is currently being held in the acute mental health treatment unit at HMCC, I still believe that she poses a significant danger to herself or others without medication. The longer Ms. Bavilla does not receive the medications, the worse her decompensation will likely get and the greater the risk she will present to herself or others. Repeated episodes of decompensation tend to make each episode more severe. Thus, additional delay in providing the medications could well result in irreparable harm and I am not willing to subject Ms. Bavilla to this risk.

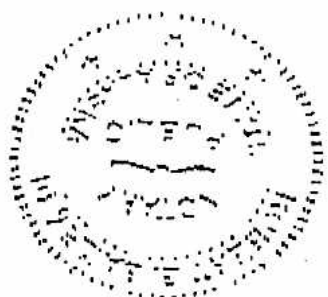
STATE OF ALASKA  
DEPARTMENT OF LAW  
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
310 K STREET, SUITE 407  
ANCHORAGE, ALASKA 99501  
(907) 268-5378

8. Despite her long history of mental illness Ms. Bavilla does not believe that she is mentally ill. Ms. Bavilla presents as a bright, intelligent woman who may appear to be well to untrained lay persons. However, her documented history of significant mental illness and my examinations of her, clearly reveal that she has a serious mental illness that requires medication.

Further your affiant sayeth naught.

SUBSCRIBED AND SWORN TO before me April 2, 2004.

*[Signature]*  
Notary Public  
My comm'n expires: 12-1-2006



I hereby certify that a true and correct copy of the foregoing was served by mail on James Gottstein, 406 G Street, Ste. 206 Anchorage, AK, 99501  
By: Shawn Gowan Date: 4-2-2004

STATE OF ALASKA  
DEPARTMENT OF LAW  
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE  
310 K STREET, SUITE 407  
ANCHORAGE, ALASKA 99501  
(907) 269-6378

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT DILLINGHAM

In the Matter of the Application )  
 for Postconviction Relief of: )  
 )  
 Etta Bavilla, )  
 )  
 Applicant. )

**RECEIVED**  
Department of Law

JAN 22 2004

Office of the District Attorney  
Third Judicial District  
Anchorage, Alaska

Case No. 3DI-02-81 CI  
re 3DI-98-362 CR

**Findings of Fact, Conclusions of Law and Order on  
Application for Post-Conviction Relief**

This case was tried in Anchorage on January 9, 2004.<sup>1</sup> Both Ms. Bavilla<sup>2</sup> and her former attorney, David Reineke, testified. Adrienne Bachman appeared for the State, and Avraham Zorea represented Ms. Bavilla. I find the facts, state conclusions and order as follows:

1. Ms. Bavilla was charged with murder in the first degree for killing her one year old son, Elihu, on July 21, 1998, in Ekuk, across the river from Dillingham. She was thereafter indicted, and the Public Defender Agency was appointed as counsel.
2. Counsel obtained an order<sup>3</sup> extending the time to file notice of insanity defense or to challenge the culpable mental state, and ultimately did file such a notice.<sup>4</sup> A motion to dismiss the indictment was filed and denied,<sup>5</sup> and the State's motion for a psychiatric examination was granted.<sup>6</sup> Public Defender David Snyder then filed a notice under AS 12.47.090(a)<sup>7</sup> to the effect that if Ms. Bavilla was acquitted by

<sup>1</sup> CD 3AN3504-5.

<sup>2</sup> See order of 12/2/03.

<sup>3</sup> Order of 10/7/98 in 3DI-98-362 CR.

<sup>4</sup> Notice filed 11/10/98.

<sup>5</sup> See Memorandum of Decision, filed 1/13/99.

<sup>6</sup> Order of 1/21/99.

<sup>7</sup> Filed 1/28/99.

reason of insanity, she would assert that she was not then suffering from any mental illness that caused her to be dangerous.

3. On February 12, 1999, I ordered a competency examination.<sup>8</sup> (All psychiatric and mental health records are contained in a manila envelope in the criminal file.) A hearing was held March 8, 1999,<sup>9</sup> and I found Ms. Bavilla incompetent to proceed.<sup>10</sup> The case was re-heard on June 2 of that year,<sup>11</sup> but the September 2 hearing had to be continued due to the untimely death of attorney Snyder.<sup>12</sup> Ms. Bavilla agreed with this continuance. The hearing was ultimately held on November 23, with attorney Reineke and Ms. Bavilla participating from the courtroom at the Alaska Psychiatric Institute.<sup>13</sup> The hearing was uncontested, I inquired of Ms. Bavilla, and found her to be competent to proceed.
4. Soon thereafter, Defendant decided to change her plea, and a hearing was held in Anchorage to accomplish this.<sup>14</sup> The agreement was 60 years, with 20 suspended, and the court was to decide if she was guilty but mentally ill.<sup>15</sup> It was apparent that Ms. Bavilla did not want me to find her GBMI, and the Rule 11(e) agreement prohibited the State from advocating that she was. We recessed part way through the COP hearing for a further conference with counsel, and at the conclusion, I made the usual Rule 11 findings.

---

<sup>8</sup> AS 12.47.100.

<sup>9</sup> Tape 3DIA-3710.

<sup>10</sup> See temporary order of 3/8/99.

<sup>11</sup> Tape 3DIA-3764.

<sup>12</sup> See stipulation of 8/25/99.

<sup>13</sup> See 11/9/99 T.O. and tape 3DIA-3929.

<sup>14</sup> CD 3AN34-1405.

<sup>15</sup> AS 12.47.030.



5. The State filed<sup>16</sup> a sentencing memorandum noting both the statutory aggravators,<sup>17</sup> and the fact that "the crime was committed by a mother who apparently labored under the delusional belief that she needed to stab her son to death because...white doctors are injecting native peoples with STD's'...or fear of 'mind control' by white people." Defendant filed a memorandum<sup>18</sup> in which she advocated against a GBMI finding, and also moved to strike certain materials from the presentence report. Further briefing took place,<sup>19</sup> and on August 9, 2000, I granted the motion to strike.
6. Despite all of this, I did find Ms. Bavilla guilty but mentally ill at sentencing.<sup>20</sup> I wrote on the judgment that it was my intention "that the Defendant be eligible for parole after 20 years unless she is dangerous, pursuant to AS 12.47.050(b)." I also noted that I felt the parole issue was not ripe for appeal until such time as she might be aggrieved by a decision of the parole board.<sup>21</sup> Ms. Bavilla has been continuously in custody since July of 1998, so that the minimum sentence of 20 years<sup>22</sup> would arrive in 2018.
7. The application in this case was filed two years after sentencing, and alleged that the GBMI determination was not part of the Rule 11 agreement.<sup>23</sup> Ms. Bavilla further alleged that she should have been allowed to withdraw her plea when I found her

---

<sup>16</sup> Filed 6/7/00.

<sup>17</sup> AS 12.55.155(c).

<sup>18</sup> Filed 6/12/00.

<sup>19</sup> See State's Response, filed 6/7/00, both parties' filings of 6/12/00, State's Sentencing Memorandum #3, filed 7/7/00, and Defendant's Supplemental Sentencing Memorandum, filed 7/10/00.

<sup>20</sup> Tape 3DIA-4177-78; Judgment, 8/14/00.

<sup>21</sup> Tape 4178, log 752.

<sup>22</sup> AS 12.55.125(a).

<sup>23</sup> Application for Post-Conviction Relief, filed 8/14/02.

GBMI. Mr. Reineke duly filed his affidavit,<sup>24</sup> and the case finally proceeded to trial earlier this month.<sup>25</sup>

8. Ms. Bavilla seems to be arguing both that she had an insanity defense *and* that she shouldn't have been found GBMI. She argues that trial counsel should have retained an expert to explore an insanity defense. While the State noted that the application didn't raise this issue, I will grant the implied motion to amend to conform with the evidence.<sup>26</sup>
9. Ms. Bavilla's testimony disposes of the first contention, pleaded in the application, that the possibility of GBMI was not part of the agreement. She clearly recited the agreement, recognized that I had discretion on the GBMI issue, and recognized that it was her choice whether or not to accept it. Although she said she was vulnerable and "bulldozered" into accepting the agreement, she also said that she was aware of the agreement weeks before she accepted it, that she was told to think it over and told that it was her decision. Mr. Reineke testified that she was very intelligent, lucid, and worried about going to trial and losing. They spoke on several occasions, including their first meeting, which lasted over 2 hours. Given her clear understanding of the agreement then and now, I find that Mr. Reineke was in no way ineffective in this regard. It was his obligation to advise her, which he did, and the structure of the plea agreement and his later motion to strike were excellent tactics towards the goal of avoiding a GBMI finding. While I did find Ms. Bavilla GBMI, it was my stated intention that she be eligible for parole after 20 years, and it remains to be seen whether the finding will cause her difficulty, and whether she will obtain parole.

---

<sup>24</sup> Filed 8/30/02.

<sup>25</sup> The (slow) procedural history can be seen in the file but has no apparent relevance to the merits.

10. The decision not to pursue an insanity defense was also tactical.<sup>27</sup> Mr. Reineke indicated that (1) he had no confidence that pursuing this course would be successful, and (2) it would have meant open sentencing, with a possible 99 years, if Ms. Bavilla were found guilty after trial. He discussed the defense with Ms. Bavilla more than once, and she testified that she understood that losing at trial could have resulted in a sentence of "99 to life." Mr. Reineke spoke to Dr. Sperbeck about it, and he spoke to Dr. Thompson as well. Dr. Sperbeck thought the defense didn't help clients; Dr. Thompson told him that the defense was self-defeating. The report of Dr. Maille was also available. Mr. Reineke also spoke to his colleague, Mr. Dieni, who had recent experience with the insanity defense, which is rarely used in our post-Hinkley world. Mr. Reineke was also present during Dr. Rothrock's examination of Ms. Bavilla, when he found her competent to stand trial. Ms. Bavilla had also spoken to a Denise Flocks (ph), apparently a psychiatrist or psychologist hired by former attorney Dave Snyder, who concluded after a short interview that she was not insane; Ms. Bavilla conceded that she was not cooperating back then. Given Mr. Reineke's observations and consultations, I find that he was not required to have hired a psychiatrist to consult as to an insanity defense.
11. I find that both Ms. Bavilla and Mr. Reineke testified honestly and completely at trial. Ms. Bavilla looked and sounded extremely well, and demonstrated a thorough understanding of the issues. While she doesn't believe she suffers from schizophrenia, and is unsure how much medication is helping her, she knows that she is stronger now. Given the 20 year minimum sentence requirement and the

---

<sup>26</sup> Civil Rule 15(b).

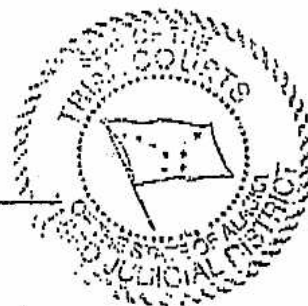
<sup>27</sup> See *State v. Jones*, 759 P.2d 558, 569 (Alaska App. 1988).

undisputed facts of the case, it appears as if the system functioned as intended; that she has been given effective treatment, and that the agreement and sentence are just. She has failed to establish ineffective assistance of counsel.<sup>28</sup> Mr. Reineke performed well above the minimum standards for criminal lawyers, and he conscientiously sought to protect Ms. Bavilla's interests, undeflected by any conflicting considerations. The application therefore fails to satisfy the performance prong of the test for ineffective assistance. Accordingly,

It is ordered that the application is denied and this action is dismissed.

Dated: 1/26/04

Fred Torrissi  
Fred Torrissi, Judge



I certify that on 1-20-04  
a copy of this document was sent to  
the attorneys of record or other: Bachman  
at the address of record: Zorea  
Reineke  
Wolf  
Clerk

<sup>28</sup> AS 12.72.040, Criminal Rule 35.1(g) and Risher v. State, 523 P.2d 421, 424 (Alaska 1974).