

SUBMISSION TO THE QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL SCHEDULED HEARING

8 FEBRUARY 2017

FOLLOWING "ACCESS" TO THE APPLICANTS DOCUMENTATION.

garth of the family daniels

Preamble:

Garth of the daniels family (herein after refer as garth) is the son of bernard and marilyn for whom bernard is the enduring power of guardianship under *section 24 of the Guardianship and Administration Act 1986*, general power of attorney pursuant to *section 107(1) of the Instruments Act 1958* (repealed *post facto*) nominated person/allied person in pursuance of the *Mental Health Act 2000* and enduring power of attorney (medical treatment) under the *Medical Treatment Act 1988, schedule 2, section 5a(2)*.

Garth is under a disability with his rights entrenched under the *International Covenant on Civil and Political Rights (ICCPR)*; *Convention Against Torture (CAT)*, with an investigation of garth's human rights under the *Convention of the Rights of Persons with Disability (C.R.P.D.)* currently under investigation by the *United Nations Office of the Human Rights Committee* in Geneva [*Daniels v Australia Communication 36/2016*].

There is also a Constitutional guarantee that a law shall not be unreasonable. *The International Covenant on Civil and Political Rights* forbids any one to be exposed to any medical experimentation:

Article 7

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

Background:

Garth has been subjected to more than one hundred ElectroShocks (ECT) which has impacted on his cognitive abilities and culminated at times in high levels of anxiety and verbal aggression motivated by fear and often interpreted as a resurgence of psychosis when forced to consume prescription drugs which garth knows adversely affects him.

No cognizance of factors contributing to these emotional responses has been investigated in the public sector other than allegations of ineffective treatment and the introduction of polypharmacy with more and higher doses of prescription drugs. The most recent additional prescription being Clozapine to

which Garth has refused consent and expressed the fact the he complied with its administration under “duress” culminating in allegation of assault and summons issued against garth.¹

The fact that garth was forcefully given clozapine by having it sprayed into his mouth is a very real concern including violation of his right to decide what is forced into his body.² The concern is very real because of the family miscegenated background being of diverse mixed ethnic origin.

As with some Asian population Garth is not able to metabolize the drug adequately which results in extreme toxic accumulation giving rise to extreme adverse drug reactions (ADR), including but not limited to Neuroleptic Malignant Syndrome (NMS) a potentially fatal condition to which garth had before been subjected.

Further, garth has suffered cardio-vascular ischemic issues which increases the risk exponentially of garth suffering a heart attack, stroke and/or sudden premature death likely to be exacerbated as a result of the prescription of clozapine.

To imply that Garth does not have legal capacity to consent cannot be negated on that basis because garth’s refusal to informed consent to clozapine (Novartis) and/or Clopine (Hosperia/Pfizer) has been consistent having prepared an advanced directive and previously having been registered under the Novartis CPMS.

Admission to RBWH

Based on the protocols applied via the CPMS it is concerning that garth had qualified to be registered on the clopine data base of Hosperia at a time when his prescription drugs prior to re-registration with CPMS had been increased from two prescription drugs(Amisulpride 200mg daily and Propranolol 20mg tds).³ The additional prescriptions consisted of

- Amisulpride 200mg b.d⁴
- Chlorpromazine 450mg (total dose-frequency not verified)
- Risperidone 2mg b.d.
- Olanzapine 30mg tds
- Oxazepam 30mg tds
- Propranolol 40mg tds.
- Zuclopenthixol (acuphase intra-muscular injection-imi) 330mg within 4 days.⁵

A consequence of the aforementioned prescriptions culminated in garth declaring he was under *duress*⁶ and refused to consent to the prescription of clozapine on or about 9 September 2016. Garth was

¹ Corey Fulcher- Mental Health Act Administrator Delegate 9 November 2016 – RBWH : (Notice of outstanding Charges): [Police :Notice to appear No 3139661 30/04/2016]

² See: *Rogers v Whittaker*. HCA

³ Three times per day.

⁴ Twice a day

⁵ See: comment of Professor Gotzsche.

⁶ Pursuant to the *Commonwealth Criminal Code Act 1995 section 10.2*(under *Duress deemed to be assault*).

forcibly administered clozapine by having it sprayed into his mouth to which he retaliated under *duress* resulting in the charge of assault against garth.

The Director of Mental Health has referred the matter to the Mental Health Court in relation to the allegations of assault. In the interim garth was moved on 8 November 2016 to TPCH SMHRU (sic) where the prescription of clozapine has continued despite evidence indicating that the risk of its continued administration having already resulted in cardiac complications and indicating that this prescription far exceeds any benefit. Dr. Walker has now enforced a dangerous prescription upon garth against his express wishes and advanced directive and against garth human rights causing harm and torture, as garth now struggles against adverse effects of the prescription threatening staff and refusing to allow any one near him in seclusion having now been forced into seclusion at 11:00am Sunday 5 February 2017.

Application for Guardianship and Public Trustee for garth- Kimberley Oakley

The applicant Kimberley Oakley a social worker who list herself as an Occupational Therapist in the documents submitted to QCAT and has lodged the application without substantive reason, and without discussion with Garth.

It is also unlikely that Garth will be in a position to discuss the application as garth has been subject to rapid cessation and alteration of prescription drugs and polypharmacy. This has resulted in unstable serum levels culminating in high levels of anxiety and distress which on Sunday 5 February 2017 again resulted in garth being placed in seclusion because of aggressive outburst a paradoxical effect of benzodiazepines and cross-over from one drug to another without the staff recourse to considering the effects of withdrawal symptomatology or the paradoxical effect of polypharmacy.

An assessment compiled by Jonathan Norris at RBWH in August 2016 confirms that the environment in which the assessment was conducted was not conducive to allow for appropriate assessment of functional performance, besides which the Report is outdated having being compiled on 25 August 2016. At that time garth was still in the open ward having been permitted leave from the ward with his parents. The analysis and summary of Jonathans Report indicates garth's strength as having a highly invested and supportive family. It suggests that garth has future goals of further study of photography. That garth utilises external memory aids such as diary notes and telephone etc...

However, contrary to the views that the family are seeking alternative accommodation for garth this is now absolutely INCORRECT.

Garth is now not capable of living independently without family support as garths admission to hospital was in the context of seeking a period of rehabilitation with a view to self-management, which has been totally destroyed because of a return by the mental health treatment of garth with failed treatment regimes. Prior to the clozapine prescription garth had remained well despite intermittent periods of PTSD and support garth's private psychiatrist in the community.

The treating team at ALL levels of management have totally ignored garths concerns and wishes with regard to his management and treatment. They have also absolutely ignored the fact that garth

nominated Bernard as his Allied person to assist Garth in promulgating his wishes in order to ensure a holistic approach to Garth's well-being and not just his mental state.

The team also appears to ignore the fact that Garth has a mother and brother who at no stage has sought to remove or exclude Garth from the Daniels household. In fact the very reason the Daniels family are in Queensland is to assist and support Garth for the duration Garth chooses to remain within the family household.

Reasons for application explored

Firstly, we fail to understand why a guardianship application has been made when Garth has the support of his entire family. All the decisions made by the consultants have been made in total opposition to the wishes and Will of Garth as communicated to the Allied person and whom Garth has provided lawful instruments to protect his rights in the event Garth at any time is classified as not having capacity to a degree considered necessary to intervene.

Secondly, a question of payment for accommodations is raised in the application and for the purpose of clarity a letter concerning that aspect is reproduced here, which will demonstrate that reference to payment is taken out of context as stated in the applicants' submissions.:-

Quote:

Ms. Patricia Bicevskis

Nursing Unit Manager- Secure Mental Health Rehabilitation Unit (SMHRU)

*Metro North Hospital & Health Service- Metro North Mental Health – The Prince Charles Hospital
CHERMSIDE QUEENSLAND 4032*

Dear Patricia,

Thank you for providing us with "An Information and orientation Resource for Clients, their families and/or carers". This communication relates specifically to fees and charges and does not address any other concerns. However, we would be happy to do so should the need arise.

We note fees and charges are guided by the Health Services Regulations 2011 and secondly, that "fees are not payable for the first 35 days of (your) stay in the SMHRU and when you are in transition to leave, there will be a period waiver negotiated, subject to conditions set out in the Guidelines Fees and Charges in Mental Health Facilities- Administration of Part 4- Health Services Regulation 2011".

Notwithstanding the aforementioned, Garth Daniels had not been transferred from another extended treatment facility as he is a public patient within a public hospital, initially the Royal Brisbane and Women's Hospital (RBWH) albeit the Department of Psychiatry. Further, the information under the fees and charges specifically states that "if you have private health insurance and wish to use it, please speak to your nurse".

For the purpose of expediency, we have prior to Garth's hospitalization ascertained that in the event Garth requires an extended period of hospitalization requiring further medical intervention that we should activate his private health cover to insure Garth's stay in hospital is as comfortable as possible. To date it would appear that there has been significant clinical and medical interventions.

Garth is NOT A FORENSIC PATIENT therefore, we find n o encumbrances which would negate you accepting to access Garths cover with my authority. In fact we question why Garth is required to pay for forced incarceration which was supposed to be a period of rehabilitation! We await your further advice.

Yours sincerely,

Bernard & Marilyn Daniels.”

Treatment at TPCH

On 23 December 2016 the pharmaceutical drug Clozapine prescribed and administered to garth daniels initially at RBWH⁷ under consultant psychiatrist Dr. Ravinder Sohal and registrar Chris May which subsequently continued on Garths transfer to TPCH⁸ by Dr. Andrea Walker, was abruptly ceased/stopped.

Garth experienced adverse drug reactions which culminated in cardiac complications confirmed at a joint meeting with garth, his parents and SMHRU⁹ staff by the chief cardiologist Dr. Brendan Bell¹⁰ held on 6 January 2017.

Dr. Andrea Walker in her submission to QCAT confirms that Quote: “... *In terms of medical issues, Garth recently experienced some episodes of chest pain that required further investigations. Also, he (garth) unfortunately had a cardiac complication related to the medication Clozapine, an antipsychotic that was prescribed to him.*” Unquote.

And, that Quote: “...*Garth will be rechallenged with clozapine shortly due to his serious deterioration in mental state following cessation on 23 December 2016. Due to the associated physical health risks with this potential re-challenge, a number of investigations will be required and possibly other medical treatments.*” Unquote. However, Dr. Andrea Walker re-commenced clozapine without further investigation as she stated would be required.

Dr. Walker appears to justify her reasons to re-challenge garth with clozapine on the basis she states that further opinions were obtained from Associate Professor John Amerena, a cardiologist of Barwon Health in the State of Victoria, the Clozaryl Cardiologist and Associate Professor William Parsonage and Dr. Dave Neillie, cardiologists from the RBWH.

Despite requests to review these opinions Dr. Walker had directed that application to review those opinions should be made on application under F.O.I. This however, is not an F.O.I. request but a request to seek access to the medical investigations previously provided (now withheld) in order to continue to be able to have informed discussions regarding garth’s on-going treatment and management both now and in the future¹¹.

⁷ Royal Brisbane & Womens Hospital

⁸ The Prince Charles Hospital

⁹ Secure Mental Health Rehabilitation Unit

¹⁰ Chief Cardiologist at TPCH

¹¹ F.O.I. applications are subject to lengthy process periods.

Dr. Brendan Bell had provided a comprehensive account of the investigative measures he undertook and concluded at our joint meeting that since the cessation of clozapine some sixteen days earlier that garth's cardiac functioning had returned to normal.

When questioned as to the cause of cardiac complications Dr. Brendan Bell confirmed that since the clozapine had ceased the heart functioning had returned to normal and that his conclusion was that the clozapine was more than likely the causative agent.

Dr. Walker states that it remains her opinion that "...clozapine is the most appropriate treatment for him (Garth)". Dr. Walker under her own admission has eluded to her opinion being in conflict with other colleagues, seeking opinions which contradict that of Dr. Brendan Bell who was made aware of all the prescriptions that had been administered to garth in conjunction with clozapine.

Clozapine without further consultation or investigations was recommence by Dr. Andrea Walker on Monday 30 January 2017, claiming that authority to proceed is authorized under provisions of the Mental Health Act 2000 (Qlds).

At this time of writing garth remains unsettled showing no sign of improvement on the current prescription which has been seriously questioned in an open communication by an independent consultant:

Quote:

"Allow me to say that it is serious medical malpractice to give anyone 4 different antipsychotics at the same time. And these are being combined with a benzo, which according to the Danish National Board of Health increases mortality by 50%. Furthermore, the combination of antipsychotics and an antidepressant increase the risk of sudden cardiac death. And, then there is lithium, a highly toxic drug. Finally, a Cochrane review of clozapine did not find any clear advantages of this drug over other antipsychotics".¹²

Unquote:

The consequences and seriousness of the clozapine prescription coupled with polypharmacy is further emphasized in this communications:-

Quote:

"What I see here is a recipe for iatrogenic killing. It could end in a state authorized murder. I am totally appalled about what Garth Daniels is exposed to. In my view it is a basis for criminal prosecution..."

Unquote:

Therefore, it seems quite incongruous that application is now made for guardianship when every discussion held to date with the treating team bernard supplemented with scientifically validated

¹² Professor Peter Gotzsche, *Professor Dr.MedSci, MSc (biology & chemistry) specialist in internal medicine, Director Nordic Cochrane Centre, co-founder of the Cochrane Collaboration.*

laboratory data and extracts from medical data bases addressing each and every prescription administered to garth and the likely consequences of misunderstandings and/or misdiagnoses.

It would according to Dr. Andrea Walker possibly require further medical interventions and we are aware would call for regular blood tests which already indicate abnormal pathological results defined by the CPMS as “alerts”. These alerts have occurred on three occasions once at the RBWH and twice at TPCB in spite of which Dr. Walker has unequivocally taken it upon herself to overlook the level of detail communicated by Dr. Brendan Bell and now places garth in a high risk category of morbidity.

We conclude our submission to the QCAT in reference to the *Constitution of the Commonwealth section 118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.*

bernard & marilyn of the family daniels

05 February 2017