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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

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a correct copy of the **OPPOSITION TO MOTION TO MODIFY STAY and STAY PENDING APPEAL** in this proceeding was faxed/hand-delivered to:


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**OPPOSITION TO MOTION TO MODIFY STAY  
and STAY PENDING APPEAL**

The Alaska Psychiatric Institute ("API"), through the Office of the Attorney General, opposes Respondent William S. Bigley's ("Mr. Bigley") Motion to Modify Stay and Stay Pending Appeal. API respectfully requests that these motions be denied.

**I. THE STAY SHOULD NOT BE MODIFIED PAST DECEMBER 17, 2008  
GIVEN THIS COURT'S CONCLUSIONS IN ITS NOVEMBER ORDER**

In its November 25, 2008 order ("November Order"), this Court granted API's medication petition, and simultaneously granted a stay in this matter to allow the Supreme Court to review this stay during oral arguments for a pending appeal in a separate matter involving Mr. Bigley. Importantly, in refusing to grant a stay pending appeal for the November order, this Court stated that Mr. Bigley "had deteriorated since May 2008 and should not have to wait longer for medication."<sup>1</sup> To grant a further stay of its November order until such time as the Supreme Court may rule on the pending appeal (at S-13116) would lead to further decompensation and decline for Mr. Bigley. This result is contrary to this Court's findings and conclusions in its November order, and must be avoided.

Mr. Bigley extensively quotes from the pleadings in his appeal of the May 2008 order ("May order") granting the court-ordered administration of

<sup>1</sup> See Order dated November 25, 2008, at Exhibit 1.

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2 psychotropic medications. The order was subsequently stayed ("May stay") to allow for  
3 appeal. Such pleadings are not relevant here, as the November order was based upon  
4 the specific facts and circumstances present in Mr. Bigley's most-recent admission to  
5 API in October 2008. This Court heard and declined Mr. Bigley's arguments regarding  
6 the applicability of the May stay to the November proceedings (on October 21, 2008,  
7 and October 28, 2008).

8 By its own terms, the May stay does not apply to the November order;  
9 instead, the May stay discussed the likelihood that Mr. Bigley would be readmitted to  
10 API "in the near future and that API staff will again seek a medication order."<sup>2</sup> The  
11 Supreme Court clearly recognized that future medication petitions may be sought, and  
12 chose not to extend the May stay to future petitions. Given this, one cannot "assume"  
13 that the Supreme Court's intent was to extend its stay, as Mr. Bigely suggests. Instead,  
14 this Court must read the May stay as it was written, and not expand its terms to allow  
15 for a stay of its November order that would be detrimental to Mr. Bigley's health and  
16 well-being.

17 Mr. Bigley has filed multiple motions with the Supreme Court regarding  
18 an extension of its May stay, and for a stay of the November order. As such, the  
19 Supreme Court is fully advised on the issues raised by Mr. Bigley and can make  
20 a determination on the merits of Mr. Bigley's claims during oral argument on  
21 December 16, 2008.

22 **II. A STAY PENDING APPEAL SHOULD NOT BE GRANTED BECAUSE**  
23 **THE REQUISITE STANDARDS HAVE NOT BEEN MET**

24 **A. Mr. Bigley Does Not Establish the Necessity for a Stay Pending**  
25 **Appeal Based on Irreparable Harm.**

26 Because certain individuals perceive that the risks associated with  
psychotropic medication outweigh its benefits, Mr. Bigley contends that irreparable harm  
will result when he receives treatment at API. However, Mr. Bigley fails to address the

<sup>2</sup> Supreme Court Case No. S-13116, Bigley v. API, Order of May 23, 2008,  
page 3.

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2 fact that this Court rejected these same arguments that psychotropic medications “do more  
3 harm than good” after considering *all* of the evidence, not just that of Mr. Bigley’s experts,  
4 who advocate Mr. Bigley’s position.

5 Permitting a stay under the circumstances here denies Mr. Bigley any  
6 treatment, contrary to the finding that the no-treatment alternative was not viable or in  
7 Mr. Bigley’s best interest. Further, granting a stay pending appeal trumps the statutory  
8 scheme of AS 47.30.839. A stay would put API in the untenable position of having  
9 committed Mr. Bigley but without the ability to carry out its mission of providing acute  
10 care to the mentally ill. It would also be contrary to this Court’s conclusions in its  
11 November order, namely that Mr. Bigley’s “...deterioration over the past year is troubling  
12 and will likely continue if he is not medicated.”<sup>3</sup>

13 This Court determined that medication is in Mr. Bigley’s best interest,  
14 despite evidence of the potential side effects or perceived dangers of medication.<sup>4</sup> It  
15 recognized that no evidence was presented by Mr. Bigley of a viable alternative to  
16 medication,<sup>5</sup> discussed evidence pertaining to Mr. Bigley’s specific prior experience with  
17 medication,<sup>6</sup> and narrowly tailored its order to the specific medication to be provided<sup>7</sup>.

18 Despite Mr. Bigley’s statements to the contrary, the Alaska Supreme Court  
19 has not found “on exactly the same evidence presented here”<sup>8</sup> that Mr. Bigley faces  
20 irreparable harm if a stay is not granted. The “same evidence” has not been presented;  
21 instead, the evidence has shown that since the May stay, Mr. Bigley has deteriorated

22 <sup>3</sup> November order at 29.

23 <sup>4</sup> As noted in the November order at 21 – 23, Mr. Bigley has not articulated a  
24 reasonable objection to either medication in general or to the ordered medication.

25 <sup>5</sup> November order at 30

26 <sup>6</sup> November order at 26

<sup>7</sup> November order at 34

<sup>8</sup> Respondent’s Memorandum in Support of Motion to Modify Stay and for Stay  
Pending Appeal (“Motion”) at 7.

1 significantly.<sup>9</sup> As discussed above, by its own terms, the May stay does not apply to the  
2 November order. It also does not apply when facts and circumstances have changed such  
3 that psychotropic medication is necessary in order to stabilize Mr. Bigley.

4 This Court has determined, consistent with the evidence, that the  
5 administration of medication to Mr. Bigley is within the standard of care for psychiatry, is  
6 appropriate for Mr. Bigley and further, that no less restrictive alternative treatment is  
7 available. This Court recognized the high risk to Mr. Bigley associated with the “no  
8 treatment” alternative and supported the authorization of medication, in part upon evidence  
9 of Mr. Bigley’s own history while on medication<sup>10, 11</sup>.

10 **B. There Is No Clear Showing of Probable Success on the Merits.**

11 API has the mission of providing acute care to the mentally ill. A stay  
12 pending appeal in the context of court-ordered administration of medication has the  
13 practical effect of preventing API from administering treatment and fulfilling its  
14 mission. Because this significant interest is not adequately protected, Mr. Bigley must  
15 make a clear showing of probable success on the merits<sup>12</sup>. Mr. Bigley makes no such  
16 showing, but instead insists that this Court was erroneous because it did not accept  
17 Mr. Bigley’s position that drugs do more harm than good.

18 API is an acute-care psychiatric hospital. It is not a home for the mentally  
19 ill. One of the purposes of civil commitment is that the commitment has, “a reasonable

20 <sup>9</sup> November order at 32.

21 <sup>10</sup> November order at page 28.

22 <sup>11</sup> API notes that despite Mr. Bigley’s unsupported assertions to the contrary,  
23 Motion at 9, Mr. Bigley has not “been desperately fighting against the forced drugging  
24 for almost 30 years.” To the contrary, evidence presented at the November hearing  
25 demonstrated that at many times in Mr. Bigley’s history, he voluntarily took medication  
26 and was better able to function in society while voluntarily taking medication. See  
November order at 22 – 23.

<sup>12</sup> *Powell v. Anchorage*, 536 P.2d 1228 (Alaska 1975) at 1272 (quoting *A.J. Indus.,  
Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970), modified in other  
respects, 483 P.2d 198 (Alaska 1971)).

1 expectation of improving [the patient's] mental condition." AS 47.30.655(6). API  
2 practices an evidence-based medical approach to treating psychiatric illness. Housing  
3 someone at API is not treatment. The stay requested by Mr. Bigley forces API into the  
4 untenable position of housing him during commitment without providing necessary  
5 treatment.

6 In touting its own claims of harm, Mr. Bigley gives a perfunctory and  
7 incomplete analysis to the harm that will befall API if a stay issues. If Mr. Bigley  
8 obtains a stay pending appeal based on perceived harm resulting from the medication  
9 itself, the statutory scheme for administration of psychotropic medication, AS 47.30.839  
10 could be "undone" by any litigant unhappy with the outcome in their case, as it is likely  
11 that the period of commitment under AS 47.30.735 et seq. would expire before the  
12 medication could be administered<sup>13</sup>. If API is prevented from taking action that it is  
13 required to demonstrate is likely to improve a patient's mental condition, the statutory  
14 scheme for involuntary commitment and treatment will be impeded. Mr. Bigley has  
15 failed to show how this significant interest is protected.

16 API has a significant interest in ensuring that undue litigation does not  
17 prevent proper care and treatment for its patients. If Mr. Bigley's motions to this Court  
18 and to the Supreme Court were granted, such a result would occur: a trial court could  
19 repeatedly find under the relevant law that medication is in Mr. Bigley's best interests,  
20 and requests for multiple stays would prevent such medication from ever being

21 <sup>13</sup> A stay in this setting should be reserved for those exceptional cases where there  
22 is a clear showing of probable success on the merits. If the Court were to merely  
23 assume that API is protected & Mr. Bigley will suffer irreparable harm if he received  
24 the approved treatment (based on general effects of psychotropic drugs), Mr. Bigley  
25 could indefinitely postpone the implementation of a medication order because the order  
26 would always become moot. To illustrate: If stay until full review on appeal, even if  
upheld, API wouldn't be able to implement the order because any new medication order  
would probably need to be based on the current situation. That would require a new  
hearing. Also, Mr. Bigley may be released from commitment at expiration of 90 days  
(or sooner) because there would be no treatment to improve his condition. Findings  
from any new hearing could be appealed again, and new stay sought, over and over.

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2 administered. This essentially leaves Mr. Bigley in a vacuum where—despite a finding  
3 that medication is appropriate and necessary—no such medication can be given in order  
4 to stabilize Mr. Bigley. As this Court noted, “the endless cycle of arrest, emergency  
5 medication while incarcerated, evaluation at API and discharge to homelessness and  
6 further degradation must be ended.”<sup>14</sup> Should a stay be granted, this cycle would  
7 continue.

8 Most importantly, API has an interest in improving Mr. Bigley’s condition  
9 by providing psychiatric treatment for his mental illness. This Court has found that  
10 Mr. Bigley has deteriorated since May 2008, and medication is in his best interests.  
11 API’s interest in providing the necessary care to Mr. Bigley cannot be protected unless  
12 proper treatment can be provided in a timely manner. More than a merely non-frivolous  
13 argument against the order should be required to deprive Mr. Bigley of treatment both  
14 his doctors and the court finds to be in his best interest. A finding that a stay is  
15 appropriate in this instance would result in substantial harm to API’s interest in  
16 providing the medical treatment that this Court has found to be appropriate.

### 17 III. CONCLUSION

18 This Court has already determined that the May stay did not preclude API  
19 from seeking future medication petitions. By its own terms, the May stay does not  
20 apply to future medication petitions. Mr. Bigley has not shown that enforcement of the  
21 November order will lead to irreparable harm, and has also not demonstrated a clear  
22 showing of probable success on the merits. Given the necessity of medicating  
23 Mr. Bigley due to the changed circumstances since May 2008, a stay would be  
24 inappropriate and would be detrimental to Mr. Bigley’s health and well-being.

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<sup>14</sup> November order at 31.

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For the foregoing reasons, API respectfully requests that Mr. Bigley's Motion to Modify Stay and for Stay Pending Appeal be denied.

DATED: 12/5/08

TALIS J. COLBERG  
ATTORNEY GENERAL

By: *Erin A. Pohland*  
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