

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Law Project for Psychiatric Rights, )  
 )  
 Plaintiff, )  
 vs. ) Case No. 3AN 08-10115CI  
 )  
 State of Alaska, *et al*, )  
 )  
 Defendants )

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**MEMORANDUM IN SUPPORT OF**  
**MOTION FOR LEAVE TO AMEND COMPLAINT**  
**(Citizen-Taxpayer Standing/Medicaid Injunction)**

Plaintiff, the Law Project for Psychiatric Rights (PsychRights®), has moved to amend the Amended Complaint, as follows:

1. Insert, ", and has citizen-taxpayer standing to bring this action" at the end of Paragraph 4. (Citizen-Taxpayer Amendment).

2. Add a new paragraph, ¶236, as follows:

236. The State approves and applies for Medicaid reimbursements to pay for outpatient psychotropic drug prescriptions to Alaskan children and youth that:

(a) are not medically necessary, or

(b) for indications that are not approved by the Food and Drug Administration (FDA) or included in (i) the American Hospital Formulary Service Drug Information, (ii) the United States Pharmacopeia-Drug Information (or its successor publications), or (iii) DRUGDEX Information System, or

(c) both.

(Medicaid Violation Allegation).

3. Amend ¶B of the Prayer for Relief to read as follows:

B. Permanently enjoin the defendants and their successors from:

1. authorizing or paying for the administration of psychotropic drugs to Alaskan children and youth without conformance with Paragraph A of this prayer for relief, and
2. approving or applying for Medicaid reimbursements to pay for outpatient psychotropic drug prescriptions to Alaskan children and youth that:
  - (a) are not medically necessary, or
  - (b) for indications that are not approved by the Food and Drug Administration (FDA) or included in (i) the American Hospital Formulary Service Drug Information, (ii) the United States Pharmacopeia-Drug Information (or its successor publications), or (iii) DRUGDEX Information System, or
  - (c) both.

(Medicaid Violation Injunction).

These three amendments are technical in nature and the desirability of making them arose out of the briefing on the Motion for Judgment on the Pleadings filed by the defendants, State of Alaska, *et al* (State) and dated March 12, 2009. In its Opposition to Motion for Judgment on the Pleadings, filed March 31, 2009, which is hereby incorporated herein by reference, PsychRights indicated that this motion for leave to amend would be forthcoming.<sup>1</sup>

**A. CITIZEN-TAXPAYER AMENDMENT**

In its Motion for Judgment on the Pleadings, the State apparently made the

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<sup>1</sup> See, pages 3-4 and note 63.

argument that the current complaint in this action was deficient for failing to allege that PsychRights has citizen-taxpayer standing. Assuming *arguendo*, that the Amended Complaint is technically insufficient for failing to include the allegation that PsychRights has citizen-taxpayer standing, the Citizen-Taxpayer Amendment makes the allegation. It appears allowance of such an amendment is mandatory under *Prentzel v. State, Dept. of Public Safety*.<sup>2</sup>

### **B. MEDICAID VIOLATION AMENDMENT**

Footnote 63 of PsychRights Opposition to Motion for Judgment on the Pleadings states:

In reviewing the status of the pleadings, PsychRights realized it should add to the relief requested to effectuate ¶22 of the Amended Complaint, to wit that the State be enjoined from paying for outpatient psychiatric drugs for anything other than indications approved by the Food and Drug Administration (FDA) or included in the following compendia: (a) American Hospital Formulary Service Drug Information, (b) United States Pharmacopeia-Drug Information (or its successor publications), or (c) DRUGDEX Information System. A motion to amend the complaint to include this relief will be forthcoming shortly.

In preparing such amendment PsychRights realized that in addition to amending the Prayer for Relief, the complaint in this action could be benefitted by including a specific allegation that the above Medicaid requirement is being violated. The Medication Violation Amendment accomplishes this. There are many other allegations that indirectly establish the State's violations of Medicaid rules, but it seems desirable to include the explicit allegation of the Medicaid Violation Amendment.

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<sup>2</sup> 53 P.3d 587, 590-91 (Alaska 2002).

In *Prentzel*,<sup>3</sup> the Alaska Supreme Court held, "a party should be permitted to amend if there is no showing that amending would cause injustice." There is no injustice here. The State has been on notice of the Medicaid violation claim since the Amended Complaint was filed in September, 2008, when the current ¶22 was added.

### C. MEDICAID VIOLATION INJUNCTION

The third amendment, the Medicaid Violation Injunction, adds to the Prayer for Relief the appropriate remedy for the State's alleged violation of Medicaid requirements. The requested injunction against such violation is the logical relief and could be ordered under the "Such other relief as the court finds just in the premises," prayer for relief,<sup>4</sup> but it seems desirable to also include the proposed explicit language. The same lack of injustice standard with respect to the Medicaid Violation Allegation applies here and the amendment to add it to the prayer for relief should be permitted.<sup>5</sup>

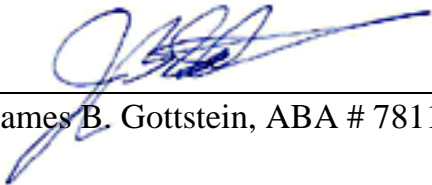
### D. CONCLUSION

For the foregoing reasons, PsychRights Motion for Leave to Amend Complaint (Citizen-Taxpayer Standing/Medicaid Injunction) should be granted.

DATED: April 3, 2009.

Law Project for Psychiatric Rights

By: \_\_\_\_\_

  
James B. Gottstein, ABA # 7811100

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<sup>3</sup> 53 P.3d at 590-91.

<sup>4</sup> §E. of the Prayer for Relief.

<sup>5</sup> *Prentzel*, 53 P.3d at 590-91.