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

4 In the Matter of the Necessity)
for the Hospitalization of:)
5)
6 WILLIAM BIGLEY,)
7 Respondent.)

Case No. 3AN-08-1252 PR

8
9 **MOTION TO STRIKE**

10 The Alaska Psychiatric Institute ("API"), through the Office of the
11 Attorney General, pursuant to Alaska Rule of Evidence 402, respectfully requests that the
12 Court strike all deposition testimony taken by Respondent William S. Bigley ("Bigley")
in this proceeding as irrelevant.

13 A hearing is scheduled for this case on Wednesday, November 5, 2008, on
14 the limited issue of court-ordered administration of psychotropic medication. In a
15 hearing on the issue of discovery on Monday, November 3, 2008, the Court allowed
16 Bigley to proceed with *limited* discovery, denying API's Motion to Quash and Motion for
17 Protective Order (to the extent it requested that discovery not be had). API will be filing
18 a motion for reconsideration on the Motion to Quash. On November 3 and 4, 2008,
19 Bigley proceeded with the depositions of three witnesses: Candice Siciliano, Ronald
20 Adler, and Dr. Kahnaz Khari, M.D. ("the depositions"). The depositions were taken
pursuant to the AS 47.30.839 hearing to be held on Wednesday, November 5, 2008.

21 Under AS 47.30.839, the hearing on Wednesday is to determine Bigley's
22 capacity to give or withhold informed consent to medication.¹ Bigley's capacity is
23 determined using the following standard:

- 24 (1) Did Bigley refuse medication?
25 (2) Is Bigley capable of informed consent?
26 (3) If not, are medications in Bigley's best interest?

1 AS 47.30.839(e).

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2 (4) Are there less intrusive alternatives available to protect the
3 individual?²

4 These questions are answered according to Bigley's *present* capacity; previous
5 commitments and adjudications are irrelevant at this hearing. As such, only Bigley's
6 most recent commitment to API, on October 20, 2008, and his capacity to give or
7 withhold consent to medication at the present time are at issue in this hearing.

8 In all three of the depositions, counsel for Bigley questioned the deponents
9 on a variety of issues unrelated to Bigley's present capacity.³ In the deposition of
10 Candice Siciliano on November 3, 2008, counsel for Bigley questioned Ms. Siciliano
11 extensively on two previous commitment petitions signed by her in September 2008.
12 Neither of these petitions concern the present commitment, and neither relate to Bigley's
13 capacity to give or withhold consent to medication. Counsel for API objected to this line
14 of questioning as irrelevant and moved to strike Ms. Siciliano's testimony at the
15 conclusion of the deposition. Similarly, in the deposition of Ronald Adler on
16 November 4, 2008, counsel for Bigley questioned Mr. Adler on API's past policies for
17 the administration of emergency medication (introducing a 2000 table of contents as an
18 exhibit), and on API's daily rate for patients. The policies for the administration of
19 emergency medication, particularly those from 2000, and API's daily rate are not at issue
20 in this hearing. Counsel for API objected to this line of questioning as irrelevant and
21 moved to strike Mr. Adler's testimony at the conclusion of the deposition. Finally, in the
22 deposition of Dr. Kahnaz Khari, M.D. on November 4, 2008, counsel for Bigley
23 repeatedly questioned Dr. Khari on the administration of emergency medication and chart
24 notes for Bigley prior to his October 20, 2008 commitment. Commitments and
25 medication administration prior to Bigley's October 20, 2008 commitment are not at
26

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

25 ³ At the present time, the transcripts for these depositions are not available. API can
26 supplement this motion with deposition transcripts as needed once received from the
court reporter.

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2 issue for this hearing. Counsel for API objected to this line of questioning as irrelevant
3 and moved to strike Dr. Khari's testimony at the conclusion of the deposition.

4 Given the irrelevant nature of most—if not all—of the testimony in the
5 depositions, based on counsel for Bigley's questioning, API requests that this deposition
6 testimony be stricken as irrelevant to the instant proceedings.

7 Accordingly, API seeks an order for the following:

8 1. That the testimony of Candice Siciliano, Ronald Adler, and
9 Dr. Kahnaz Khari, M.D. be stricken as irrelevant to the November 5, 2008, AS 47.30.839
10 hearing.

DATED: November 5, 2008

11 TALIS J. COLBERG
12 ATTORNEY GENERAL

13 By: 
14 Erin A. Pohland
15 Assistant Attorney General
16 Alaska Bar No. NA14009

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AFFIDAVIT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

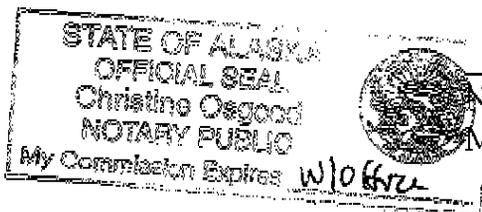
Erin A. Pohland, being first duly sworn upon oath, deposes and says:

- I am the assistant attorney general assigned to the above-captioned matter.
- The facts stated in API's Motion to Strike are true and correct to the best of my knowledge.

Further your affiant saith naught.

Erin A. Pohland

SUBSCRIBED AND SWORN to before me this 5th day of
November, 2008.



Christine Osgood
Notary Public in and for Alaska
My commission expires 11/06/12

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ORDER

Having considered API's Motion to Strike and any responses thereto,
IT IS SO ORDERED:

1. The deposition testimony of Candice Siciliano, Ronald Adler, and
Dr. Kahnaz Khari, M.D. shall be stricken from the record as irrelevant to the proceedings.

DATED: _____

SUPERIOR COURT JUDGE

Recommended for approval:

Probate Master

Dated: _____

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