

Case No. S-15409

FILED
STATE OF ALASKA
APPELLATE COURT

2013 DEC 26 AM 10:03

IN THE SUPREME COURT FOR THE STATE OF ALASKA

CLERK APPELLATE COURT

BY:

DEPUTY CLERK

GLENN BOHN AND LORRAINE PHILLIPS,

Petitioners,

In the Matter of the Protective Proceedings for

BRET BYRON BOHN

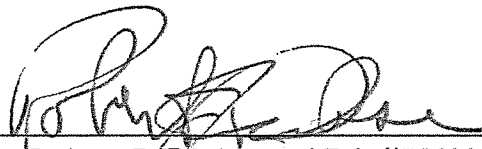
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On Petition for Review from the Superior Court for the State of Alaska
Third Judicial District at Anchorage
The Honorable Erin Marston Presiding
Case No. 3AN-13-02737PR

PROVIDENCE'S RESPONSE TO EMERGENCY PETITION FOR REVIEW

December 26, 2013

By:



Robert J. Dickson, ABA #7210044
Atkinson, Conway & Gagnon, Inc.
420 L Street, Suite 500
Anchorage, AK 99501
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Attorneys for Providence Alaska
Medical Center

PROVIDENCE'S RESPONSE TO EMERGENCY PETITION FOR REVIEW

Providence Alaska Medical Center ("Providence"), by and through its attorneys, Atkinson, Conway & Gagnon, Inc., hereby respond to the Emergency Petition for Review filed by Glenn Bohn and Lorraine Phillips.

Bret Bohn is a 26-year-old male who was admitted to Providence through its Emergency Room on October 19, 2013, and is suffering from acute delirium resulting from some sort of encephalopathy of an unknown etiology. Potential diagnoses included within the current differential are Prion Disease, Whipple's Disease, or some potential new neoplasm. The patient, under the care of Providence Family Medicine Clinic, has been examined and evaluated by five neurologists, an infectious disease specialist, an ANP mental health professional, a psychiatrist and a neuropsychologist. Despite over 35 lab tests, 19 results of which have been confirmed by the Mayo Clinic; CT scans of both the head and maxillofacial areas with and without contrast; a PET CT scan of the brain; a further MRI of brain imaging with and without contrast; a chest, abdomen and pelvis CT scan; and a scrotal ultrasound; plus a further full body PET scan series going on this week; and multiple electroencephalographs, the physicians at Providence are unable to determine the cause of his encephalopathy. The delirium is preventing him from having the mental capacity to make his own healthcare decisions. The physicians have determined that the cause of the dysfunction is organic and not a psychiatric disorder. But they are unable to determine sufficiently precisely the cause of the dysfunction. What can be said is that there is some frontal lobe dysfunction; and that he is deteriorating on a daily basis.

Without being able to reliably determine the cause of the frontal lobe dysfunction, medically appropriate treatment cannot be applied.

Providence has exhausted the medical abilities of this city in attempting to determine the cause of the patient's encephalopathy. There are only three or four facilities in the country that have the equipment and staffing to be able to conduct an electroencephalograph while at the same time observing the brain activity through an MRI and other imaging. For reasons not germane, the hospitals in Seattle were unable to take the patient. Johns Hopkins Medical Institute (Johns Hopkins) has the equipment and physicians who can perform these further examinations and evaluations that the patient needs. On Monday, December 23, 2013, the neurology department at Johns Hopkins informed the relevant personnel at Providence that Johns Hopkins would admit this patient on Thursday or Friday, December 26 or 27 on a compassionate care basis (*i.e.*, at no cost). The experience at Providence is that tertiary hospitals of this nature do not hold a bed open indefinitely but only for a specified time.

Because of the shortness in time available to react to the offer of Johns Hopkins to accept this patient, rather than provide this information to Adult Protective Services, who is the petitioner in the court below, Providence filed its own motion for an emergency hearing before Judge Marston on Monday, December 23. A copy of that pleading along with the affidavit of Heather Brock, ANP, are attached hereto as exhibits A and B, respectively. The motion was filed because Providence had been advised by the state

that the court had ordered that the patient not be transferred to another facility without prior court permission.

In response to this Emergency Motion, Judge Marston scheduled a hearing for Thursday, December 26 at 2:00 p.m. The purpose of the hearing was to hear medical evidence from a physician, ANP mental health professional and a social worker specifically named by the court on the issue of the medical necessity of the transfer and the information from Johns Hopkins. A copy of the court's order dated December 23, 2013 is attached as Exhibit C. The parents have offered no medical evidence of any nature.

As of the close of business Monday, December 23, the state Adult Protective Service advised that it had no objection to the transfer; the guardian, through its attorney, advised that it had no objection to the transfer; and the attorney representing the patient himself also indicated that she had no objection to the transfer. At the end of the day Monday, counsel for the parents indicated that they objected, but did not state any reasons. Since then, an opposition to the motion has been filed in the lower court repeating arguments made by the parents' counsel at the earlier December 19 hearing, but without any medical evidence whatsoever. In other words, there has been no medical evidence contradicting the affidavit of Heather Brock, ANP, and the medical chart all to the effect that it is in the patient's best interest to have this further evaluation at Johns Hopkins. The affidavit of Heather Brock also establishes that the patient is deteriorating.

During the early days of the patient's admission, his parents had unlimited visiting privileges. The staff observed the patient's mother advising him not to take the

medications prescribed for him by his physicians. On more than one occasion she also told the patient that he was better off dead and that he should end his own life. Inasmuch as the patient was clearly a “vulnerable adult” because of his incapacity, and because his mother, who was in a position of making his health care decisions due to a power of attorney, Providence submitted a report of a vulnerable adult as required by AS 47.24.010(a)(1) and (2). As a result, the Adult Protective Service performed an investigation as is required by AS 47.24.015; and they determined that the patient was in fact a vulnerable adult and being abused or neglected by his caregiver, the holder of the power of attorney. APS therefore petitioned the Superior Court for the appointment of a guardian; and a temporary guardian was appointed on November 14. After hearing from the Alaska Adult Protective Services, an attorney appointed to represent the patient, and a court visitor, the court agreed that the appointment of a guardian was appropriate and appointed a temporary guardian. Subsequently the parents have opposed that appointment. In other words, the court agreed that the parents were not acting in the patient’s best interests.

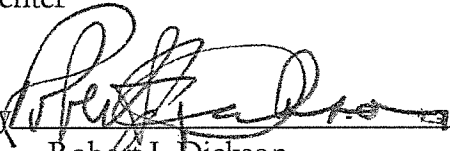
A hearing was scheduled for November 19, at which the court was going to hear medical testimony on the patient’s condition. The arguments among counsel at that hearing prevented the taking of any evidence. The only arguments raised by the parents are complaints that their own personal legal rights have been infringed. They have provided no medical evidence that the care being provided or the transfer to Johns Hopkins is medically contra indicated. Although Providence did not participate in that hearing and is not a party to the guardianship proceeding in the lower court, Providence was advised that the court had

entered an order prohibiting the patient from being moved without further order of the court. No written order to that effect has been made available to Providence.

Thus the patient is in dire need of further examination and evaluation, Johns Hopkins is the only place as a practical manner where he can get it soon, the timeframe for obtaining that further diagnostic work is limited; and all involved with the patient's care and best interests agree that he should be transferred to Johns Hopkins, except the parents who have argued that their legal rights have been infringed upon.

DATED this 26 day of December, 2013.

ATKINSON, CONWAY & GAGNON
Attorneys for Providence Alaska Medical
Center

By 
Robert J. Dickson
ABA No. 7210044

I certify that on December 26, 2013,
a copy of the foregoing document was sent
to the following attorneys or parties
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Protective
Proceeding of

BRET BYRON BOHN,

Respondent.

**PROVIDENCE ALASKA
MEDICAL CENTER'S
EMERGENCY MOTION
FOR PERMISSION TO
TRANSFER BRET BOHN
TO JOHNS HOPKINS**

Case No. 3AN-13-02737 PR

On Monday, December 23, 2013, Johns Hopkins Medicine ("Johns Hopkins"), an internationally-renown facility located in Baltimore, Maryland, informed Providence Alaska Medical Center ("Providence") that it had accepted a transfer of Bret Bohn from Providence to Johns Hopkins. Pursuant to AS 13.52.140, Providence seeks an immediate order from the Court directing and approving the transfer Mr. Bohn to Johns Hopkins.¹

Counsel for the State, Mr. Bohn's guardian, and Mr. Bohn's parents have been served with a copy of this motion and its exhibits by e-mail.

Accompanying this motion is an affidavit from Heather Brock, ANP. Ms. Brock is a mental health specialist and board certified as an adult nurse practitioner and as a psychiatric-mental health nurse practitioner. (Heather Brock Affidavit, ¶ 2) She has treated

¹ AS 13.52.140 states that "On petition of a...health care provider or institution involved with the patient's care, the superior court may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section is governed by AS 13.26.090 – 13.26.320."

Exhibit A

Page 1 of 5 Pages

Mr. Bohn almost continuously since October 23, 2013. *Id.*, ¶ 3. Mr. Bohn is suffering from delirium and altered mental status. *Id.* There is evidence that he is experiencing seizures, but the cause of those seizures is unknown. *Id.* at ¶ 5. Mr. Bohn's condition does not appear to be due to a psychiatric disorder or to represent an extreme emotional reaction to an upsetting event. *Id.* As Ms. Brock states in her affidavit, Mr. Bohn does not have the capacity to make health care decisions on his own. *Id.*, ¶ 4.

The doctors and care providers at Providence have conducted numerous tests on Mr. Bohn, but have not been able to determine the cause of Mr. Bohn's condition, and thus cannot formulate the best means of treating his condition. (Heather Brock Affidavit, ¶ 6) Mr. Bohn therefore needs to be transferred to a specialized, tertiary hospital that has the ability to conduct additional, specialized testing and treatment that is not available at Providence. *Id.* The only specialty facilities that can provide this additional testing and treatment are located outside of Alaska. *Id.* There is no facility in Alaska that can provide any higher level of care to Bret than Providence. *Id.*

On Monday, December 23, 2013, Johns Hopkins notified Providence that it was willing to accept a transfer of Mr. Bohn to its facility. (Heather Brock Affidavit, ¶ 9) Dr. Nicholas Maragakis, an Associate Professor of Neurology at Johns Hopkins, has admitted Mr. Bohn to Johns Hopkins under his care. *Id.* Mr. Bohn has been admitted regardless of his insurance status. *Id.*

Johns Hopkins is a world-renown medical facility in Baltimore, Maryland that can provide the specialized testing and treatment that Mr. Bohn needs. (Heather Brock

Affidavit, ¶ 7) It is an internationally recognized tertiary facility that has the equipment and physicians to perform the specialized testing and treatment needed by Mr. Bohn. *Id.* Providence contacted Johns Hopkins to request that it accept a transfer of Mr. Bohn to their facility so that he can received the specialized testing and treatment that he needs. *Id.* Ms. Brock has worked with Johns Hopkins for two weeks to arrange for Mr. Bohn's admission to Johns Hopkins because Mr. Bohn needs the care that he can receive at Johns Hopkins. *Id.*, ¶ 8.

Transferring Mr. Bohn to Johns Hopkins is medically necessary to treat his condition and is in Mr. Bohn's best interests. (Heather Brock Affidavit, ¶ 9) Transferring Mr. Bohn to Johns Hopkins is the next appropriate step medically because Johns Hopkins has the ability to both conduct the additional testing that is required to further evaluate the cause of Mr. Bohn's condition and treat the cause of Mr. Bohn's condition. *Id.* If Bret is not transferred to Johns Hopkins, there is substantial that Providence will not be able to determine the cause of Mr. Bohn's condition and thus effectively treat his condition. *Id.*

Moreover, Mr. Bohn's condition continues to decline. (Heather Brock Affidavit, ¶ 11) Mr. Bohn may suffer harm or a decline in his condition if he is not immediately transferred to Johns Hopkins. *Id.* Immediate transfer is therefore appropriate to give Mr. Bohn the best opportunity to receive effective treatment for his condition. *Id.*

Johns Hopkins has stated that a bed in its facility will be available to Mr. Bohn on Thursday, December 27th, or Friday, December 28th. (Heather Brock Affidavit, ¶ 12) Mr. Bohn needs, as a medical necessity, to be physically transferred to Johns Hopkins by life-

EMERGENCY MOTION FOR PERMISSION TO TRANSFER BRET BOHN TO JOHNS HOPKINS

In the matter of the Protective Proceeding of Bret Byron Bohn, 3AN-13-2737 PR

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Exhibit A

Page 1 of 5 Pages

flight on Thursday or Friday. *Id.* Johns Hopkins is working with Providence to determine the logistics of this transfer. *Id.*

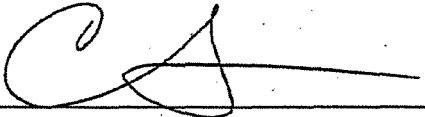
Failure to immediately authorize the transfer Mr. Bohn to Johns Hopkins will adversely affect Mr. Bohn and is contrary to his best interests. (Heather Brock Affidavit, ¶ 13) Mr. Bohn's condition is potentially progressing and treatment should not be delayed unnecessarily. *Id.* If Providence is unable to immediately transfer Mr. Bohn Johns Hopkins, Mr. Bohn may not receive the specialized testing and treatment that his doctors have said he needs. *Id.* Providence therefore needs immediate approval from the Court to transfer Mr. Bohn to Johns Hopkins or Mr. Bohn will lose the opportunity to obtain this needed specialty testing and care. *Id.*

The Court should immediately authorize the transfer of Mr. Bohn to Johns Hopkins. The transfer is medically necessary and in Mr. Bohn's best interests.

DATED this 23rd day of December, 2013.

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Attorneys for Providence Alaska Medical
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By _____


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EMERGENCY MOTION FOR PERMISSION TO TRANSFER BRET BOHN TO JOHNS HOPKINS
In the matter of the Protective Proceeding of Bret Byron Bohn, 3AN-13-2737 PR

Page 4 of 5
20-2344/5000.999

Exhibit A
Page 1 of 5 Pages

I certify that on December 23, 2013,
a copy of the foregoing document was sent
to the following attorneys or parties
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In the matter of the Protective Proceeding of Bret Byron Bohn, 3AN-13-2737 PR.

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20-2344/5000.999

Exhibit A
Page 1 of 5 Pages

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

In the Matter of the Protective
Proceeding of

BRET BYRON BOHN,

Respondent.

Case No. 3AN-13-02737 PR

AFFIDAVIT OF HEATHER BROCK

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

1. My name is Heather Brock. I am employed as an Advanced Nurse Practitioner with Providence Alaska Medical Center ("Providence"). I can testify to the following from my own personal knowledge and review of records to which I have access in carrying out my duties and responsibilities with respect to Bret Bohn.

2. I have worked at Providence for three years. I work for the Department of Psychiatry at Providence Alaska Medical Center. I provide psychiatric consultation services for adult patients throughout the medical and intensive care units of the hospital. My degrees

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are in nursing. I have a bachelor's degree in nursing and master's degrees in nursing. I am board certified as an adult nurse practitioner and as a psychiatric-mental health nurse practitioner. My specialty is psychosomatic practice, also known as consult-liaison psychiatric practice. I have worked as an advanced practice nurse practitioner for 11 years. I have been licensed by the State of Alaska as an RN since 1999, and have been licensed as an ANP since 2002.

3. I have been providing care for Bret Byron Bohn since October 23, 2013. I have examined, evaluated and talked with Mr. Bohn on most of my scheduled work days since October 23rd. Attached as Exhibit 1 to this affidavit is a true and correct copy of my chart notes reflecting my examinations and care of Mr. Bohn from October 23, 2013 to December 18, 2013.

4. Mr. Bohn is suffering from delirium and altered mental status. Bret's condition rapidly fluctuates, which is typical of delirium. He is confused and has significant periods of time where he cannot understand or remember what he is told. Throughout this admission, Bret has not displayed the ability to make decisions regarding his health care or to care for himself. He does not have the capacity to make health care decisions due to his condition.

5. Mr. Bohn's delirium and altered state is due to an as yet undetermined underlying medical condition. There is evidence that he is experiencing seizures, but the cause of those seizures is unknown. His confusion, memory loss, altered reflexes, altered sensorium, and pattern of speech loss are not symptoms of a psychiatric disorder. He is sometimes anxious, paranoid, fearful, and sometimes has described hallucinations, but these

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AFFIDAVIT OF HEATHER BROCK

In the matter of the Protective Proceeding of Bret Byron Bohn, 3AN-13-2737 PR

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Exhibit B
Page 2 of 6 Pages

symptoms are typical in delirium. Mr. Bohn's condition does not appear to be due to a psychiatric disorder or to represent an extreme emotional reaction to an upsetting event.

6. The doctors and care providers at Providence have conducted numerous tests on Mr. Bohn, but have not been able to determine the underlying cause of his condition, and thus cannot formulate the best means of treating his condition. Mr. Bohn therefore needs to be transferred to a specialized, tertiary hospital that has the ability to conduct additional, specialized testing and treatment that is not available at Providence. The only specialty facilities that can provide this additional testing and treatment are located outside of Alaska. There is no facility in Alaska that can provide any higher level of care to Mr. Bohn than Providence. There are very few facilities with neurologists and physicians specializing in symptoms such as the ones that Mr. Bohn is experiencing

7. Johns Hopkins Medicine ("Johns Hopkins") is a world-renowned medical facility in Baltimore, Maryland that can provide the specialized testing and treatment that Mr. Bohn needs. It is an internationally recognized tertiary facility that has the equipment and physicians to perform the specialized testing and treatment needed by Mr. Bohn. Providence contacted Johns Hopkins to request that it accept a transfer of Mr. Bohn to their facility so that he can receive the specialized testing and treatment that he needs.

8. Johns Hopkins is in international demand. Patients require case review, screening, and approval before they can be accepted for transfer. Mr. Bohn is without health care coverage, and although this has not been a barrier to his care here or there, his situation did require additional advocacy and coordination. I and the family medicine team have been working with Johns Hopkins for over two weeks to review Mr. Bohn's case and Mr. Bohn's

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AFFIDAVIT OF HEATHER BROCK

In the matter of the Protective Proceeding of Br/ Byron Bohn, 3AN-13-2737 PR

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Exhibit B

Page 3 of 6 Pages

appropriateness for admission to Johns Hopkins because Mr. Bohn has appeared to require a very specialized level of care.

9. On Monday, December 23, 2013, Johns Hopkins notified Providence that it was willing to accept a transfer of Mr. Bohn to its facility. Dr. Nicholas Maragakis, an Associate Professor of Neurology at Johns Hopkins, has admitted Mr. Bohn to Johns Hopkins under the Department of Neurology. Mr. Bohn has been admitted regardless of his insurance status due to the severity of his illness.

10. Transferring Mr. Bohn to Johns Hopkins is medically necessary to treat his condition and is in Mr. Bohn's best interests. Transferring Mr. Bohn to Johns Hopkins is the next appropriate step medically because, as a tertiary facility, that institution has the ability to both perform the advanced testing that is required to further evaluate the cause of Mr. Bohn's condition and then treat the cause of Mr. Bohn's condition. If Mr. Bohn is not transferred to Johns Hopkins, there is substantial likelihood that Providence will not be able to determine the cause of Bret's condition and thus effectively treat his condition.

11. Additionally, Mr. Bohn's condition continues to decline. Prompt transfer is therefore appropriate to give Mr. Bohn the best opportunity to receive effective treatment for his condition. Mr. Bohn may suffer harm or a decline in his condition if he is not immediately transferred to Johns Hopkins.

12. Johns Hopkins has stated that a bed in its facility will be available to Mr. Bohn on Thursday, December 27th, or Friday, December 28th. Mr. Bohn requires medical transfer as he is not appropriate or stable for commercial air travel. Johns Hopkins is working with Providence to determine the logistics of this transfer.

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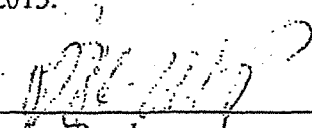
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Page 4 of 6


Exhibit B
Page 4 of 6 Pages

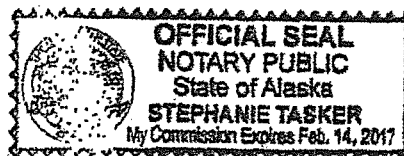
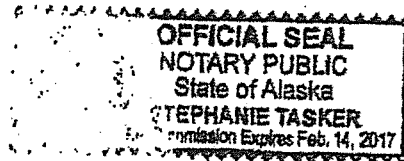
13. Mr. Bohn's condition requires additional treatment and testing. That treatment and testing need to be done by a specialty facility such as Johns Hopkins. Mr. Bohn's condition is potentially progressing and further evaluation and treatment should not be delayed unnecessarily. Providence is continuing further studies and treatment while this transfer is pending. If Providence is unable to immediately transfer Mr. Bohn to Johns Hopkins, Mr. Bohn may not receive the more specialized testing and treatment that his doctors have said he needs. Providence therefore needs immediate approval from the Court to transfer Mr. Bohn to Johns Hopkins or Mr. Bohn will lose the opportunity to obtain this needed specialty testing and care.

DATED this 23rd day of December, 2013.


Heather Brock

SUBSCRIBED AND SWORN TO before me this 23rd day of December,
2013:


Notary Public in and for Alaska
My Commission Expires: Feb 14, 2017



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AFFIDAVIT OF HEATHER BROCK
In the matter of the Protective Proceeding of Bret Byron Bohn, 3AN-13-2737 PR
Page 5 of 6

Exhibit B
Page 5 of 6 Pages

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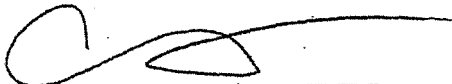
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Protective Proceeding of)
BRET BYRON BOHN,)
Respondent.)

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BY MAIL

DEC 24 2013

ATKINSON, CONWAY
& GAGNON, INC.

) Case No. 3AN-13-02737PR

HEARING ORDER

An evidentiary hearing in this matter is scheduled for December 26, 2013 at 2:00 p.m. before Judge Erin B. Marston, at the Nesbett Courthouse, 825 West Fourth Avenue, Courtroom 302, Anchorage, Alaska. The purpose of the hearing is to address Providence Alaska Medical Center's Emergency Motion to Transfer Bret Bohn to John Hopkins, and any opposition thereto.

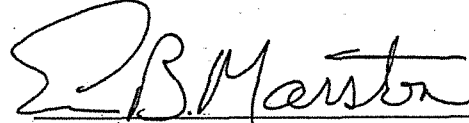
The State of Alaska and/or Providence Hospital shall make available, either in person or telephonically, Dr. Peter Abraham, DO, Sarah Blanning, LMSW and Heather Brock to testify to Bret Byron Bohn's current medical condition, the availability of medical care at Johns Hopkins Medicine and the urgency of securing additional care for the patient. If none of these individuals are available, another doctor that has reviewed the medical files and is competent to testify shall be made available. The court will also inquire into the patient's medical treatment since being admitted to the hospital and the actions of Bret Byron Bohn's parents leading up to

Exhibit C

Page 1 of 2 Pages

Providence Hospital's November 1, 2013 letter to Adult Protective Services
seeking a temporary guardian to act in Bret Bohn's best interests.

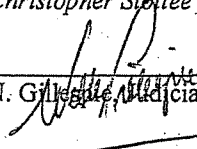
DATED in Anchorage, Alaska this 23rd day of December 2013.



Erin B. Marston
Superior Court Judge

I certify that on Dec 23, 2013
copy of the above was mailed & emailed to the
parties of record:

Nevhiz E. Calik Russell *Mario Lincoln Bird*
John A. Bove *Elizabeth M Russo*
Carolyn A. Perkins
Christopher Slottee


N. Gillette, Judicial Assistant