

PsychRights®

Law Project for
Psychiatric Rights, Inc.

March 12, 2007

Gara LaMarche
OSI-New York
400 West 59th Street
New York, NY 10019

Dear Mr. LaMarche:

As you suggested in our November 20, 2006, meeting, I am updating the information presented in my August 21, 2006, letter with a funding proposal. I am not including materials I enclosed with that letter, but can if you so desire.

Brief Summary and Background

In a nutshell, the psychiatric drugs typically forced on people don't work on the target symptoms for many, if not most, are often experienced as torture, and are extremely harmful.¹ By excluding non-drug choices, at least half the people who could otherwise have completely recovered after a first or second psychotic break go on to become permanent mental patients, labeled as "chronically mentally ill." Hundreds of thousands of people in the United States, if not a million or more, are forced to take these drugs each year under court compulsion. If their rights were being honored, however, only a tiny fraction would be subject to this treatment. PsychRights' mission is to mount a strategic litigation campaign in the United States against unwarranted forced psychiatric drugging and electroshock.² Related to this is public education and fostering the availability of alternatives because both are essential to success.³

Update/Significant Events Since August Letter

- Alaska Supreme Court Awards \$82,240 in Attorney's Fees in the Myers Case. As suggested in my August 21, 2006 letter was likely, the Alaska Supreme Court awarded PsychRights \$82,240 in full reasonable attorney's fees as a prevailing public

¹ See, compiled research at <http://psychrights.org/Research/Digest/Chronicity/NeurolepticResearch.htm> and <http://psychrights.org/Research/Digest/NLPs/neuroleptics.htm>. Research on Electroshock is available at <http://psychrights.org/Research/Digest/Electroshock/electroshock.htm>.

² Some people find the drugs helpful and PsychRights is not trying to prevent such people from having access to them. They should be told the truth about them, but they should have access to them if they so desire.

³ This approach is described in some detail in the article *How the Legal System Can Help Create a Recovery Culture in Mental Health Systems*, available at <http://psychrights.org/Education/Alternatives05/RoleofLitigation.pdf> and was enclosed with the August 21st letter. Also enclosed with the August 21st letter is the *Report on Multi-Faceted Grass-Roots Efforts To Bring About Meaningful Change To Alaska's Mental Health Program* available at <http://psychrights.org/Articles/AKEffortsRevMar07.pdf>, which describes successes in Alaska utilizing this approach.

interest litigant. PsychRights decided the best primary use of these funds was to hire an Executive Director to help move PsychRights' program forward. Payment requires a legislative appropriation and is not expected until May or June, 2007, but a line of credit of \$75,000 has been obtained so that the award may be used prior to actual payment by the State of Alaska.

- Executive Director Hired. In mid-December, Bruce Whittington was hired as Executive Director from among a number of very excellent candidates including three lawyers and at least one Ph.D. His primary task is to implement the national strategic litigation effort.
- Zyprexa Papers.⁴ In early December, 2006, pursuant to what I believe were entirely proper procedures, I subpoenaed documents from Dr. David Egilman, an expert witness in the massive Zyprexa products liability litigation consolidating some 30,000 separate claims for diabetes and other metabolic diseases. Lilly failed to exercise its right to object in time and I received about 700 very important, formerly secret documents, which I forwarded to a number of people, including Alex Berenson of the New York Times. This resulted in what may be an unprecedented five straight days of coverage, starting with front page stories on Sunday and Monday, December 17th and 18th, and an editorial calling for a Congressional investigation. According to the New York Times,⁵ the Zyprexa Papers show Eli Lilly (1) downplayed to doctors the serious health problems caused by Zyprexa, (2) illegally promoted "off-label" uses of Zyprexa, and (3) provided doctors with data regarding other blood-sugar problems associated with Zyprexa that did not match data the company circulated internally. The off-label promotion revealed by the documents is to the elderly, for whom the drug is particularly lethal.

The judge disagreed I had followed proper procedures, and in a 78-page opinion issued February 13, 2007, decided I had conspired with Dr. Egilman and Mr. Berenson to violate the protective order issued in the case and granted a permanent injunction requiring me and a few others to return the Zyprexa Papers and not further disseminate them.⁶ Notably, Alex Berenson was not included in the injunction, nor were the New York Times, National Public Radio, the Wall Street Journal, or Bloomberg News, all of whom had received the Zyprexa Papers. The judge found there was no free speech right to disseminate the Zyprexa Papers, but concluded it was futile to try and enjoin their distribution on the Internet.

Most recently, on March 1st, Congressman Waxman, Chair of the House Committee on Oversight and Government reform requested documents pertaining to Zyprexa and its

⁴ The documents pertaining to this as well as the New York Times articles are available on the Internet at <http://psychrights.org/States/Alaska/CaseXX.htm> for more information.

⁵ Because of subsequent events, I did not have much of a chance to go through the documents myself.

⁶ I am appealing the decision, which is available at <http://psychrights.org/States/Alaska/CaseXX/EilLilly/MemorandumFinaJudgmentOrderInjunction.pdf>. Lilly has threatened to file civil and criminal contempt charges against me soon. They have also threatened to file disciplinary charges against me to the Alaska bar. Even under a worse case scenario it does not appear this would seriously hamper PsychRights' efforts. I can explain if you would like.

illegal off-label marketing, including the documents which I obtained and was ordered to return to the court. (enclosed)

- Wetherhorn I Decided. On January 12th, the Alaska Supreme Court issued its decision in *Wetherhorn I*, which can be found at <http://psychrights.org/States/Alaska/CaseFour/WetherhornIsp-6091.pdf>. It is called *Wetherhorn I* because we have another appeal pending in which oral argument was held February 15th, which is called *Wetherhorn II*. The significant aspects of *Wetherhorn I* are:

Gravely Disabled Standard Struck Down. The Alaska Supreme Court ruled that a person could not be involuntarily committed as "gravely disabled" unless the "level of incapacity [is] so substantial that the respondent is incapable of surviving safely in freedom." (emphasis added). This is a huge win.

Ineffective Assistance of Counsel Not Decided. However, with respect to the most important issue, which is people's right to have lawyers who actually work for them, *ie.*, effective assistance of counsel, the court ruled that a direct appeal was not the way to challenge it because there needed to be a record established in a way that is comparable to post-conviction relief proceedings in criminal cases. We felt the violation was so clear it wasn't necessary, but the court ruled it had to be challenged another way. So, we will proceed to do it in a way that is consistent with the Court's ruling.

- Financial Performance. The year end balance sheet and 2006 Revenues and Expenses statement are attached as well as the updated donations analysis. On an accrual basis, which includes the \$82,240 fee award, and a little over \$29,000 in private donations, PsychRights had over \$113,000 in revenues and under \$40,000 in expenses, for a net of just over \$74,000.

Proposal(s)

PsychRights has made tremendous progress since it was founded in late 2002. Because I can represent people in Alaska it might be considered a pilot project with demonstrated success. A major component in being able to achieve this success is that I have been in a position to provide essentially full time services on a volunteer (*pro bono*) basis. This has allowed the \$20,000 to \$30,000 raised each year to be employed with incredible effectiveness. However, in order to implement its national strategy, PsychRights needs to be able to bring more to the effort. The \$82,240 in attorney's fees arising from the *Myers* win has enabled it to hire an Executive Director and pay for associated expenses for about one year. This allows PsychRights to begin seriously organizing strategic litigation in other states, but the funding requested here for specific activities will greatly enhance this effort.

Thus, PsychRights is seeking funding from the Open Society Institute for the following activities through 2009:⁷

1. Medical Fellowship for Grace E. Jackson, MD;
2. Executive Director;
3. Executive Assistant;
4. Travel;
5. Representation Expenses; and
6. Staff Attorney.

This is a prioritized list. A spreadsheet reflecting these requests within the context of PsychRights' overall budget is enclosed.

1. Medical Fellowship for Grace E. Jackson, MD - \$80,000 per Year for 2.75 Years.

When we met you suggested OSI had a fellowship program and I should check into it. I mentioned that we had a perfect candidate. I subsequently checked OSI's website and what we are asking the fellowship for does not, strictly speaking, fall within OSI's existing fellowship criteria. Therefore we are including it here. Dr. Grace E. Jackson is a psychiatrist of conscience who refused to continue harming her patients when she found out the truth about standard psychiatric treatments. She has paid a very large professional price for this courageous stand and has devoted as much of her time as she can into researching the mechanisms of actions of psychiatric drugs on the brain and body of psychiatric drugs. She has also been used by PsychRights as an expert witness and her testimony was instrumental in the *Myers* case finding that a "valid debate exists in the medical/psychiatric community as to the safety and effectiveness" of psychiatric drugs. She is probably the most knowledgeable psychiatrist in the country and perhaps the world on the mechanisms of actions on the brain and body. This fellowship would be used to both continue her research and publication of her findings and make her available as an expert consultant and witness. Dr. Jackson has agreed to \$80,000 per year for 75% of her time for 2.75 years, starting in April of 2007. A more full description of this fellowship request is attached.

2. Executive Director -- \$91,500 for 2008 and 2009.

PsychRights has funding for the first year of the Executive Director's \$42,000 salary, plus 22% fringe. It is hoped the Executive Director's salary can be raised to

⁷ One of PsychRights' operational requirements that must be considered is maintaining its status as a publicly supported charity under the Internal Revenue Code. In this regard, PsychRights' draft Form 8734 has been attached. It appears that any significant grant from the Open Society Institute will create a problem in this regard unless it can properly be categorized as an "unusual grant." For this reason, PsychRights is asking for the requested funding through 2009 that can be properly categorized as an unusual grant. It seems that performance benchmarks, etc., could be included to ensure that desired results are being achieved. You are much more knowledgeable about this issue than I so perhaps there are other ways to deal with the public support requirement issue.

\$60,000 (plus 22% fringe), starting in 2008 and PsychRights is requesting 75% of this for 2008 and 50% for 2009, for a total of \$91,500.

3. Executive Assistant -- \$80,800 through 2009.

Currently, some of the administrative/clerical work is being performed by my law office assistant and thus donated by me, but a lot of it is being done by me and Bruce Whittington, PsychRights' Executive Director. A database has been created to keep track of the massive amount of communications PsychRights has received and continues to receive and this data needs to be entered into the database. There are a myriad of other similar tasks and an Executive Assistant is needed to allow the President and Executive Director to focus on other tasks.

4. Travel -- \$45,000 through 2009.

In order to organize strategic litigation in various states and to attend various conferences and meetings, both PsychRights' Executive Director, Bruce Whittington and president Jim Gottstein will need to do a fair amount of traveling. Travel is thus a large projected expense, budgeted at \$25,000 per year. PsychRights is asking for \$15,000 per year for three years to help with this.

5. Representation Expenses -- \$60,000 through 2009.

Representation expenses are for items such as service of process, expert witness fees, deposition and transcription costs, litigation-related travel. The budget through 2009 is for \$125,000 of which PsychRights is asking OSI for \$60,000.

6. Staff Attorney -- \$171,400 Through 2009.

It would be extremely beneficial to have another attorney available to assist in the legal research to develop the strategic approach in various states as well as be available to assist in litigation. This position is budgeted at a base salary of \$60,000, starting in July of 2007, which with a 22% load for payroll taxes and benefits, comes to \$72,000 per year. PsychRights believes it could bear almost \$10,000 of this expense in 2007, but would not be able to in 2008 and 2009.

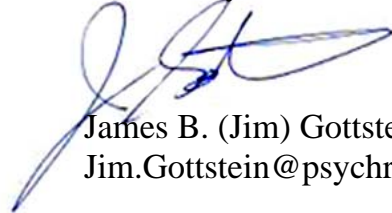
Conclusion

I know the total requested of almost \$670,000 is a large amount for such a small and relatively young organization. However, PsychRights has shown it can have a large impact even with a small amount of resources. Realistically, PsychRights needs to move to the next level with the type of staff being proposed here in order to bring the effort into very many states. As you mentioned during our meeting, this is not a cause that very many foundations would choose to support. While we receive a gratifying amount of private donations for such a new organization with such an impoverished base, having the kind of "kick-start" that a substantial grant from OSI would provide is incredibly important. Each of the proposals, which are priority ranked, is distinct and could be

funded with good effect without funding others. The package, however, will provide a particularly good combination of resources to further PsychRights' mission.⁸

Your consideration of this proposal will be greatly appreciated. Of course, I am available to provide additional information you might desire, answer questions and discuss this proposal.

Yours truly,



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1. Congressman Waxman's March 1, 2007, letter to Eli Lilly requesting the Zyprexa Papers and other documents pertaining to Zyprexa.
2. *Pro Forma* Budget through 2009.
3. 2006 Revenues and Expenses and December 31, 2006, Balance Sheet.
4. Donations Summary Report, updated to the end of 2006.
5. Draft IRS Form 8734.
6. Fellowship Proposal for Grace E. Jackson
7. Grace E. Jackson, M.D., CV.

⁸ Since the proposal is for a three year budget, each year is relatively modest. Also, needing to satisfy the public support test suggests it would be good to be able to categorize this as an "unusual grant," unless you know of a different approach.