



October 23, 2008, at 9:58 am from Jim Gottstein to Counsel for API:

Receiving no response to my demand for a complete copy of Mr. B's chart from the beginning of 2007, I will just go ahead and subpoena the records. If you want input into who and when, you should let me know immediately.<sup>4</sup>

October 23, 2008, at 8:03 pm from Jim Gottstein to Counsel for API:

Not having heard from you, I am going to try and arrange a court reporter for Wednesday morning to take the deposition of Dr. Khari and then subpoena her. I will try and be accommodating as I can to your schedule, but without knowing what time frame I might be dealing with, I feel I need to get this done as soon as possible. Will you accept service of Dr. Khari's subpoena?<sup>5</sup>

The next day, Friday, October, 24, 2008, Counsel for API informed Counsel for Respondent that API was going to withdraw the forced drugging petition and Counsel for Respondent wrote a confirming e-mail to that effect:

This is to confirm our discussion that API is going to dismiss the forced medication petition in 3AN 08-1252 PR and in reliance on this, I am canceling the deposition of Dr. Khari.<sup>6</sup>

Ms Derry confirmed this as follows:

I am writing the motion right now, and will have it filed in superior court before noon.<sup>7</sup>

The forced drugging petition was indeed withdrawn that day and the deposition cancelled. However, a new one was filed the following Monday, October 27, 2008. Therefore, after the hearing held October 28, 2008, Counsel for Respondent began anew to obtain the information he needed to defend against the new forced drugging petition.

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<sup>4</sup> Exhibit A, page 2.

<sup>5</sup> Exhibit A, page 3.

<sup>6</sup> Exhibit A, page 4.

<sup>7</sup> *Id.*

October 28, 2008, at 11:00 am e-mail from Counsel for Respondent to Counsel for API.

Hi Laura,

A few things:

- I need to schedule depositions, but I will need to have the chart for at least a day or so before that.
- I don't see any reason why I shouldn't get all his 2007 & 2008 chart by the end of tomorrow.
- Since it seems like a focus is going to be on the emergency justification, please provide *ex post hasto* (a Latin phrase I made up) all documentation pertaining to AS 47.30.838 medication against Bill for 2007 and 2008. I don't see why this shouldn't be available by the end of today because special record keeping is required.
- I need a copy of API's policy on emergency medication. Will you provide it or do I need to subpoena it.
- Who is in charge of/does training with respect to emergency medication?
- What witnesses other than Dr. Khari do you intend to call? I will need to take their depositions.
- Could you please give me your direct phone number?<sup>8</sup>

October 30, 2008, at 2:55 pm e-mail from Jim Gottstein to Laura Derry:

I will ask you again if you will accept service of subpoenas for API employees? We have served the deposition subpoena on Dr. Khari, but Mr. Adler was not there. His assistant said he was at a conference today and tomorrow and would be out of town on Monday. As I wrote you and left voice mail earlier, I will work with you on the schedule as I can. So, maybe we should do it Saturday or Sunday. I think you are obligated to work with me on this. I will object to your calling any witness(es) whose deposition I was unable to take, especially due to your refusal to accept service.<sup>9</sup>

Counsel for API responded:

I'm sorry if I have inconvenienced you. It is not the practice of the Human Services section to accept service on behalf of our clients. Mr. Adler will be available tomorrow morning for you to serve him with your subpoena—at a reasonable time—around 9 am.

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<sup>8</sup> Exhibit A, page 5.

<sup>9</sup> Exhibit A, pages 7-8.

As a second and equally important matter, API does not believe that discovery is proper for this type of proceeding, and this specific case. Should discovery occur, we wish to meet and confer with you regarding the depositions. Given the late notice, and the fact that you wish to depose psychiatrists on Monday, and they are responsible for the care of multiple patients, it will be difficult if not impossible to produce these witness at the times requested. Also, the 9pm deposition of Ron Adler is a time that should only be allowed, at the convenience of the witness. We would like to confer with you regarding alternate days and times as mutually agreeable between the witnesses and parties, furthermore the state requests that the transcripts from these requests be maintained as confidential.<sup>10</sup>

Before Counsel for Respondent could respond, Counsel for API sent another e-mail as follows:

In my most recent email, I don't think I was as clear as I needed to be regarding our disagreement over discovery. We do not believe you are entitled to discovery under a variety of theories. I assume you disagree with that position and are not willing to withdraw your subpoenas. Assuming I am correct, I will be filing motions to quash tomorrow, under an expedited basis. As required by the Civil Rule 77, I am informing you of our intent to move on an expedited basis to quash your subpoenas and assume we can inform the court that we have discussed this matter and have agreed to disagree.

If you are willing to withdraw your subpoenas please advise; if we don't hear from you by noon tomorrow, we will file the above mentioned motions.<sup>11</sup>

Counsel for Respondent attempted to respond to both e-mails as follows:

Hi Laura,

First, if Ron's subpoena said 9:00 pm, that was a mistake. Lisa was out sick yesterday and I sent her home today before I got your last e-mail because she is still sick and I hadn't located a copy of what we sent out in between your last e-mail and this one. So, that's why I hadn't responded yet.

In any event, yes, your assumption that I don't intend to withdraw the

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<sup>10</sup> Exhibit A, page 7.

<sup>11</sup> Exhibit A, page 6.

subpoenas is correct. I am, of course, as I've repeatedly said, willing to work with you with respect to the details.

You may also represent that I would be willing to submit my opposition to your motion to quash orally, in argument if we can do it tomorrow afternoon. Otherwise, I should be able to get my opposition in by noon on Monday. With respect to your offer to meet and confer, I have been saying we should do that for days and had to issue the subpoenas (as I said I would) because I ran out of time.<sup>12</sup>

Then, early the next morning, realizing he had not responded to the issue of confidentiality, Counsel for Respondent e-mailed Counsel for API as follows:

I have realized that when I responded to this as part of my response to your later e-mail, I didn't include a response about the confidentiality of the transcripts. You can move for a protective order and I will agree to keep it confidential (to the extent not used at trial) for a reasonable amount of time after the relevant deposition(s)--say a week--for you to file for such a protective order. If you want to draft up a stipulation to that effect for me to review, go ahead.<sup>13</sup>

Counsel for API responded, "I will call you mid-morning,"<sup>14</sup> and counsel for the parties did talk on the phone that morning. During that conversation, recognizing that API would not be willing to conduct Mr. Adler's deposition over the weekend, Counsel for Respondent indicated that if Mr. Adler was going to be out of town on Monday and the hearing going to take place on Wednesday, that the deposition needed to be taken Tuesday.

Counsel for Respondent is thus incredulous at API's complaint that he was unwilling to work with API with respect to scheduling the depositions.

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<sup>12</sup> Exhibit A, page 6.

<sup>13</sup> Exhibit A, page 7

<sup>14</sup> *Id.*

## **II. CONDITIONS OF DISCOVERY**

At page 2 of its Motion for Protective Order, API requests that a protective order be issued that discovery be had at a time and place convenient to the deponents. Respondent does not believe that is necessary because his discovery efforts have been entirely reasonable under the circumstances created by API.<sup>15</sup> At page 2 of its Motion for Protective Order, API also complains that the timing leaves little room for API to conduct discovery of its own and therefore Respondent should not be allowed to conduct discovery. First, Respondent has not objected to API conducting any discovery it desires. Second, the timing is of its own making.

## **III. CONFIDENTIALITY**

At page 2 of its Motion for Protective Order, API asserts that Counsel for Respondent has a history of using information obtained in court proceedings to tarnish the reputation of treating physicians via publication on his website, attaching a copy of the Law Project for Psychiatric Rights' Home Page. First, there is nothing in that attachment that tarnishes anyone's reputation. Second, API assumes their witnesses will tarnish their reputations in their deposition testimony. As set forth above, Counsel for Respondent suggested to API that the parties enter into a stipulation to keep the depositions confidential for a long enough time for API to seek a protective order. It seems to Respondent this is sufficient protection. Currently, there is no basis upon which this Court

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<sup>15</sup> Respondent does object to API suggesting that his interest in avoiding being subjected to forced drugging which the Alaska Supreme Court has equated with lobotomy and electroshock is of so little importance that the "busy" Dr. Khari should not be inconvenienced even though she initiated the petition.

could determine whether the depositions will result in any testimony that should be made confidential.

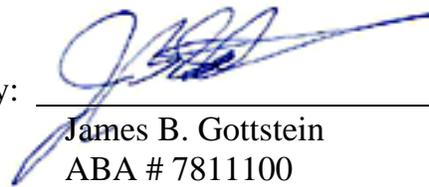
**IV. CONCLUSION**

For the foregoing reasons, API's Motion for Protective Order should be **DENIED**.

DATED: November 3, 2008.

Law Project for Psychiatric Rights

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



James B. Gottstein  
ABA # 7811100