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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

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MOTION FOR RECONSIDERATION

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I. INTRODUCTION

The Alaska Psychiatric Institute ("API"), through the Office of the Attorney General, respectfully requests this court to reconsider its ruling denying API's Motion to Quash ("Motion") notices of depositions for Dr. Dwight Stallman, Officer Wendy Shackelford, Dr. Kahnaz Khari, and Ron Adler ("notices"). The court orally ruled on this motion on November 3, 2008, on AS 47.30.825(b), AS 47.30.839(d), AS 47.30.852, and AS 47.30.853 grounds.¹ The court's ruling seems to overlook the relevant statutes and rules that are directly controlling in this case and is in contrary to the purpose and intent of the proceedings involving medication petitions.

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II. LEGAL STANDARD

Under Civil Rule 77(k), a party may move the court to reconsider its ruling if the court has misapplied a statute, a decision, or a principle directly controlling to the case, or overlooked a material fact or proposition of law.

III. ARGUMENT

A. Applicability of AS 47.30.825(b), AS 47.30.839(d), AS 47.30.852 and AS 47.30.853

¹ The underlying counsel requested the log notes to capture the exact statute citations. The log notes did not provide any citations for basis of the court's ruling. Nevertheless, the underlying counsel's notes reflect that the court cited the above mentioned statutes for basis of its ruling.

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2 In denying API's Motion, the court relied on AS 47.30.825(b),
3 AS 47.30.839(d), AS 47.30.852, and AS 47.30.853.² With this ruling, the court seems to
4 overlook the intent of the State's mental health policy and misapply the governing
5 statutes. As such, API requests the court to reconsider its ruling under Rule 77(k).

6 Alaska Statute 47.30.655 outlines the principles for the State's mental
7 health procedures, and one of these principles is for the treatment to occur as promptly as
8 possible.³ This intent is in line with AS 47.30.839 which governs proceedings for
9 involuntary administration of psychotropic medications. This statute requires the court to
10 hold a hearing on a petition for involuntary administration of psychotropic medications
11 within 72 hours.⁴ It mandates that the court appoint the Office of Public Advocacy to
12 provide a visitor "to assist the court in investigating the issue of whether the patient has
13 capacity to give or withhold informed consent to the administration of psychotropic
14 medication."⁵ The visitor is required to "gather pertinent information and present it to the
15 court in written or oral form at the hearing."⁶ The court is also mandated to appoint an
16 attorney to represent the patient, and a guardian ad litem if necessary.⁷ The statute
17 requires the court to consider all evidence presented at the hearing, including evidence
18 presented by the guardian ad litem, the petitioner, the visitor, and the patient and allows
19 for the patient's attorney to cross-examine any witnesses including the guardian ad litem

20 ² The underlying counsel will not address AS 47.30.852 and 853, because there are
21 no such statutes.

22 ³ AS 47.30.655(3). This mandate is a unique provision for Alaska as other
23 jurisdictions allow for longer periods of time to hold hearings for petitions involving
24 involuntary administration of psychotropic medications which . See e.g., South Dakota
25 Codified Laws 2001 § 27A-12-3.14. North Dakota Century Code 2007 § 25-03.1-11,
26 which allow the courts in those states to have longer period of time to gather information
which provides time for the parties to conduct discovery.

4 AS 47.30.839(e).

5 AS 47.30.839(d).

6 AS 47.30.839(d).

7 AS 47.30.839(c).

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2 and the court visitor. The court is authorized to grant API's petition for medication
3 administration only if the court finds by clear and convincing evidence that the patient is
4 not competent to provide informed consent.⁸ The court may not permit the treatment
5 facility to administer psychotropic medication unless the court makes findings that
6 comply with all applicable statutory requirements and, in addition, expressly finds by
7 clear and convincing evidence that the proposed treatment is in the patient's best interest
8 and that no less restrictive alternative is available.⁹

9 This statutory framework comports with *Matthews v. Eldridge* balancing
10 test, because, even though an individual interest is at stake, conducting discovery,
11 including depositions, does not add any value to the proceedings.¹⁰ Taking depositions
12 curtails already well-functioning statutorily mandated proceeding, and burdens not only
13 the state but puts the individual at risk due to lack of medication. In providing for
14 hearings within 72 hours *without* the added burden of typical discovery procedures, the
15 legislature has struck an appropriate balance between the individual and the State's
16 interest. In this short amount of time, the state is required to complete its own
17 examination of the respondent, provide any legal and appropriate treatment, and prepare
18 to support a petition for medication with clear and convincing evidence. To require the
19 state to also devote resources to make its treating physicians, psychiatrists, and staff
20 available for depositions or any other discovery requests would be unduly burdensome,
21 both from an administrative and fiscal perspective. Resources spent on satisfying these
22 new procedural burdens would not be available to devote to patient care and assessment.
23 Due process does not demand such a reallocation of state resources.¹¹ Also, the practical
24 demands of adding Mr. Bigley's proposed procedures is inconsistent with the promise of
25 a hearing within 72 hours.

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8 AS 47.30.839(g).

9 *Myers v. API*, 138 P.3d 238 (Alaska 2006).

10 424 U.S.319 (1976).

11 *Parham v. J.R.*, 42 U.S. 584, 605-606 (1979).

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The court also cited AS 47.30.825(b) for its decision to deny API's Motion. This rule is not relevant to the discovery requests filed by Mr. Bigley because it outlines patient's rights requires the facility to provide information to the patient and other individuals who are acting on behalf of the patient.

B. Applicability of Probate Rules and Rules of Civil Procedures

The court's decision in denying API's Motion overlooks Rules of Probate Procedures ("Probate Rules") and misapplies the Rules of Civil Procedure. As such, API respectfully requests the court to reconsider its decision under Civil Rule 77(k).

Probate Rules govern proceedings brought under Title 13 of the Alaska Statutes including mental commitments under 47.30.¹² These rules are silent regarding discovery procedures; however, for situations not covered by the rules (such as discovery procedures), Rule 1(e) allows the court to proceed "in any lawful manner, including application of the Civil and Evidence Rules . . ." Nevertheless, the court procedure "may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of probate proceedings."¹³ Conducting depositions of API staff and medical personnel unduly delay and interfere with the unique character and the purpose of the medication petition hearing. Also, in this case, application of civil procedure discovery rules is unnecessary and it is a violation of the Probate Rule 1(e), because AS 47.30.839 already eliminates the 'surprise factor' which is the goal of the entire discovery process.¹⁴ The "[p]urpose of discovery rule and pretrial procedure rule is

¹² Rule 1(b).

¹³ Rule 1(b).

¹⁴ *Hartford Acc. & Indem. Co. v. Cutter* 229 A.2d 173, (Supreme Court of New Hampshire 1967). ([d]iscovery, together with depositions . . . are important procedures for probing in advance of trial the adversary's claims and his possession or knowledge of information pertaining to controversy between the parties, and their underlying purpose is to reach the truth and to reach it as early in the process as possible by narrowing the issues thus enhancing the chances for a fair and amicable settlement and, this failing, shortening the ensuing trial which will be decided on basis of pertinent evidence rather than rules of evidence.)

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2 to eliminate secrets and surprises at trial, simplify issues, and lead to fair and just
3 settlements without having to go to trial.¹⁵

4 In this case, conducting discovery will and already has delayed the hearing,
5 causing it to be held outside of the statutorily-mandated time period. This is against the
6 purpose of discovery, as API does not have any secrets or surprises that they can bring
7 out in trial – everything is outlined in the petition. Taking depositions does not simplify
8 the issues; there is only one issue that can be decided by the court and that issue does not
9 need more processes to be simplified. Even though in a typical litigation discovery helps
10 the parties to settle cases in a just manner, the uniqueness of a medication petition does
11 not allow for any type of settlement, and conducting depositions becomes a futile
12 process.

12 IV. CONCLUSION

13 By allowing Mr. Bigley to take depositions in this case, the court has set a
14 precedent that is neither allowed nor contemplated by the statutes and Probate Rules.
15 This ruling will cause these hearings to be held outside of the statutorily mandated time
16 frame, cause unnecessary delays, and put the state under an administrative and fiscal
17 burden which is not intended by the statutes or the rules. As such, API respectfully asks
18 the court to reconsider its ruling and allow for the hearings to be conducted in the
19 statutorily-mandated manner.

20 DATED: November 6, 2008

21 TALIS J. COLBERG
22 ATTORNEY GENERAL

23 Nevhu's E. Calik, AAG, 0606043

24 By: 

25 Erin A. Pohland

26 Assistant Attorney General

Alaska Bar No. NA14009

15 See also *Crist v. Goody*, 507 P.2d 478 (Court of Appeals of Colorado 1973) and
16 *State ex rel. Plank v. Koehr*, 831 S.W.2d 926 (Supreme Court of Missouri, 1992).

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ORDER UPON MOTION FOR RECONSIDERATION

The Court, having considered petitioner's Motion for Reconsideration, respondent's opposition, and being fully advised in the premises,

IT IS HEREBY ORDERED that petitioner's Motion for Reconsideration of Alaska Psychiatric Institute's Motion to Quash notices of depositions is GRANTED. IT IS FURTHER ORDERED that the hearing for court-ordered medication shall proceed without further discovery.

DATED: _____

SUPERIOR COURT JUDGE

Recommended for approval:

Probate Master

Dated: _____

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