

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

In the Matter of the Necessity)
for the Hospitalization of:)
)
WILLIAM BIGLEY,)
)
Respondent.)

Case No. 3AN-08-1252 PR

CERTIFICATE OF SERVICE

I hereby certify that on this day, correct copies of the **MOTION FOR PROTECTIVE ORDER**, and the **ORDER** in this proceeding were faxed/hand-delivered to:

Public Defender Agency
Fax No. 868-2588

and faxed/mailed to:

Law Project for Psychiatric Rights, Inc.
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, AK 99501
Fax No. 274-9493
[also hand-delivered on November 5, 2008]

Ron Adler
Alaska Psychiatric Institute
2900 Providence Drive
Anchorage, AK 99508
Fax No. 269-7128

Marieann Vassar
3080A Leighton Street
Anchorage, AK 99517
Fax No. 338-0711

Because attachment (5) is so large, it will be only included with the mailed copies. Tina

Tina
Signature

11/5/08
Date

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6100

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the Necessity)
for the Hospitalization of:)
5)
6 WILLIAM BIGLEY,)
7 Respondent.)

Case No. 3AN-08-1252 PR

8 **MOTION FOR PROTECTIVE ORDER**

9
10 The Alaska Psychiatric Institute ("API"), through the Office of the
11 Attorney General, pursuant to Alaska Rule of Civil Procedure 26(c), hereby requests the
12 entry of a protective order in this matter.

13 Given the history of contentious litigation involving Respondent William
14 S. Bigley ("Bigley"), and particularly given the past actions by Bigley's attorney, James
15 B. Gottstein ("Gottstein"), API respectfully requests that the Court enter a protective
16 order preventing the dissemination of deposition and hearing transcripts in this matter
and ordering the confidentiality of all documents pertaining to this case.

17 API seeks to protect deponents Dr. Kahnaz Khari, M.D., Dr. Dwight
18 Stallman, Officer Wendi Shackelford, and Ronald Adler, as well as all testifying
19 witnesses, from annoyance and harassment by Gottstein. In the past, Gottstein has
20 targeted a treating physician at API by filing a Civil Rights of Institutionalized Persons
21 Act charge with the Department of Justice,¹ naming him in court pleadings involving
22 Bigley², and attempting to file criminal charges against him with the district attorney's
23 office.³ As a result, this physician had difficulties securing another position, and API
continues to have issues attracting and retaining qualified physicians due to the actions

24
1 See Attached

25
2 See Attached

26
3 See Attached

1
2 of Gottstein.⁴ In the past, Gottstein's release of confidential materials through his
3 representation of Bigley resulted in a federal judge questioning his professional
4 responsibility and permanently enjoining him from disseminating these documents.⁵ It
5 is unclear what purpose would be served by allowing this information to be released,
6 other than harassment of the physicians and staff of API and the distribution of
7 confidential information about Bigley.

8 Additionally, under AS 47.30.845, proceedings such as this are per se
9 confidential and any disclosure is limited by the statute. There is no "different
10 procedure" identified under AS 47.30.839. Therefore, all discovery obtained, and any
11 material generated during the hearing should remain confidential and a protective order
12 should be issued.

13 Given the sensitive nature of the information sought in discovery and in
14 the court proceedings, and the history of Gottstein using information obtained in court
15 proceedings to tarnish the reputation of treating physicians via publication on his
16 website and personal attacks on the physicians, API requests that a protective order be
17 issued so that the contents of all discovery and proceedings in this case be confidential,
18 from now and into the indefinite future. Such an order would protect both Bigley from
19 the disclosure of sensitive medical information and the deponents from harassment and
20 embarrassment by Gottstein.

21 ///

22 ///

23 ///

24
25 ⁴ See Attached affidavit from Ron Adler

26 ⁵ See Attached court order

MOTION FOR PROTECTIVE ORDER

ITMO: W.B.

EP/TO/DERRYL/API/BIGLEY (3AN 08-1252 PR)/PROTECTIVE ORDER 2 (2).DOC

CASE NO. 3AN 08-1252 PR

PAGE 2 OF 3


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Accordingly, API seeks a protective order for the following:

1. That the contents of the discovery and of the court proceedings be kept confidential so as to protect both the respondent and the deponents/witnesses.

DATED: November 5, 2008

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Erin A. Pohland
Assistant Attorney General
Alaska Bar No. NA14009

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

In the Matter of the Necessity)
for the Hospitalization of:)
WILLIAM BIGLEY,)
Respondent.)

Case No. 3AN-08-1252 PR

AFFIDAVIT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Erin A. Pohland, being first duly sworn upon oath, deposes and says:

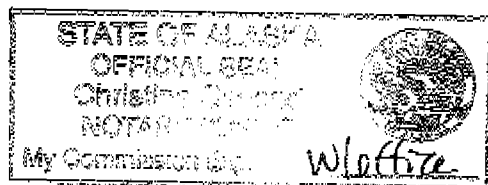
1. I am the assistant attorney general assigned to the above-captioned matter.

2. I have attempted to confer with James B. Gottstein, attorney for respondent, in an effort to resolve these issues. Mr. Gottstein has agreed to keep the contents of the discovery proceedings confidential for a week to allow API to file this protective order. He did not agree to maintain the confidentiality of the proceedings beyond one week.

Further your affiant saith naught.

Erin A. Pohland

SUBSCRIBED AND SWORN to before me this 5th day of November, 2008.



Christina Osmond
Notary Public in and for Alaska
My commission expires: W. Laffree

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1081 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

In the Matter of the Necessity)
for the Hospitalization of:)
)
WILLIAM BIGLEY,)
)
Respondent.)

Case No. 3AN-08-1252 PR

ORDER

Having considered API's Motion for Protective Order and any responses thereto, IT IS SO ORDERED:

1. All discovery and court proceedings in this matter shall be kept confidential.

DATED: _____

SUPERIOR COURT JUDGE

Recommended for approval:

Probate Master

Dated: _____

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1081 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

PsychRights[®]

Law Project for
Psychiatric Rights, Inc.

September 18, 2007

Shanetta Y. Cutlar, Chief
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW, PHB
Washington, D.C. 20530

RECEIVED LAW AGO AWC
SEP 19 2007 PM 12:26

Re: Alaska Psychiatric Institute's Apparent Pattern or Practice of Violations of
CRIPA, 42 U.S.C. § 1997 *et seq.*

Dear Ms. Cutlar:

This letter is to advise you of what appears to be a pattern or practice of violations of residents' federal constitutional rights under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.* (CRIPA) at the Alaska Psychiatric Institute (API) and to request an investigation the

More particularly, it appears that the constitutional right to decline or refuse psychiatric medications is being systematically violated. The United States Supreme Court has consistently recognized a fundamental right under the Due Process Clause of the United States Constitution to decline or refuse psychiatric medication(s).² In *Mills v. Rogers*, the Court explained that patients' federal due process rights may depend in part on state law:

Because state-created liberty interests are entitled to the protection of the federal Due Process Clause, the full scope of a patient's due process rights may depend in part on the substantive liberty interests created by state as well as federal law.³

Last year, in *Myers v. Alaska Psychiatric Institute*,⁴ the Alaska Supreme Court held Alaska's due process clause requires the court to find that forced psychiatric drugging is in the best interests of the patient and there is no less intrusive alternative available before any such forced drugging could occur under the *parens patriae* doctrine. The court distinguished this from police power justification, which is statutorily authorized under AS 47.30.838:

¹ 2800 Providence Drive Anchorage, Alaska, 99508-4677, tel: (907) 269-7100, fax: (907) 269-7251, Ron Adler, CEO and Duane Hopson, MD, Medical Director.

² See, *Mills v. Rogers*, 457 US 291, 102 S.Ct. 2442 (1982); *Sell v. United States*, 539 U.S. 166, 123 S.Ct. 2174 (2003); *Riggins v. Nevada*, 504 U.S. 127, 112 S.Ct. 1810, (1992); *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028(1990).

³ 457 US at 300, 102 S. Ct. 2449, citations omitted

⁴ 138 P.3d 238 (Alaska 2006).

Attachment 1

Shanetta Y. Cutlar
 September 18, 2007
 Page 2

[T]he state's power of civil commitment sufficed to meet its police-power interest, so we fail to see how the issue of medication implicates the state's police power at all.⁵

AS 47.30.838(a)(1), cited in *Myers*, allows such forcible drugging under the police power justification only if:

(1) there is a crisis situation, or an impending crisis situation, that requires immediate use of the medication to *preserve the life of, or prevent significant physical harm to, the patient or another person*, as determined by a licensed physician or a registered nurse; the behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's response to the behavior or condition *must be documented in the patient's medical record*; the documentation *must include an explanation of alternative responses to the crisis that were considered or attempted by the staff and why those responses were not sufficient*;

(emphasis added).

In connection with my recent representation of a resident at API in an involuntary administration of psychotropic medication proceeding under AS 47.30.839 (Forced Drugging), it has become apparent that API:

- (1) fails to train its psychiatrists and other personnel properly with respect to residents' right to decline psychotropic medication, or
- (2) tolerates or encourages blatant violations of residents' rights thereto, or
- (3) both,

resulting in a pattern or practice of violations of CRIPA.

In this particular situation, my client, a resident at API, was repeatedly forcibly drugged upon one or more of API's psychiatrists' order(s) between the close of a court hearing on August 31, 2007, until early in the morning of September 10, 2007, without a court order authorizing it under AS 47.30.839, or with respect to AS 47.30.838, either (1) the justification required in AS 47.30.838 being present in fact, or (2) any of the required documentation being placed in my client's medical records. With respect to the police power justification, as indicated, *Myers* held once in the hospital, this provision is not implicated, in any event.

A review of the medical records for my client strongly suggests forced psychiatric drugging without proper authorization in contravention of patients' federal constitutional rights is a pattern or practice at API.⁶

⁵ 138 P.3d at 248-9.

⁶ Also, in December of 2006, Ron Adler, the CEO of API, indicated there had been a dramatic drop in Forced Drugging petitions under AS 47.30.839. Since, there appears to be little if any drop in the percentage of patients being administered psychotropic drugs, it is hard to see how this drop could have

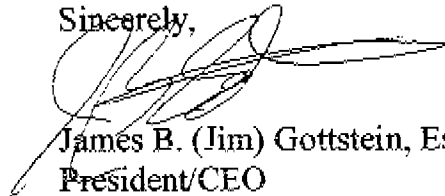
Shanetta Y. Cutlar
September 18, 2007
Page 3

In light of this, I am requesting the Special Litigation Section investigate what is transpiring at API and take whatever action might be appropriate under CRIPA.

I, of course, will be pleased to answer any questions and provide whatever other assistance I can.

Thank you for your attention to this matter.

Sincerely,



James B. (Jim) Gottstein, Esq.
President/CEO

cc: Governor Sarah Palin

Talis J. Colberg, Attorney General of the State of Alaska

Elizabeth Russo, Assistant Alaska Attorney General

Karleen Jackson, Commissioner, Alaska Dep't of Health & Social Services

Melissa Witzler Stone, Director, Alaska Division of Behavioral Health

Ron Adler, CEO, Alaska Psychiatric Institute

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
Respondent,)
William Worrall, MD,)
Petitioner)

Case No. 3AN 07-1064 P/S

OBJECTIONS TO MASTER'S REPORT

I. TABLE OF CONTENTS

I. Table of Contents	1
II. Factual Background	2
<i>A. Respondent's History</i>	2
<i>B. Prior 2007 Involuntary Commitment and Forced Drugging Proceedings</i>	7
<i>C. CHOICES, Inc.'s Involvement with Respondent</i>	8
<i>D. 2006/2007 Guardianship Proceedings</i>	10
<i>E. Ex Parte Application and Order in this Case</i>	12
III. Course of Current Proceeding	13
<i>A. August 31, 2007, Hearing</i>	14
<i>B. September 4, 2007, Pre-Hearing Brief Filed</i>	15
(1) Dr. Mosher's Testimony in Myers.....	18
(2) Dr. Jackson's Testimony in Myers.....	22
<i>C. Ronald Bassman Written Testimony</i>	25
<i>D. Robert Whitaker Written Testimony</i>	25
<i>E. September 5, 2007, Forced Drugging Petition Hearing</i>	33
(1) Motion to Strike All of Respondent's Attachments and Affidavits.....	33
(2) Dr. Worrall's Testimony on Best Interests and Less Intrusive Alternative.....	33
(3) Sarah Porter Testimony.....	34
<i>F. API's Criminal Assault on Respondent</i>	37
<i>G. Respondent's Request for a Less Intrusive Alternative/Remedy</i>	40
<i>H. September 10, 2007 Hearing</i>	42
<i>I. Motion for Permanent Mandatory Injunction</i>	43
(1) Paul Cornils' Less Intrusive Alternative Testimony.....	43
<i>J. Order Striking 80% of Respondent's Case and Removing it From the Official Court File</i> 45	
<i>K. Order Removing Other Documents from the Official Court File</i>	45
<i>L. Dismissal of Forced Drugging Petition</i>	46
<i>M. The Probate Master's Report</i>	46
<i>N. Opposition to Motion for Permanent Mandatory Injunction</i>	46

O. *Offers of Proof* 47

P. *Reply to Opposition to Motion for Permanent Mandatory Injunction* 47

IV. Discussion 47

A. *Myers v. Alaska Psychiatric Institute Mandates a Less Intrusive Alternative* 48

B. *Respondent Has Established There is a Less Intrusive Alternative* 49

C. *Respondent is Entitled to the Requested Less Intrusive Alternative in the Community* 49

D. *Specific Responses to Probate Master's Report* 51

(1) *Erroneous Findings of Fact* 52

(2) *Erroneous Conclusions* 54

V. Conclusion 56

COMES NOW, William S. Bigley, by and through his counsel, the Law Project for Psychiatric Rights (PsychRights®) and objects to the Probate Master's report/recommendations issued in the above captioned matter on September 24, 2007.

II. FACTUAL BACKGROUND

A. Respondent's History

Prior to 1980, Respondent was successful in the community, he had long-term employment in a good job, was married with two daughters.¹

In 1980, Respondent's wife divorced him, took his two daughters and saddled him with high child support and house (trailer) payments, resulting in his first hospitalization at the Alaska Psychiatric Institute (API).²

¹ Appendix to Pre-Hearing Brief (Appendix) 157-64. Approximately 80 per cent of the Appendix was struck by the Probate Master and removed from the official court file, by Order dated September 14, 2007 (Order Striking Respondent's Case). On September 28, 2007, these documents were resubmitted with Respondents Offers of Proof filed the same date (Offers of Proof).

² Appendix 157.

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
 406 G Street, Suite 206
 Anchorage, Alaska 99501
 (907) 274-7686 Phone ~ (907) 274-9493 Fax

PsychRights[®]

Law Project for
Psychiatric Rights, Inc.

September 18, 2007

RECEIVED LAW AGO AND
SEP 19 2007 PM 12:27

Adrienne Bachman, District Attorney
310 K. Street Suite 520
Anchorage, AK 99501-1975

Re: Criminal Assault Complaint Against William A. Worrall, MD

Dear Ms. Bachman:

In connection with my representation of Mr. William S. Bigley in an involuntary administration of psychotropic medication proceeding under AS 47.30.839 (Forced Drugging), I have become aware that William A. Worrall, MD, a psychiatrist at the Alaska Psychiatric Institute, assaulted Mr. Bigley by issuing orders to have him forcibly injected with dangerous drugs without authority to do so.

By way of background, on August 30, 2007, Dr. Worrall filed a Forced Drugging petition against my client and a hearing was set for August 31, 2007, at which Dr. Worrall expected to receive authorization to administer drugs to Mr. Bigley against his will. However, I obtained a short continuance until Wednesday, September 5, 2007 to defend against the petition. Dr. Worrall complained that Mr. Bigley was too disruptive not to be drugged until then and the Probate Master informed Dr. Worrall that if it was an emergency, he could use the police power authority contained in AS 47.30.838.

AS 47.30.838(a)(1) allows such forcible drugging only if:

(1) there is a crisis situation, or an impending crisis situation, that requires immediate use of the medication to *preserve the life of, or prevent significant physical harm to, the patient or another person*, as determined by a licensed physician or a registered nurse; the behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's response to the behavior or condition *must be documented in the patient's medical record*; the documentation *must include an explanation of alternative responses to the crisis that were considered or attempted by the staff and why those responses were not sufficient*;

(emphasis added).

Mr. Bigley was repeatedly forcibly drugged upon Dr. Worrall's order(s) between the close of the hearing on August 31, 2007, until early in the morning of September 10, 2007, without either (1) the justification required in AS 47.30.838 being present in fact, or (2) any of the required documentation being placed in Mr. Bigley's medical records.

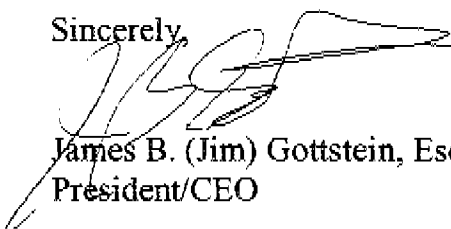
Attachment 3

Adrienne Bachman
September 18, 2007
Page 2

I believe the unauthorized forcible administration of these drugs properly constitutes criminal assault because they cause serious physical injury.¹ In fact, in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 242 (Alaska 2006), and *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371, 382 (Alaska 2007), the Alaska Supreme Court acknowledged that these drugs have been equated with the intrusiveness of Electroshock and Lobotomy.

I have full documentation of this assault, which I can provide you, and would be pleased to answer any questions that you might have. If I should do anything further to lodge formal criminal charges, please let me know. Thank you for your attention to this matter.

Sincerely,



James B. (Jim) Gottstein, Esq.
President/CEO

cc: William Bigley

William A. Worrall, MD

Duane Hopson, MD, Medical Director, Alaska Psychiatric Institute

Ron Adler, CEO, Alaska Psychiatric Institute

Talis J. Colberg, Attorney General of the State of Alaska

Elizabeth Russo, Assistant Alaska Attorney General

¹ See, generally, "Rethinking Psychiatric Drugs: A Guide to Informed Consent," by Grace E. Jackson, MD, *AuthorHouse*, 2005; and "Toxic Psychiatry," by Peter R. Breggin, MD, *St. Martin's Griffin*, 1994. See, also, "Prospective analysis of premature mortality in schizophrenia in relation to health service engagement: a 7.5-year study within an epidemiologically complete, homogeneous population in rural Ireland," by Maria G. Morgan, Paul J. Scully, Hanafy A. Youssef, Anthony Kinsellac, John M. Owens, and John L. Waddington, *Psychiatry Research* 117 (2003) 127-135. This study concluded: "On long-term prospective evaluation, risk for death in schizophrenia was doubled on a background of enduring engagement in psychiatric care with increasing provision of community-based services and introduction of second-generation antipsychotics." Schizophrenia, neuroleptic medication and mortality, by Matti Joukamaa, Markku Helovaara, Paul Knekt, Helio Vaara, Arpo Aromaa, Raimo Ratasalo and Ville Lehtinen, *British Journal of Psychiatry* (2006), 188, 122-127 found that that in a given time period the relative risk of dying was 2.50 times per increment of one neuroleptic.

PsychRights[®]
Law Project for
Psychiatric Rights, Inc.

September 24, 2007

RECEIVED LAW AGO ANC
SEP 25 2007 AM 10:59

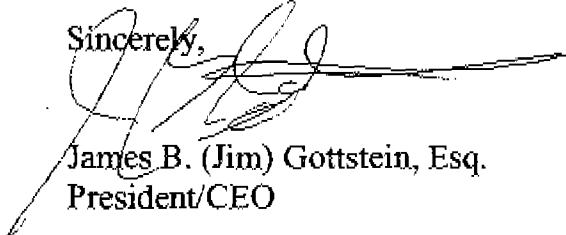
Adrienne Bachman, District Attorney
310 K. Street Suite 520
Anchorage, AK 99501-1975

Re: Follow up to September 18, 2007 regarding Criminal Assault against William S. Bigley letter

Dear Ms. Bachman:

Since my letter to you of September 18th, Dr. Worrall has insisted it was not he who ordered the unauthorized forced psychiatric drugging of Mr. Bigley. My understanding of the medical records is no doubt imperfect and while it is clear a criminal assault occurred, it is possible it was not by Dr. Worrall. Therefore, I am modifying my request to be a more general investigation as to this assault occurring at the Alaska Psychiatric Institute.

Sincerely,



James B. (Jim) Gottstein, Esq.
President/CEO

cc: William Bigley
William A. Worrall, MD
Duane Hopson, MD, Medical Director, Alaska Psychiatric Institute
Ron Adler, CEO, Alaska Psychiatric Institute
Talis J. Colberg, Attorney General of the State of Alaska
Elizabeth Russo, Assistant Alaska Attorney General

Attachment 3

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

CASE CAPTION

AFFIDAVIT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Ronald Adler, being first duly sworn upon oath, deposes and says:

1. I am the chief executive officer for Alaska Psychiatric Institute.
2. Due to counsel for Respondent Mr. James Gottstein's actions in personally attacking Respondent's treating physicians, I have had difficulties attracting and retaining physicians to work at API.

Further your affiant saith naught.

Ronald Adler

SUBSCRIBED AND SWORN to before me on Nov. 5th, 2008.

Leilua T. Salety
Notary Public in and for Alaska
My commission expires with office

