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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of )  
A Request for Information )  
)  
)  
)

Case No. 3AN-16-00695 DN

**API COMMENT ON COURT'S PROPOSAL OF NOVEMBER 4, 2019**

The court proposed that future respondents could be asked if they would consent to participation in Dr. Gotzsche's project; either the judge handling the petition could ask directly, or the assistant public defender could explain the request and report back to the court. The court asked for comments. API's comments are:

API agrees with Dr. Gotzsche that it would be wrong to ask respondents before the involuntary medication hearing. Any respondent who is facing an involuntary medication hearing presumably just had the court grant an involuntary commitment petition about two minutes before. That can be an emotional time.

API also believes, however, that asking respondents before the commitment hearing presents significant problems, because it would imply that the commitment petition is going to be granted.

Asking respondents after a medication hearing presents a serious problem: the court would have just held there was clear and convincing evidence that the respondent cannot make informed decisions about medication. It is inconsistent to find that a person who cannot make an informed decision about medication could make an informed decision about releasing medication records.

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API agrees with Dr. Gotzsche that any of these methods would skew the results, making any study non-helpful. Random sampling is an essential part of the scientific method. Because the study will be inevitably<sup>1</sup> skewed, it follows that **Dr. Gotzsche has little interest in the records.**

API believes there would be a significant problems with the superior court or magistrate judge asking a patient if they wanted to participate in Dr. Gotzsche's study. Canon 2 (B) of the Code of Judicial Conduct states that "A judge shall not use or lend the prestige of judicial office to advance the private interests of the judge or others." This Canon applies to magistrate judges. Having a magistrate judge or superior court judge ask respondents to participate in Dr. Gotzsche's study advances Dr. Gotzsche's own interests. Furthermore, with the inherent prestige and authority of the office, **no respondent could feel the court's inquiry was simply neutral, and not a request.**

Another problem would be that there are patients who want a hearing, but who exercise their right to not attend. A magistrate judge cannot ask a patient who is not present. Nor would it be appropriate for a magistrate judge to go to a patient on a unit when that patient did not want to go to the hearing.

API believes there would be a significant problem with having an assistant public defender asking a patient if they wanted to participate in Dr. Gotzsche's study. The patient is not only a patient, but also a *client*. To require an attorney to ask their client if the client wants to be part of Dr. Gotzsche's study would interfere with the

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<sup>1</sup> **Dr. Gotzsche has asked for 30 consecutive cases, not 30 random cases. His request is inherently skewed.**

attorney-client relationship. Alaska Rule of Professional Conduct 2.1 indicates independent professional judgment is required. It is also compelled speech, which is disfavored under the First Amendment. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 US 557 (1995)(*passim*). In general, individual rights are protected at least as much under the Alaska Constitution as the United States Constitution.

DATED: November 20, 2019.

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**CERTIFICATE OF SERVICE**

I certify that on this date, true and correct copies of the *API Comment on Court's Proposal of November 4, 2019*, and this *Certificate of Service* in this proceeding were served to the following parties via **hand delivery**:

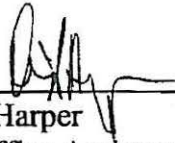
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