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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

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OBJECTIONS TO PROPOSED TESTIMONY

The State of Alaska, Alaska Psychiatric Institute ("API"), by and through the Office of the Attorney General, hereby objects to the direct testimony of proposed witnesses for Respondent William S. Bigley ("Bigley") as follows:

I. TESTIMONY OF LOREN R. MOSHER, MD IS HEARSAY

Bigley attempts to introduce the direct testimony of Dr. Mosher under Alaska Rule of Evidence 804(b)(1). This testimony should be excluded as violative of the hearsay rule, Rule 802, as API has not had an opportunity to develop the testimony of Dr. Moser as it relates to Bigley's case.

The proposed "affidavit" of Dr. Mosher¹ and prior deposition testimony ("the documents") are dated March, 2003. Neither the "affidavit" nor the testimony is for the instant case; both were taken in a separate case, *In the Matter of the Hospitalization of Faith J. Myers*. Because the documents were not produced for the above-captioned case, they bear no relation to the ultimate issue at stake in this hearing, Bigley's capacity to give or withhold informed consent to medication.

Under Rule 804(b)(1), former testimony of a witness may be introduced if the party against whom it is offered had an opportunity and similar motive to develop testimony as in the present proceeding. Here, API had no such similar motive and opportunity, given that the *sole* issue at stake here – *Bigley's* capacity to give or

¹ As discussed below, this document has merely been notarized, not sworn to by Dr. Mosher. As such, it does not qualify under Alaska law as an affidavit.

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2 withhold informed consent to medication – was not at issue in this previous case
3 involving an entirely different Respondent. As such, and because Dr. Mosher is
4 unavailable to testify or be available for cross-examination in this proceeding, his
5 testimony should be excluded as hearsay in violation of Rule 802.

6 **II. THE TESTIMONY OF SARAH PORTER IS HEARSAY**

7 Bigley has also proposed to introduce prior testimony of Sarah Porter
8 under Alaska Rule of Evidence 804(b)(1). In order to avail himself of this rule, Bigley
9 must show that he has been unable to procure Ms. Porter's attendance through
10 reasonable means, including process. No such showing has been made. As a result,
11 Ms. Porter's former testimony does not fall under the ambit of Rule 804(b)(1) and
12 should be excluded as hearsay under Rule 802.

13 **III. THE TESTIMONY OF ROBERT WHITAKER, RONALD BASSMAN, 14 PHD, SARAH PORTER, LOREN MOSHER, MD AND GRACE 15 JACKSON, MD IS IRRELEVANT**

16 Under Alaska Rule of Evidence 402, irrelevant evidence is inadmissible.
17 Here, the ultimate issue is Bigley's capacity to give or withhold informed consent to
18 medication.² Bigley's capacity is determined using the following standard:

- 19 (1) Did Bigley refuse medication?
- 20 (2) Is Bigley capable of informed consent?
- 21 (3) If not, are medications in Bigley's best interest?
- 22 (4) Are there less intrusive alternatives available to protect the
23 individual?³

24 The issue before the court at the hearing on the Petition for Administration
25 of Psychotropic Medication is therefore a fairly narrow one, contrary to the
26 respondent's briefing. This is not a forum to debate the general appropriateness of
27 using psychotropic medication to treat mental illness. The legislature has determined
28 that this is appropriate under certain circumstances, establishing statutory guidelines for

29 ² AS 47.30.839(e).

30 ³ *Myers v. Alaska Psychiatric Institute*, 138 P.2d 238 (Alaska 2006).

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2 when a state-treatment facility can prescribe such medications. The Alaska Supreme
3 Court has not declared that the treatment of psychiatric illness with psychotropic
4 medication is unconstitutional.⁴ The *Myers* court ultimately held that it is the trial court
5 that must determine whether the treatment of a respondent's mental health illness with
6 psychotropic medication is in his best interests and whether there is no less intrusive
7 treatment available.⁵

8 Given the standard for determining capacity, opinions helpful to the court
9 are those based on knowledge of the standard of care in the State of Alaska, knowledge
10 of Bigley's mental health status, and therapeutic alternatives available to Bigley in the
11 State. At the hearing on the medication petition, API has offered or intends to offer the
12 expert testimony of Dr. Khari, respondent's treating psychiatrist and various witness
13 with personal knowledge of Bigley. This testimony will demonstrate that Bigley is
14 incapable of giving informed consent, that the psychotropic medication API would like
15 to prescribe is in Bigley's best interests, and that there is no less intrusive treatment
16 option at this time. These are the specific issues before the court at this time, not the
17 much wider debate Bigley proposes regarding the propriety of psychotropic medication,
18 which is so extensive as to include medication that is not being proposed for Bigley.

19 The proposed witnesses listed by Bigley as available for cross-
20 examination are not residents of the State.⁶ The testimony for these out-of-state experts
21 is not about the standard of care for the State or for API. None of the proposed
22 witnesses have treated or examined Bigley⁷. It is unclear how these witnesses, not
23 residents or practitioners in the State, none of whom have treated Bigley, can provide
24 relevant information as to Bigley's capacity to consent. Generalized analysis of clinical
25 trials, psychopharmacology, and less intrusive alternatives is not relevant to the hearing;

26
4 *See Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006).

5 *Id.* at 254.

6 *See* Respondent's Preliminary Witness List, attached as Exhibit 1.

7 *See* Stipulation by counsel, attached as Exhibit 2.

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2 the sole purpose of the hearing is to determine *Bigley's* ability to consent to medication.
3 Because none of these proposed witnesses can provide testimony as to *Bigley's* ability
4 to consent, whether medication would be in *Bigley's* best interest, or less intrusive
5 alternatives for *Bigley*, their testimony is irrelevant. Having never evaluated or treated
6 *Bigley*, the proposed witnesses are unable to provide testimony as to what is in *Bigley's*
7 best interest, or what a least restrictive alternative in Anchorage, Alaska is for *Bigley*.
8 The only testimony they can offer is theoretical in nature, and therefore irrelevant. As
9 such, under Alaska Rule of Evidence 402, the testimony of Bob Whitaker, Sarah Porter,
10 Loren Mosher, MD, Grace Jackson, MD, and Ronald Bassman, PhD should be
11 excluded.

12 **IV. THE AFFIDAVITS OF ROBERT WHITAKER, RONALD BASSMAN,
13 PHD, GRACE JACKSON, MD, AND LOREN MOSHER, MD ARE
14 IMPROPER**

15 API additionally objects to the "affidavits" of Mr. Whitaker, Dr. Bassman,
16 Dr. Jackson and Dr. Mosher on the grounds that they are not affidavits. Fairbanks
17 Superior Court Judge Robert B. Downes provided clear direction on when documents
18 are merely inadmissible letters, rather than affidavits:

19 An affidavit is "[a] voluntary declaration of facts written down and sworn
20 to by the declarant before an officer authorized to administer oaths." Black's Law
21 Dictionary 58 (Bryan A. Garner ed., 7th ed. 1999). While a notary public is empowered
22 to administer such oaths, and to witness them, *id.* at 1085, AS 44.50.060, it is the
23 declarant's act of swearing that the statements in the declaration are true which converts
24 a notarized letter into an affidavit.

25 Day's letter does not contain a sworn declaration that the statements
26 contained in it are true and accurate to the best of his ability. As such, the fact that his
letter is signed and notarized is insufficient to render it an affidavit. It must, therefore,
be struck.

Judge Robert B. Downes, *Hymes v. DeRamus*, Case No. 4FA-03-1617 CI,
Order Granting Motion to Strike, dated April 10, 2006. Like the pleadings in the

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2 *Hymes* case, Mr. Whitaker's, Dr. Bassman's, Dr. Jackson and Dr. Mosher's "affidavits"
3 are not sworn to by the declarants. Instead, they are merely notarized letters. Thus,
4 they should be stricken.

5 **V. THE TESTIMONY OF PAUL CORNILS IS IRRELEVANT**

6 The affidavit of Mr. Cornils purports to set out a "less intrusive
7 alternative" for Bigley through use of the approach advocated by his employer,
8 CHOICES, and an approach suggested by attorney for Respondent, James B. Gottstein.

9 ⁸ Mr. Cornils also states that his employer, CHOICES, could be a provider of such "less
10 intrusive alternatives" to Bigley⁹. However, in previous testimony, Mr. Cornils has
11 stated that unless Bigley is compliant with his medications, CHOICES cannot provide
12 these services to him.¹⁰ Because the relevant inquiry regarding less intrusive alternatives
13 revolves around alternatives to medication, an "alternative" that *requires* compliance
14 with medication is not truly an alternative.¹¹ As such, any testimony regarding an
15 alternative that requires medication is irrelevant, and the affidavit of Mr. Cornils should
16 be excluded under Alaska Rule of Evidence 402. Specifically, paragraphs L through V

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21 ⁸ It should be noted that CHOICES, Consumers Having Ownership in Creating
22 Effective Services, was co-founded by attorney for Respondent, James B. Gottstein. *See*
23 Attached Biography of James B. Gottstein at Exhibit 3.

24 ⁹ *See* Attached Affidavit of Paul A. Cornils at paragraph V, at Exhibit 4.

25 ¹⁰ *See* Attached Testimony of Paul A. Cornils at 250: 2 – 25; 251: 1 – 12, dated
26 May 15, 2008, at Exhibit 5.


¹¹ *See* Findings and Order of Court-Ordered Administration of Medication, dated
May 19, 2008, at Exhibit 6.

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of the affidavit should be excluded as irrelevant given that they reference an alternative to medication that is not truly available to Bigley without compliance with medication.

DATED: November 7, 2008

TALIS J. COLBERG
ATTORNEY GENERAL

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

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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 08-1252PR

RESPONDENT'S PRELIMINARY WITNESS LIST

Respondent hereby submits this preliminary¹ witness list with respect to the hearing currently set for November 5, 2008 in this matter.

Witnesses Intending to Call

Respondent intends to call the following witnesses:

1. Jerry Jenkins
Anchorage Community Mental Health Services (ACMHS)
API Records Assert ACMHS is Outpatient Provider
Experience & opinions regarding Respondent, less intrusive alternative
2. Dorothy Pickles, MSW²
P.O. Box 141336
Anchorage, AK 99508
(907) 375-5602 (907) 258-5205
API Procedures
3. Pat Ventgen
P.O. Box 940352
Houston, AK 99694
350-7133
API Procedures

¹ Due to the expedited nature of this proceeding and the need to review more records this weekend, it is impossible to know

² Ms. Pickles is scheduled to be out of town on November 6 & 7, 2008.

4. George Gee
Proprietor Side Street Café
412 G Street, Anchorage, Alaska 99501
258-9055
Experience & opinions regarding Respondent
5. Jerry Winchester
Owner of Winchester Alaska
406 G Street, Suite 205
Anchorage, Alaska 99501
272-4347
Experience & opinions regarding Respondent
6. Lise Falskow
Alaska World Affairs Council
406 G Street, Suite 207
Anchorage, Alaska 99501
276-8038
Experience & opinions regarding Respondent
7. Susan Musante³
CHOICES, Inc.
401 Northern Lights Blvd. suite 100
Anchorage, Alaska 99503
(907) 333-4343
Less Intrusive Alternative

Witnesses Available for Cross-Examination

The following witnesses are available for cross-examination on their written testimony and otherwise may be called to testify:

8. Bob Whitaker (telephonically)
(617) 499-4354
Expert in analysis of clinical trials and other research

³ It is believed Ms. Musante is scheduled to be out of town November 4-6, but it should be possible to arrange a time to testify telephonically if her testimony is needed during the time she is out of town.

9. Grace Jackson, MD (telephonically)
(910) 208-3278
Expert psychiatric/psychopharmacology testimony
10. Ronald Bassman, Ph.D. (telephonically)
(518) 495-0092
Expert in less intrusive alternatives

Potential Witnesses

The following witnesses are API employees, were identified through discovery, or listed by API, or may be necessary to authenticate documents, or any combination thereof, and may be called:

11. Candice Siciliano, LPC
Alaska Community Mental Health Services (ACMHS) on
contract to Providence Psychiatric Emergency Room
4020 Folker Street, Anchorage, Alaska
XX2-2800⁴
12. M.R. Brown, RN, API Employee
13. Leslie Palmer, records custodian for ACMHS
14. Melinda Natenek, LMSW, API Employee
15. Kamaree Altaffer, API employee
16. Anne O'Brien, listed by API
17. Jonathan Hughes, listed by API
18. Steve Young, listed by API
19. Kahnaz Khari, M.D., listed by API
20. Aron Wolf, M.D., listed by API
21. Jenny Love, M.D., listed by API
22. Lawrence Maile, listed by API

⁴ Indecipherable phone number on 9/30/08 *Ex Parte* Petition

23. Ron Adler, listed by API
24. Dr. Dwight Stallman, listed by API
25. Officer Wendi Shackelford, listed by API
26. Laura Brooks, listed by API
27. Theresa O'Neel, listed by API
28. Mark Behnen, listed by API
29. Young Lee, listed by API
30. Other witnesses identified by Respondent's Chart
31. Witnesses to rebut Petitioner's rebuttal witnesses, if any, and Witnesses identified by such testimony.
32. Any witness(es) listed on other parties' lists or called by any party.
33. Any witness(es) determined to exist through discovery or testimony.

DATED: October 31, 2008.

Law Project for Psychiatric Rights

By: 

James B. Gottstein, ABA # 7811100

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

EXHIBIT 1
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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

STIPULATION

The State of Alaska, Alaska Psychiatric Institute ("API"), by and through the Office of the Attorney General, and Respondent William S. Bigley ("Mr. Bigley"), by and through James S. Gottstein, hereby stipulate to the following:

1. Witness for Respondent Loren Mosher has never treated or examined Mr. Bigley, or examined Mr. Bigley's medical records.
2. Witness for Respondent Robert Whitaker has never treated or examined Mr. Bigley, or examined Mr. Bigley's medical records.
3. Witness for Respondent Ronald Bassman, PhD has never treated or examined Mr. Bigley, or examined Mr. Bigley's medical records.
4. Witness for Respondent Grace E. Jackson, MD, has never treated or examined Mr. Bigley, or examined Mr. Bigley's medical records since May 20, 2008.
5. Witness for Respondent Sarah Porter has never treated or examined Mr. Bigley, or examined Mr. Bigley's medical records.

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Exhibit 2
Page 1 of 3

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6. Witness for Respondent Paul A. Cornils has not treated or examined Mr. Bigley in the past 12 months, or examined Mr. Bigley's medical records within the past 12 months.

DATED: November 5, 2008

TALIS J. COLBERG
ATTORNEY GENERAL

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

DATED: _____

JAMES B. GOTTSTEIN, ESQ.
Attorney for Respondent

By:
James B. Gottstein
Alaska Bar No. 7811100

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Osgood, Tina M (LAW)

From: Pohland, Erin A (LAW)
Sent: Friday, November 07, 2008 3:56 PM
To: Osgood, Tina M (LAW)
Subject: FW: Stipulation

Can you print this out and attach it to the stipulation exhibit? Thanks!

From: Jim Gottstein [mailto:jim.gottstein@psychrights.org]
Sent: Friday, November 07, 2008 3:49 PM
To: Pohland, Erin A (LAW)
Subject: Stipulation

Hi Erin,

We are not in a position to file your stipulation today that was just delivered. I can bring it to API on Monday, though,

--

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

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501
USA
Phone: (907) 274-7686 Fax: (907) 274-9493
jim.gottstein[at]psychrights.org
<http://psychrights.org/>

PsychRights[®]
Law Project for
Psychiatric Rights

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of forced psychiatric drugging. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging interventions against their will. Extensive information about this is available on our web site, <http://psychrights.org/>. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.

Exhibit 2
Page 3 of 3

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Law Project for
Psychiatric Rights

James B. (Jim) Gottstein
(President)



Jim Gottstein grew up in Anchorage, Alaska. After graduating from West Anchorage High School in 1971, he attended the University of Oregon and graduated with honors (BS, Finance) in 1974. From there he attended Harvard Law School graduating in 1978 with a J.D. degree. Mr. Gottstein's career has evolved from emphasizing business matters and public land law, with mental health representation and advocacy as an adjunct, to increasing emphasis on mental health advocacy and representation.

Since late 2002, Mr. Gottstein has devoted the bulk of his time *pro bono* to the Law Project for Psychiatric Rights (PsychRights) whose mission is to mount a strategic litigation campaign against forced psychiatric drugging and electroshock across the United States. In June of 2006, the Alaska Supreme Court decided Myers v. Alaska Psychiatric Institute, which ruled Alaska's forced drugging procedures unconstitutional. Myers has been called "the most important State Supreme Court decision" on forced drugging in 20 years.

Mr. Gottstein has won two other Alaska Supreme Court decisions since then, Wetherhorn v. Alaska Psychiatric Institute in 2007, which held Alaska's involuntary commitment statute unconstitutional to the extent that someone could be committed as gravely disabled without the state proving the person was unable to survive safely in freedom, and Wayne B. v. Alaska Psychiatric Institute in 2008, ruling the State could not dispense with the requirement of a transcript when involuntary commitment and forced drugging cases are referred to a master for hearing and recommendations.

Mr. Gottstein is most known around the US and internationally for subpoenaing and releasing the Zyprexa Papers, resulting in a series of New York Times articles and an editorial calling for a Congressional investigation.

Mr. Gottstein has also devoted considerable time trying to make alternatives to psychiatric drugs available in Alaska through Soteria-Alaska, and CHOICES, Inc. See, Report on Multi-Faceted Grass-Roots Efforts To Bring About Meaningful Change To Alaska's Mental Health Program for a description of these efforts.

Jim's mental health work has included:

- Co-founding the Law Project for Psychiatric Rights (PsychRights) in 2002. Jim is currently president.
- Serving on the board of directors of the National Association for Rights Protection and Advocacy (NARPA) since 2005, including as president in 2006 and 2007 and currently as treasurer.

Exhibit 3
Page 1 of 2

- Serving on the board of directors of the International Center for the Study of Psychiatry and Psychology (ICSPP) since 2006.
- Co-founding Soteria-Alaska, Inc., in 2003, to provide a non-coercive and mainly non-drug alternative to psychiatric hospitalization, serving as president until November, 2007.
- Co-founding CHOICES, Inc. (Consumers Having Ownership in Creating Effective Services) in 2003 to provide peer-run, alternative services, especially the right to choose not to take psychiatric drugs, serving as president until November, 2007.
- Co-founding Peer Properties, Inc., in 2002, to provide peer (mental health consumer) run housing for people diagnosed or diagnosable with serious mental illness who are homeless, at risk of homelessness, or living in bad situations. Jim is currently president.
- Serving on the Alaska Mental Health Board (AMHB), the statewide planning board for Alaska's mental health program from 1998 to 2004, where, at various times, he served as chair of its Program Evaluation Committee and its Budget Committee, which made statutorily required recommendations regarding the state's mental health program budget.
- Co-founding in 1998 and serving until 2002 on the board of directors of the Alaska Mental Health Consumer Web which provides peer-support and a drop in center for mental health consumers in Anchorage.
- Co-founding Mental Health Consumers of Alaska in 1986 and serving on its board of directors for almost ten years.
- Serving as plaintiffs' counsel on behalf of people diagnosed with mental disorders in Alaska in the billion dollar litigation over the state of Alaska's misappropriation of a one million acre trust granted for Alaska's mental health program. See, Weiss v. State, 939 P 2d 380 (Alaska 1997).

last modified 9/23/2008

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Exhibit 3
Page 2 of 2

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)

COPY
Original Received
Probate Division

SEP 12 2007

Clerk of the Trial Courts

Case No. 3AN 07-1064 P/S

AFFIDAVIT OF PAUL A. CORNILS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Paul A. Cornils, being first duly sworn under oath do hereby state as follows:

A. My name is Paul Cornils and I am the Program Manager for CHOICES, Inc., which stands for Consumers Having Ownership in Creating Effective Services. I have almost 10 years experience working in the field of behavioral health with adults and children including 8 years as a case manager with people who are diagnosed with serious and persistent mental illness.

B. I first began Respondent Bill Bigley in January of 2007, under contract with the Law Project for Psychiatric Rights (PsychRights®). When the cost of services exceeded \$5,000 PsychRights said it could not afford to continue paying and Mr. Bigley informed me he did not want to work with me anymore so services were discontinued.

C. CHOICES began working with Mr. Bigley again in July of this year at the request of the Office of Public Advocacy (OPA), Mr. Bigley's Guardian and has continues to do so.

Exhibit 4
Page 1 of 6

D. Mr. Bigley is so angry at being put under a guardianship that he takes extreme measures to try to get rid of his guardianship. As a result, he is mostly refusing to cooperate in virtually any way with the Guardian.

E. For example, Mr. Bigley rips up checks from the Guardian made out to Vendors on his behalf, trying to force the Guardian to give him his money directly and as part of his effort to eliminate the guardianship.

F. Mr. Bigley has also refused various offers of "help" from the Guardian, such as grocery shopping in a similar attempt to get out from under the guardianship.

G. He exhibits the same types of behavior to me, but I have a different approach, which involves negotiation and discussion, does not involve coercion and where the natural consequences of Mr. Bigley's actions are allowed to occur.

H. This is very important because after people are labeled with a mental illness everything is attributed to the mental illness and the person no longer takes responsibility for his or her actions.

I. Taking responsibility for one's actions is a core tenet of CHOICES' approach.

J. Another tenet of the CHOICES' approach is what is known as a "Relapse Plan." In fact, there is a whole curriculum called the "WRAP," developed by Mary Ellen Copeland, used around the world, which stands for Wellness Recovery Action Plan, of which a Relapse Plan is a part. Other aspects are learning how to deal with one's difficulties in ways that do not create as many problems. I am a trained WRAP Facilitator.

K. With Mr. Bigley, however, I have used Anger Management, Moral Reconciliation Therapy (MRT) and elements of Peer Support, all of which I have taken training in and have received certification as the most beneficial techniques for Mr. Bigley at this time.

L. It is my belief that if the CHOICES approach were consistently used with Mr. Bigley and there are sufficient community support resources there is a good chance he will be able to live successfully in the community.

M. I understand Mr. Bigley, through his attorney Jim Gottstein, has moved for an injunction as follows:

1. Mr. Bigley be allowed to come and go from API as he wishes, including being given, food, good sleeping conditions, laundry and toiletry items.
2. If involuntarily at a treatment facility in the future, be allowed out on passes at least once each day for four hours with escort by staff members who like him, or some other party willing and able to do so.
3. Only the Medical Director of API may authorize the administration of psychotropic medication pursuant to AS 47.30.838 (or any other justification for involuntary administration of medication, other than under AS 47.30.839), after consultation with James B. Gottstein, Esq., or his successor.
4. API shall procure and pay for a reasonably nice two bedroom apartment that is available to Mr. Bigley should he choose it.¹ API shall first attempt to negotiate an acceptable abode, and failing that procure it and make it available to Mr. Bigley.
5. At API's expense, make sufficient staff available to be with Mr. Bigley to try keep him out of trouble.
6. The foregoing may be contracted for from an outpatient provider.

¹ API may seek to obtain a housing subsidy from another source, but such source may not be his Social Security Disability income.

N. It makes perfect sense. With respect to Number 1, Mr. Bigley's problems in the community revolve around the expression of his extreme anger, and has caused the loss of housing options. Currently, it is my understanding even the Brother Francis Shelter is not available to him. There needs to be a safe and comfortable place for Mr. Bigley to sleep when he doesn't have any other option. Even though he is never actually violent, there is no other option in Anchorage of which I am aware that is in a position to deal with his yelling and screaming.

O. Frankly, it is unlikely that Mr. Bigley would avail himself of the option because of the way he has been locked up and treated there so much in his life, but the option should be available to him.

P. Number 2, is more likely unless and until Mr. Bigley gets his behavior within a socially acceptable range. Mr. Bigley seems to always be okay on pass when he is there so he should be given such passes.

Q. With respect to Number 4, housing is a huge issue for Mr. Bigley. He demands a relatively nice apartment and will choose homelessness over one that does not meet his requirements. Currently, under his Guardianship regime, he is only given about \$60 per week for food and \$50 per week for spending money. That is an unreasonably small amount. I don't know if the State should be required to support Mr. Bigley's housing to the extent requested by Mr. Gottstein, but it should in a reasonable amount as necessary.

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R. With respect to Number 5, right now, it would be very beneficial to have someone with Mr. Bigley for an extended period of time during the day to help him meet his needs and stay out of trouble.

S. Currently, it would probably take more than Medicaid allows to provide what is needed.

T. Using CHOICES' approach, it is my opinion there is a reasonable prospect that within a year to eighteen months Mr. Bigley could get by with far less services and be within the normal Medicaid range.

U. There is also a reasonable prospect that this will never be achieved.

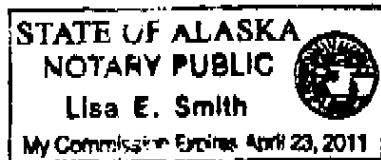
V. With respect to Number 6, CHOICES could be such an outpatient provider, but would need to increase its staffing level in order to be able to do so properly, which would take at least a little bit of time.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED September 12, 2007.

By: Paul A. Cornils
Paul A. Cornils

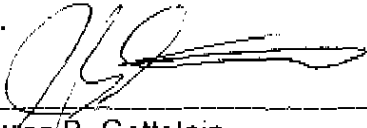
SUBSCRIBED AND SWORN TO before me this 12th day of September, 2007.



Lisa E. Smith
Notary Public in and for Alaska
My Commission Expires: 4/23/2011


State of Alaska)
)ss
 Third Judicial District)

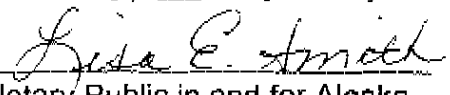
I, James B. Gottstein, hereby swear that this reproduction of Affidavit of Paul Cornils, to which this is appended, is a true, correct and complete photocopy of the original filed in 3AN 07-1064PR.

Dated: 10/27/2008 
 James B. Gottstein

SUBSCRIBED AND SWORN TO before me this 27th day of ~~May~~ October, 2008.

STATE OF ALASKA
NOTARY PUBLIC
Lisa E. Smith
 My Commission Expires April 23, 2011




 Notary Public in and for Alaska
 My Commission expires: 4/23/2011

4
 m. b. s. b.

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1 A Right. So in Mr. Bigley's case, it's kind of
2 been ongoing -- let's see how I would describe it. A
3 relapse plan is generally in place for individuals who
4 experience intermittent crisis. Mr. Bigley's case,
5 his behavior is almost on a daily basis described by
6 somebody he comes into contact with as a crisis.

7 What we do in that case is I or one of my
8 colleagues go to wherever Mr. Bigley is and intervene,
9 which generally involved negotiation and discussion.
10 And it works. So we discuss with him how to better
11 approach his particular issue that they -- without
12 being aggressive and angry, which is quite -- most
13 often, 90 percent of the time, the behavior that's
14 getting him in trouble is his anger and his aggression
15 are disturbing to the community.

16 Q Does Choices work with clients who are on
17 medication?

18 A Yes. Choices, with or without medication.
19 If the individual chooses not to take medication, and
20 that is something they have worked out with their
21 medical provider and they have a plan to manage their
22 issues without medication, that's something that we
23 support. And we assist them in developing plans to
24 manage their behavior without medication.

25 But medication or not does not preclude

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1 somebody from service.

2 Q Does Choices work with any clients who are
3 refusing to take medication against their physician's
4 recommendations?

5 A No. And our medical director at this time
6 would not support that.

7 Q Am I correct in understanding that your
8 medical director would not support Choices working
9 with a patient or a client --

10 A Who is --

11 Q -- who was refusing to take medication
12 against physician's recommendations?

13 A Against their -- yes, sir, that's correct.

14 Q And it's your understanding in this case that
15 Mr. Bigley's treating psychiatrists are recommending
16 that he take medication, correct?

17 A It is.

18 MR. TWOMEY: No further questions, Your
19 Honor.

20 THE COURT: So would you be available to
21 provide services to Mr. Bigley if he chose not to take
22 medication at this time?

23 THE WITNESS: That is kind of a -- maybe. I
24 would have to have a discussion with our medical
25 director, and we would have to identify the

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1 appropriate resources.

2 I would not be willing to begin to provide
3 services to Mr. Bigley at this time without the
4 appropriate financial resources, so that --

5 THE COURT: Well, setting aside the finances,
6 I am trying to follow up on Mr. Twomey's questions,
7 which was --

8 THE WITNESS: Which is I currently do not
9 believe our medical director would agree.

10 THE COURT: To provide services without
11 medication?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Follow-up on that question,
14 Mr. Twomey?

15 MR. TWOMEY: No, Your Honor.

16 THE COURT: Mr. Gottstein?

17 PAUL CORNILS

18 testified as follows on:

19 RECROSS EXAMINATION

20 BY MR. GOTTSTEIN

21 Q I guess I want to -- would like to start with
22 the last one. But if -- if Mr. Bigley had a
23 psychiatrist who was willing to work with him without
24 medications, then Choices would?

25 A Yes, sir.

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1 Q That's correct. Okay. And in fact, when
2 he -- when he's discharged from API, then he really
3 doesn't have a treating physician; is that correct?

4 A That's correct.

5 Q Okay. Now, Mr. Twomey asked you about the --
6 I think the WRAC plan, the Wellness Recovery Action
7 Plan, and I think --

8 A I don't recall.

9 Q -- or relapse plan, correct?

10 A Yeah. A relapse plan, right.

11 Q And you said that that wasn't really
12 appropriate for --

13 A Well, I'm not saying it's -- it's -- it is
14 appropriate.

15 But how relapse is generally viewed from a
16 case management standpoint is that you have an
17 individual who has, quote, stable behavior who reaches
18 a point where his -- his or her behavior is no longer
19 stable in his approaching crisis. At that time, a
20 relapse plan is implemented.

21 In Mr. Bigley's case, his behavior is viewed
22 by the community as almost constantly being in crisis.
23 So our plan is to -- and my personal approach with
24 Mr. Bigley was to intervene at the earliest possible
25 point that a crisis was identified, and we'd negotiate

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

IN THE MATTER OF:)
)
 Plaintiff,)
)
 vs.)
)
 WB: WILLIAM BIGLEY)
)
 Defendant.)
)

Case No. 3AN-08-00493 PR CI

*** CONFIDENTIAL ***

VOLUME III

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE SHARON GLEASON
 Superior Court Judge

Anchorage, Alaska
 May 15, 2008
 10:07 A.M.

APPEARANCES:

FOR THE STATE: Timothy M. Twomey, Esq.
 Assistant Attorney General
 1031 West 4th Avenue, Suite 200
 Anchorage, Alaska 99501

FOR THE DEFENDANT: James B. Gottstein, Esq.
 Law Project for Psychiatric Rights
 406 G Street, Suite 206
 Anchorage, Alaska 99501

Exhibit 5
 Page 2 of 2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the)
Necessity for the)
Hospitalization of:)

WILLIAM BIGLEY ,)
Respondent.)

Case No. 3AN-08-00493 P/R

FINDINGS AND
ORDER CONCERNING COURT-ORDERED
ADMINISTRATION OF MEDICATION

FINDINGS AND ORDER

A petition for the court approval of administration of psychotropic medication was filed on April 28, 2008.

Respondent was committed on May 5, 2008 for a period of time not to exceed 30 days in an order signed by Judge Rindner on that date.

Hearings were held on May 12, May 14 and May 15, 2008, to inquire into respondent's capacity to give or withhold informed consent to the use of psychotropic medication, and to determine whether administration of psychotropic medication is in the respondent's best interested considered in light of any available less intrusive treatments. See *Myers v. API*, 138 P.3d 238, 252 (Alaska 2006).

Having considered the allegations of the petition, the evidence presented and the arguments of counsel, the court finds:

1. The evidence is clear and convincing evidence that the respondent is not competent to provide informed consent concerning the administration of psychotropic medication. The evidence presented was clear and convincing that Mr. Bigley lacks the

capacity to assimilate relevant facts about his current mental health condition. This finding is supported not only by the testimony of the health care professionals from API, the court visitor, and Mr. Cornils, but by Mr. Bigley's own demeanor during the course of the court proceedings. Mr. Bigley's demeanor in the courtroom was indicative of some limited understanding by him that the court proceedings were to address API's request for an order to administer psychotropic medication without his consent. But he was quite agitated and maintained a running monologue throughout most of the court proceedings. The evidence was clear and convincing, particularly the testimony of Dr. Maile, that Mr. Bigley denies the existence of a mental illness and is unwilling to confer with either the court visitor or API staff in an effort to assimilate relevant facts about his mental health. The evidence was also clear and convincing that Mr. Bigley is unwilling to participate in treatment decisions at all because he is unwilling to communicate or cooperate at all with API staff or with the court visitor regarding any such proposed treatment. The court visitor attempted to assess Mr. Bigley's capacity to give or withhold informed consent, but was unable to do so because of Mr. Bigley's complete refusal to cooperate with her. Mr. Bigley has indicated that he believes the hospital staff is poisoning him, both as to the food and drink he was provided as well as any medication. Counsel for Mr. Bigley asserted that Mr. Bigley's belief that the medication could poison him was a reasonable objection to the medication, given the medication's side effects. But the evidence was clear and convincing that Mr. Bigley's concern of being poisoned is not due to any potential side effect of the proposed medication; rather, it constitutes a delusional belief that API would attempt to administer a substance that is poison in the strictest sense of that term --rather than an antipsychotic medication with potentially significant side effects. The evidence is clear and convincing that Mr. Bigley does not have the capacity to participate in treatment decisions by means of a rational thought process, and is not able to articulate reasonable objections to using the proposed medication.

2. The evidence is clear and convincing that Mr. Bigley has never previously made a statement while competent that reliably expressed a desire to refuse future treatment with psychotropic medication. The court visitor testified she was unaware of any such statement. Mr. Bigley did not introduce any evidence of such a statement. Through his counsel, Mr. Bigley asserted that the fact that Mr. Bigley promptly ceased taking antipsychotic medication after his prior releases from API is demonstrative of such a statement to refuse future treatment. But this court finds that the fact that Mr. Bigley has ceased taking antipsychotic medication in the past does not, in itself, reliably express a desire to refuse such medication in the future.

3. The evidence is clear and convincing that the proposed course of treatment is in Mr. Bigley's best interest. API has proposed to administer one medication to Mr. Bigley at this time - risperadone. The proposed dosage is up to 50 mgs. every two weeks. API presented clear and convincing evidence that the administration of this medication to Mr. Bigley meets the standard of medical care in Alaska for individuals with Mr. Bigley's medical condition. The evidence is clear and convincing that Mr. Bigley is unable at the present time to obtain any housing or mental health services outside of API because of his current aggressive and angry behavior. He is not welcome at the Brother Francis Shelter or in any assisted living home at the present time. The option that Mr. Bigley simply be permitted to come and go from API as he chooses is not a realistic alternative for two reasons - first, it is inconsistent with API's role as an acute care facility for individuals throughout the state that are in need of acute mental health care, and second, the evidence is clear and convincing that Mr. Bigley would not avail himself of this option even if it were available to him. As such, it is not a less intrusive treatment at all. When medication has been administered in the past to Mr. Bigley, his behavior has improved to such an extent that he has been able to successfully reside in the community, albeit for short periods of time. Without the administration of medication at this time, the evidence is clear and convincing that there will not be any improvement in Mr.

Exhibit 6
3 of 5

Bigley's mental functioning. And this particular medication has not caused severe side effects to Mr. Bigley in the past. Evidence was introduced that Mr. Bigley has had tardive dyskinesia as a result of the long term administration of antipsychotic medication to him over a period of many years, but the risk of that condition is considerable less with risperadone than with some other medications. [See Transcript of 2003 proceedings at 42-45; 3AN-02-00277 CI] Although CHOICES has provided valuable assistance to Mr. Bigley in the recent past that has enabled Mr. Bigley to function outside of API, the testimony of Paul Cornils constitutes clear and convincing evidence that that entity is not able to provide assistance to Mr. Bigley to enable him to live in the community at the present time because Mr. Bigley is not following treatment advice to receive medication. Although Mr. Bigley presented evidence as to the potential side effects of risperadone, both long term and short term, he presented no viable alternative to such treatment at the present time. In short, the evidence is clear and convincing that in order for Mr. Bigley to be most likely to achieve a less restrictive alternative than his current placement at API, the involuntary administration of risperadone is needed. In reaching this conclusion, this court has considered that the involuntary administration of risperadone to Mr. Bigley by injection is highly intrusive, and that there is a certain degree of pain associated with the receipt of an injection, particularly if it is to be administered to a patient that is strongly opposed to its administration. And the court has considered the adverse side effects of risperadone that were presented in court, and the fact that Mr. Bigley has not experienced some of those side effects, such as diabetes or undesirable weight gain when the drug has been administered to him in the past. The drug has been in use since the early 1990's, and, as noted above, falls within the standard of care in Alaska at the present time. The risk to Mr. Bigley of nontreatment is very high- the evidence is clear and convincing that Mr. Bigley will continue to be unable to function in the community unless he receives this treatment - the only form of treatment that is available to him at the current time. As such, although highly

intrusive to Mr. Bigley in the short term, this court finds that the proposed treatment is the least intrusive means of protecting Mr. Bigley's constitutional right to individual choice in his mental health treatment over the long term.

ORDER

For the foregoing reasons, API's petition for the administration of psychotropic medication is GRANTED, solely with respect to the use of risperadone in an amount not to exceed 50 mg per two weeks during the respondent's period of commitment. If API seeks to use additional or other medication during the period of commitment, it may file a motion to amend this order. If API seeks to continue the use of psychotropic medication without the patient's consent during a period of commitment that occurs after the period in which the court's approval was obtained, the facility shall file a request to continue the medication when it files the petition to continue the patient's commitment.

Pursuant to Mr. Bigley's request at the close of the evidence in this proceeding, this decision is STAYED for a period of 48 hours so as to permit Mr. Bigley to seek a stay of this order from the Alaska Supreme Court.

5-19-08
DATE

12:30 p.m.

Sharon Gleason
SHARON L. GLEASON
Judge of the Superior Court

I certify that on 5/19/08
a copy of this order was sent to:

respondent's attorney
attorney general
treatment facility
court visitor
guardian

Clerk: A. Stanley

In re Bigley, 3-AN-08-493
Order re Medication
Page 5 of 5

EXHIBIT 6
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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. The facts stated in the Objections to Proposed Testimony are true and correct to the best of my knowledge.

Further your affiant saith naught.

Erin A. Pohland

SUBSCRIBED AND SWORN to before me on this 7th day of November, 2008.



Derryl O'Good
Notary Public in and for Alaska
My commission expires with office

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

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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 RE: OBJECTIONS TO PROPOSED TESTIMONY

Having considered API's Objections to Proposed Testimony and any opposition filed, for the reasons stated in the motion, the motion is GRANTED. The testimony of Bob Whitaker, Grace Jackson, MD, Sarah Porter, Loren Mosher, MD, Paul Cornils, and Ronald Bassman, PhD shall not be presented at the hearing.

DATED: _____

SUPERIOR COURT JUDGE

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