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

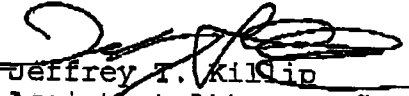
In the Matter of the )  
Hospitalization of: )  
FAITH J. MYERS, )  
Respondent. ) Case No. 3AN 03-00277 PR

MOTION FOR EXPEDITED CONSIDERATION

The Department of Health and Social Services, through the Attorney General's Office, moves for an order, pursuant to Civil Rule 77(g), granting expedited consideration of its Motion to Vacate Stay on Medication Orders. A decision is needed by Monday, April 28, 2003 given Ms. Myers' condition, which continues to decompensate. This motion for expedited consideration is supported by the attached affidavits of counsel and Drs. Hanowell and Kletti (original of Dr. Kletti's affidavit filed with the Alaska Supreme Court previously, copy filed here).

DATED: 4.28.03

GREGG D. RENKES  
ATTORNEY GENERAL

By:   
Jeffrey T. Killip  
Assistant Attorney General  
Alaska Bar No. 9204005

ORDER

IT IS SO ORDERED.  
DATED: \_\_\_\_\_

\_\_\_\_\_  
SUPERIOR COURT JUDGE

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1001 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 98501  
PHONE: (907) 268-5100

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SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the )  
Hospitalization of: )  
 )  
FAITH J. MYERS, )  
 )  
Respondent. )

Case No. 3AN 03-00277 PR

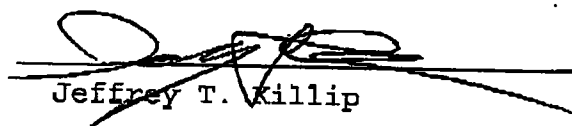
AFFIDAVIT

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

Jeffrey T. Killip, being first duly sworn upon oath,  
deposes and says:

1. I am the Assistant Attorney General assigned to this case.
2. Everything stated in these pleadings is true to the best of counsel's knowledge and belief.
3. Counsel just left a voice-mail message for Jim Gottstein and Martin Engle informing them of these motions, as they were each apparently unavailable to take the call.

Further affiant saith naught.

  
Jeffrey T. Killip

SUBSCRIBED AND SWORN to before me this \_\_\_ day of  
April 2003.

Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

FRANK MURKOWSKI, GOVERNOR

ALASKA PSYCHIATRIC INSTITUTE  
2800 PROVIDENCE DRIVE  
ANCHORAGE, ALASKA 99508-4677  
PHONE: (907) 269-7100  
FAX: (907) 269-7128

### AFFIDAVIT

Re: MYERS, Faith  
API #: 01-51-62

At the request of Assistant Attorney General J. Killip, I am providing this affidavit in regards to Ms. Faith Myers, my patient on the Susitna Unit at the Alaska Psychiatric Institute. Since Ms. Myers attended her commitment hearing (Alaska Superior Court, Judge M. Christen) on 4/16/03, her psychiatric condition has deteriorated substantially. Ms. Myers continues to exhibit profound psychosis, including extreme agitation, as well as paranoid, grandiose and bizarre delusional beliefs, such as believing that she has psychic powers and believing that staff members are "devils." She has also been quite violent over the past twenty-four (24) hours. Early this morning, she assaulted a member of the nursing staff and continued to threaten to assault staff. Her level of agitation and aggression was such that the situation necessitated she be placed in the locked seclusion room. When the on-duty psychiatrist attempted to assess her in the seclusion room, she continued to state that she would assault staff, and she made reference to staff being "devils." She subsequently and repeatedly called the on-duty psychiatrist "penis-head."

We continue to be unable to provide the necessary medical treatment Ms. Myers requires, due to a Stay on the Order authorizing us to provide antipsychotic medication on an involuntary basis. We are currently unable to provide such medication except in emergency situations. Such intermittent use of antipsychotic medication is insufficient to treat her psychotic disorder.

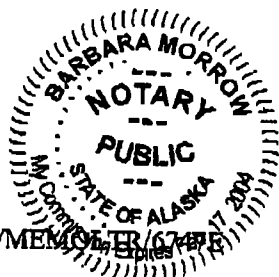
We feel that the need for the use antipsychotic medication is critical and immediate. It is unlikely that Ms. Myers can be discharged from API in the foreseeable future, unless antipsychotic medication is implemented immediately. Immediate implementation of such medication is certainly in her best interest, and further delays are clearly not in her best interest.


Thank you for your attention to this matter.

DATED this 24<sup>th</sup> day of April, 2003, at Anchorage, Alaska.

  
Robert G. Hanowell, M.D.

SUBSCRIBED AND SWORN before me this 24<sup>th</sup> day of April, 2003.



  
Notary Public in and for Alaska  
My Commission expires: 2-17-2004

RGH/ojb/MEMORANDUM 6/7/03

IN THE SUPREME COURT OF THE STATE OF ALASKA

FAITH J. MYERS,  
Appellant,

vs.

ALASKA PSYCHIATRIC INSTITUTE,  
Appellee,

Supreme Court No. S-11021

Trial Court Case No. JAN 03-00277 PR

**AFFIDAVIT OF NICHOLAS B. KLETTI, M.D.**

I, Nicholas B. Kletti, M.D., hereby swear and affirm that:

I am the Medical Director of Alaska Psychiatric Institute, and have been so since August 2000. I graduated from medical school at the University of Chicago's Pritzker School of Medicine in 1986, and graduated from Massachusetts General Hospital's Psychiatry Residency Training Program in 1990. I passed my written and oral American Board of Psychiatry and Neurology exams in 1991 on my first try after becoming eligible to sit for those exams, and I remain Board Certified in psychiatry at the present time. I was on the faculty of Harvard Medical School from 1987 until my moving from Boston, Massachusetts in 1996. I am currently on the faculty at the University of Washington School of Medicine, and am the clerkship coordinator for the teaching of University of Washington medical students here at API.

I am very familiar with Ms. Faith Myers, having been her psychiatrist during previous hospitalizations here, and having supervised her care during her current hospitalization. I have reviewed her record extensively, I have interviewed her, and I have extensively discussed her case with her current direct care providers.

Ms. Myers was hospitalized most recently at Alaska Psychiatric Institute on February 21, 2003, on an involuntary basis, initiated by her family, who were increasingly concerned about Ms. Myers' psychotic thinking and behaviors in the context of her stopping prescribed antipsychotic medications.

The family has been on record as wanting Ms. Myers to return to taking antipsychotic medications, and that they feel Ms. Myers was in the best mental health they had seen her following her February 2001 discharge from Alaska Psychiatric Institute, when she was regularly taking the prescribed antipsychotic medication, Zyprexa (also known as olanzapine).

Ms. Myers' direct care providers here at API, her outpatient providers in the community, and myself as supervisor of all clinical services at Alaska Psychiatric Institute, all strongly feel that

Myers v. Alaska Psychiatric Institute  
Klenti affidavit

01/04/2003

p.2

Ms. Myers should take prescribed antipsychotic medication. API has continued to petition for Forced Medication Order, as Ms. Myers continues to refuse treatment with medications. A Forced Medication Order was entered by Judge Christen, but this Order has been stayed pending appeals by Ms. Myers' lawyer, Mr. James Gottstein.

The use of antipsychotic medications is the prevailing and overwhelming current standard-of-care for the treatment of schizophrenia. This is supported in every standard textbook in the field of psychiatry. The fact that use of antipsychotic medications for schizophrenia is the current standard-of-care in psychiatry was not contested by the defense.

Mr. Gottstein produced two psychiatrists who gave telephonic testimony in Mr. Myers' commitment and forced medication hearing: Drs. Grace Jackson and Leonard Mosher. Both of these witnesses expressed their belief that antipsychotic medications are dangerous and should not be prescribed.

Both Drs. Jackson and Mosher acknowledged that their viewpoints are not the standard-of-care in modern psychiatry and that they are in the minority in the scientific psychiatric community.

Neither Dr. Jackson nor Dr. Mosher has examined Ms. Myers nor have they discussed any element of her case with her current direct care providers.

Neither of these witnesses expressed any modifying or qualifying statements about their strongly-held opinions, despite not having examined Ms. Myers or knowing her case in detail, and despite their views being in the vast minority amongst psychiatrists. A standard-of-care in medical practice is to understand that there are no absolutes in the clinical care of one individual, and to properly balance competing viewpoints, especially when there is controversy. Drs. Jackson and Mosher did not do this.

Medical ethics demand that physicians follow the standards-of-care within their professional field. If these standards-of-care are not followed, then there must be important extenuating circumstances unique to the individual patient as to why these standards were not followed, lest a treating physician be subject to malpractice torts. No physician who has examined Ms. Myers or has reviewed her case in detail feels that there are these extenuating individual circumstances which would weigh against Ms. Myers being treated using psychiatric standard-of-care practice, including antipsychotic medication.

The contrast between Ms. Myers current hospitalization, having been admitted February 21, 2003, and her next-most recent API hospitalization, from December 27, 2000 to February 8, 2001, is an important one, and is described below.

In Ms. Myers' December 27, 2000 to February 8, 2001 API hospitalization, treatment with medications began in early January only after a Forced Medication Order was granted. Ms. Myers was successfully discharged to the community one month later, in the best state of mental health she has ever been in, as reported by her family.

Myers v. Alaska Psychiatric Institute  
Kletti affidavit

01/04/2003

p.3

Ms. Myers continued to be stable and functioning in the community in 2001 and 2002 until stopping her prescribed medications sometime in late 2002, subsequently suffering progressive psychotic deterioration, directly leading to this current API hospitalization. As described in earlier testimony, Ms. Myers' worsening psychosis then led to: impending eviction; threatening notes written to neighbors; a confrontation with airport police; and other problems associated with her mental illness.

Ms. Myers was successfully treated in a four week span of time in 2001 using antipsychotic medications. She went from a homeless, psychotic person to the best mental health her family states they had seen her in that span, and was able to remain functional in the community for almost 18 months before stopping her medications and suffering from a worsening of psychosis again.

An individual's history of treatment often predicts their future response to treatment. It is reasonable to assume clinically that had Ms. Myers been treated with antipsychotic medication from the beginning of her most recent admission here on February 21, 2003, that she would likely already be discharged and functioning in the community again.

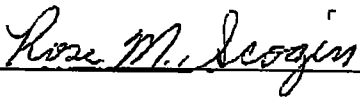
Everything stated in this affidavit is true to the best of my knowledge and belief.

Further affiant saith naught.

  
Nicholas B. Kletti, M.D.

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of April, 2003



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

In the Matter of the )  
Hospitalization of: )  
FAITH J. MYERS, )  
Respondent. ) Case No. 3AN 03-00277 PR

MOTION TO VACATE STAY ON MEDICATION ORDERS

The Alaska Psychiatric Institute (API or "the hospital"), through the Alaska Attorney General's Office, moves to lift the court's stay of the orders granting the medication petition for both the 30 and 90-Day commitment periods based on Ms. Myers' continued decompensation that includes an assault on a staff worker two days ago, her immediate need for medication to improve her condition, and the substantial likelihood that she will not improve without medication making her continued hospitalization - although completely avoidable through the careful administration of the medication previously authorized - an unfortunate and continuing reality.

The motion is supported by the affidavits of Drs. Hanowell and Kletti dated April 24, 2003 and April 1, 2003, respectively. In further support of its motion, the Hospital states as follows:

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1001 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 98501  
PHONE: (907) 289-5100

1  
2 **FACTUAL BACKGROUND & IMMEDIATE NEED FOR MEDICATIONS**

3 Ms. Myers was admitted to API on February 21, 2003,  
4 in connection with involuntary commitment proceedings initiated  
5 by her family given her decompensation from her 20-year battle  
6 with paranoid schizophrenia. Although she has benefited  
7 substantially in the past from the psychotropic medications to  
8 manage her illness, the hospital has been unable to carefully  
9 administer these medications due to the legal challenges  
10 mounted to date by her counsel. Consequently, Ms. Myers  
11 remains at the hospital with no release opportunity within  
12 sight. She has continued to decompensate as evidenced by a  
13 recent assault on a hospital staff member two days ago,<sup>1</sup> and  
14 three separate episodes of escalated behavior that each  
15 required emergency medication. Without the ability to  
16 administer psychotropic medication as previously authorized by  
17 this court and consistent with the hospital's treatment plan,  
18 the hospital's ability to effectively treat her condition in  
19 order to gain her release is substantially compromised.  
20

21 In the hospital's view, the continued hospitalization  
22 of Ms. Myers without being able to improve her condition  
23 through the careful administration of psychotropic medication  
24 is more than unfortunate. Had the hospital been able to  
25 administer these medications early on in her admission, in all  
26

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MOTION FOR HEARING ON ADN  
ITMO: F.M.  
JK/MJ/API/MYERS.MOTION FOR HEARING

CASE NO. 03-00277 PR  
PAGE 2 OF 2



1  
2 likelihood her condition would have improved sufficiently so  
3 that she would already have been released. Instead and as a  
4 result of the delay in being able to administer the medication,  
5 Ms. Myers' condition continues to deteriorate and the degree of  
6 her suffering is magnified and will be prolonged indefinitely.  
7 In the hospital's view, the situation has reached a crisis  
8 level, as Ms. Myers needs the benefit of the medication  
9 immediately. Because the appeal can take months to resolve,  
10 continuation of the stay under these circumstances is clearly  
11 not in Ms. Myers' best interests.

#### 12 PROCEEDURAL BACKGROUND

13 On March 14, 2003, the superior court issued its  
14 order that granted both the Petition for 30-Day Commitment and  
15 Petition for Court Authorization for Administration of  
16 Psychotropic Medication. See Order dated March 14, 2003. On  
17 March 19, 2003, the superior court issued an order that stayed  
18 the effectiveness of the medication petition filed in  
19 connection with the Petition for 30-Day Commitment provided  
20 Respondent sought stay of the first medication order before the  
21 Alaska Supreme Court, which she has done. The Hospital opposed  
22 Respondent's motion for stay given her insufficient showing  
23 that the legal standard for stay had been met. See Opposition  
24 to Motion for Stay Pending Appeal, attached at Exhibit 2. The  
25

26  
The court found at the second trial on April 16, 2003 Ms. Myers tried to assault a staff assistant See Order dated

MOTION FOR HEARING ON ADN  
ITMO: F.M.  
JK/MJ/API/MYERS.MOTION FOR HEARING

CASE NO. 03-00277 PR  
PAGE 3 OF 2

1  
2 Alaska Supreme Court has not issued any decision on that  
3 request as of this date.

4 On April 19, 2003, the superior court issued its  
5 order that granted the Petition for 90-Day Commitment and the  
6 Petition for Authorization of Psychotropic Medication. See  
7 Order dated April 19, 2003, page 18. In its ruling, the  
8 superior court stated: "No medication may be administered until  
9 a ruling is available on Ms. Myers' appeal from the decision  
10 reached March 15, 2003." Id.

11 The hospital requests that the above stay concerning  
12 the each of the medication petitions be lifted due to the fact  
13 that Respondent cannot meet the legal standard for the stay,  
14 and because of the hospital's immediate need to administer  
15 medication on Respondent's behalf.

16  
17 **RESPONDENT CANNOT MEET LEGAL STANDARD TO MAINTAIN STAY**

18 Appellate Rule 205 requires the superior court to  
19 address the issue of stay, and states in applicable part that  
20 "[a] motion for stay will not normally be considered by the the  
21 supreme court unless application has been made to the trial  
22 court and has been denied, or has been granted on conditions  
23 other than those requested." Appellate Rule 205.

24 Powell v. City of Anchorage, 536 P.2d 1228 (Alaska  
25 1975) provides the four elements be demonstrated by the movant

26 April 19, 2003 at page 6 of 18.

MOTION FOR HEARING ON ADN  
ITMO: F.M.  
JK/MJ/API/MYERS.MOTION FOR HEARING

CASE NO. 03-00277 PR  
PAGE 4 OF 2

1  
2 before a stay is appropriate: 1) the likelihood that the movant  
3 will prevail on the merits; 2) irreparable harm to movant if  
4 stay not granted; 3) that no harm will befall to third parties  
5 should the stay be granted; and, 4) the stay would not be  
6 contrary to the public interest. The Hospital contests any  
7 assertion by Respondent that she can satisfy each and every one  
8 of the four criteria necessary to be demonstrated for obtaining  
9 a stay under Powell v. City of Anchorage, 536 P.2d 1228 (Alaska  
10 1975). In fact, the hospital contests that she cannot  
11 demonstrate that she can meet any - let alone all - of the four  
12 criteria.

13 Specifically, Respondent cannot demonstrate a  
14 likelihood of success on the merits. Second, although  
15 Respondent may have presented evidence in support of a finding  
16 that the medications may cause her harm in response to the  
17 hospital's evidence that the medications can only help Ms.  
18 Myers condition at this point, such testimony offered by  
19 Respondent's experts is to be afforded little weight given its  
20 inconsistency with what is overwhelmingly accepted as the  
21 standard of psychiatric care in the U.S. today - as  
22 acknowledged by Respondent's experts themselves.<sup>2</sup> Third,  
23 Appellant cannot negate the substantial harm to other  
24 interested parties, such as members of Ms. Myers' family who  
love and care for her, and who will continue to suffer

<sup>2</sup> Respondent presented a total of three experts during the course of both trials. Two of Respondent's experts never examined Respondent and agreed that their anti-medication views to treat schizophrenia were not mainstream. The third expert, Dr. Smith, met with Respondent for 75 minutes, did not speak with Respondent's family or treating physicians, and appears not to have departed much from his prior "activist" view that medications are never advisable to treat mental illness.

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emotionally if her condition is not improved. Finally, Appellant cannot refute the harm to the public interest if facilities like the Alaska Psychiatric Institute are not allowed to help patients like Ms. Myers because they are prohibited from using medications - previously proven to be effective - to treat schizophrenia.

**SUFFICIENT EVIDENCE TO RULE ON THE ISSUE OF STAY**


The Hospital submits that the court has sufficient evidence before it - after two trials - to rule on the issue of stay. If the court feels that more evidence is necessary in order to render a decision, then the Hospital respectfully requests that an evidentiary hearing be held on an expedited basis.

**CONCLUSION**

In light of the foregoing, the Hospital respectfully requests that the court vacate the stay concerning its prior orders authorizing the Hospital to administer psychotropic medication.

DATED: 4-25-03

GREGG D. RENKES  
ATTORNEY GENERAL

By:   
Jeffrey T. Killip  
Assistant Attorney General  
Alaska Bar No. 9204005

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the )  
Hospitalization of: )  
FAITH J. MYERS, )  
Respondent. )

Case No. 3AN 03-00277 PS

ORDER

Having considered the Hospital's Motion to Vacate Stay of Medication Orders, IT IS HEREBY ORDERED that the Department's motion is GRANTED. Accordingly, the hospital may immediately proceed with the administration of psychotropic medication pursuant to the Petitions for Court Authorization for Administration of Psychotropic Medications that were previously approved by this court.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Morgan Christen  
SUPERIOR COURT JUDGE

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
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ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

EXHIBIT 2

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IN THE SUPREME COURT OF THE STATE OF ALASKA

FAITH J. MYERS,	)	
Appellant,	)	
	)	
vs.	)	
	)	Supreme Court No. S-11021
ALASKA PSYCHIATRIC INSTITUTE,	)	
Appellee,	)	
	)	

Trial Court Case No. 3AN 03-00277 PR

OPPOSITION TO MOTION FOR STAY PENDING APPEAL

The Department of Health and Social Services, Alaska Psychiatric Institute (Appellee or "the hospital"), through the Attorney General's Office, hereby opposes Appellant's Motion for Stay Pending Appeal dated March 21, 2003. Appellee's opposition is supported by the attached affidavit of Dr. Nicholas Kletti, Medical Director, Alaska Psychiatric Institute, who attests to the hospital's continued inability to provide what no one contests is overwhelmingly recognized as the currently accepted standard of medical care in the United States today - the careful use of nueroleptic medications to treat schizophrenia. As stated by Dr. Kletti, continued delay in the administration of medication is contrary to Ms. Myers' welfare and not in her bests interests.

In opposition thereto, Appellee states as follows:

1. Appellant's Motion for Stay Pending Appeal does not comport with the procedures of Alaska Appellate Rule 205. This Court should remand the issue of a stay back to the Superior Court, pursuant to Appellate Rule 205, for a

DEPARTMENT OF LAW  
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1  
2 determination by the court as to whether entry of a stay  
3 pending the appeal is appropriate. If the superior court does  
4 not grant that request for a stay pending the appeal's  
5 duration, then appellant can motion this Court to consider the  
6 request.

7 On remand, the superior court may wish to hold an  
8 evidentiary hearing to obtain more evidence on the issue of the  
9 appropriateness of entering a stay pending the duration of the  
10 appeal - which will likely take months - including whether a  
11 delay in the administration of medications will harm appellant  
12 and/or is in Ms. Myers' bests interests. The superior court  
13 may also wish to appoint and hear from an individual -  
14 independent of this litigation - who is charged with looking  
15 out for the appellant's best interests, such as a court  
16 appointed guardian ad litem. Counsel understands that the  
17 family may have already initiated guardianship proceedings and  
18 the superior court may wish to accelerate that process. The  
19 court may also wish to consider the appointment of an expert  
20 psychiatrist who is independent of and not connected to these  
21 proceedings, similar to its prior appointment of the court  
22 visitor for examination of the issue of capacity.

23 The superior court may want to consider all of the  
24 above additional information before rendering a decision on  
25 whether to grant a stay of the effectiveness of the medication  
26 petition pending the duration of the appeal. If the superior  
court does not grant appellant's request for a stay pending the  
duration of the appeal, then appellant can properly proceed

MOTION TO QUASH SUPOENA &amp; NOTICE DEPOSITION

CASE NO. 03-00277 PR

ITMO: F.M.

PAGE 2 OF 5

JK/MJ/API/MEYERS/ OPPOSITION TO MOTION TO STAY

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

1  
2 with a motion for stay in this Court pursuant to Appellate Rule  
3 205.

4           2. If the Court chooses to hear appellant's request  
5 for a stay pending the appeal now, then it should deny that  
6 request for, among others, those reasons stated in the attached  
7 affidavit of Dr. Nicholas Kletti, Medical Director, Alaska  
8 Psychiatric Institute dated April 1, 2003.

9           As reflected in his testimony at trial and in his  
10 attached affidavit, Dr. Kletti is of the expert opinion that  
11 delay in the administration of medication is contrary to Ms.  
12 Myers' welfare and is not in her best interests medically,  
13 based on what is overwhelmingly accepted as the current  
14 standard of psychiatric care in the United States today - which  
15 is practiced by the hospital. Appellant does not dispute that  
16 the position forwarded by her own experts offered at the trial  
17 fall outside what is currently accepted at the standard of care  
18 for psychiatry in the United States today (e.g. that  
19 neuroleptic medications should not be used to treat  
20 schizophrenia). Appellee respectfully asserts that it cannot  
21 be required to practice psychiatric medicine, as Appellant  
22 argues, outside the parameters of what is currently accepted as  
23 the standard of care for psychiatric medicine in the United  
24 States today. In fact, were Dr. Kletti and others to practice  
25 psychiatry as forwarded by appellant's experts, they would each  
26 be liable for malpractice and the hospital might lose its  
license as a psychiatric treatment facility.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
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MOTION TO QUASH SUPOENA & NOTICE DEPOSITION  
ITMO: F.M.  
JK/MJ/API/MEYERS/ OPPOSITION TO MOTION TO STAY

CASE NO. 03-00277 PR  
PAGE 3 OF 5



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Appellee's response to Appellant's legal arguments will be addressed here. Appellant argues that the Superior Court "never explicitly addressed" the adequacy of the hospital's expert testimony on the issue of harm to Ms. Myers caused by continued delay in administration of medication under State v. Coon, 974 P.2d 386 and related authority. Appellee disagrees and cites to pages 1-4 of the superior court's order issued on March 21, 2003 (attached).

Concerning Appellant's assertion that she has satisfied the criteria for obtaining a stay under Powell v. City of Anchorage, 536 P.2d 1228 (Alaska 1975), Appellee contests that she cannot demonstrate that she can meet any - let alone all - of the four criteria. Specifically, she has not demonstrated a likelihood of success on the merits. Second, although Appellant may have presented evidence in support of a finding that the medications may cause her harm, such testimony and evidence was elicited from sources of whom Appellant acknowledges fall outside what is currently accepted as the standard of psychiatric care in the United States today, and from experts who have never even examined Ms. Myers. Third, Appellant overlooks the substantial harm to other interested parties, such as members of Ms. Myers' family who love and care for her, and who will continue to suffer emotionally if her condition is not improved. Finally, Appellant overlooks the harm to the public interest if facilities like the Alaska Psychiatric Institute are not allowed to help patients like Ms.

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2 Myers because they are prohibited from using medications -  
3 previously proven to be effective - to treat schizophrenia.

4           Concerning Appellant's constitutional arguments,  
5 Appellee states that her arguments are misplaced in this  
6 motion. The issue before the Court concerning any proper  
7 motion for stay is whether stay is compatible with the welfare  
8 and best interests of Ms. Myers - not whether any rights to  
9 privacy have been violated. Presumably, the issues concerning  
10 privacy will be raised in her points on appeal and addressed in  
11 that context.

12           As provided by the Court Rules and in furtherance of  
13 the best interests of Ms. Myers, the matter of stay pending  
14 appeal should be decided by the superior court. For the above  
15 reasons, Appellant's Motion for Stay Pending Appeal should be  
16 DENIED.

17           DATED: 4-1-03

18           GREGG D. RENKES  
19           ATTORNEY GENERAL

20           By:   
21           Jeffrey T. Killip  
22           Assistant Attorney General  
23           Alaska Bar No. 9204005

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

RECEIVED  
MAR 25 2003

DEPARTMENT OF LAW  
OFFICE OF ATTORNEY GENERAL  
3RD JUDICIAL DISTRICT  
ANCHORAGE, ALASKA

In the Matter of the Hospitalization of: )  
)  
)  
Faith J. Myers, )  
)  
)  
Respondent. )  
)  
)  
\_\_\_\_\_ )

3AN-03-277 PR

ORDER

On February 21, 2003, an Order was entered that allowed Ms. Myers to be delivered to the temporary custody of the Alaska Psychiatric Institute (API). At a hearing held on March 5, 2003, findings were entered on record that Ms. Myers had been shown by clear and convincing evidence to be mentally ill, that she presented a likelihood of serious harm to herself or others, and that she would therefore remain committed in the Alaska Psychiatric Institute (API) for a period of not more than 30 days. AS 47.30.735. On March 14, an Order was entered granting the State's Petition for Administration of Psychotropic Medication. At Petitioner's request, another Order was entered staying March 14 Order for a period of 7 days, so that the March 14 ruling could be appealed to the Alaska Supreme Court.

Prior to the March 5 hearing, counsel for Ms. Myers filed a Motion to Dismiss both the Petition for 30-Day Commitment and the Petition for Court Approval of Psychotropic Medication. That Motion is now ripe for review. As noted, both of the Petitions have been granted since Mr. Gottstein filed the Motion to Dismiss. However, there are certain arguments he raises in his Memorandum in

Support that, while considered by me in my previous rulings, I wish to address more fully in light of the serious questions presented in this case.

1. Application of Daubert Admissibility Standard

Respondent's counsel contended both in his Motion and at the evidentiary hearing held on March 5 that expert testimony proffered by the State on the question of Ms. Myers' future dangerousness or the appropriateness of the medication plan proposed by API should not be considered. Specifically, counsel argued that under the standard for admissibility of expert scientific testimony set forth in Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and as adopted by the Alaska Supreme Court in State v. Coon, 974 P.2d 386 (Alaska 1999), the testimony of Dr. Hanowell and Dr. Kletti should not be considered. Respondent asserts that such testimony is not sufficiently reliable under the Daubert criteria for admission of scientific evidence on either the question of Ms. Myers' future dangerousness, or the proposed plan of administering psychotropic medication to treat her currently diagnosed mental condition.

The State's Opposition to Post-Hearing Motion to Delay Effectiveness of Any Forced Medication Order identifies that this testimony was not offered to justify the validity of the proposed treatment plan, but rather to show that the elements of the State's Petition had been established. Opposition, at 2. It was primarily for this latter purpose that I considered the testimony offered by the State's medical witnesses in this matter. Under Coon, when an area of scientific expertise is well known and has been fully considered by the court, a trial court may take judicial notice of its admissibility. Id. at 398. The State's experts were candid that the

current understanding of mental illness is such that, at this point, no one can testify as to what causes schizophrenia and/or why some medications work for some patients. They testified that their views were based upon clinical observations and research that is based largely upon observations of outcomes. This limitation does not cause me to conclude that the testimony is unreliable or untrustworthy. Regarding Ms. Myers' diagnosis, I read Coon to permit the consideration of the psychiatrists' testimony regarding clinical observations supporting the conclusion that Ms. Myers suffers from schizophrenia. Though Ms. Myers disputes that she is mentally ill, she did not dispute that she hears voices commanding her to do things, that she sees people she realizes can not be present and experiences other sensations and hallucinations she refers to as "special effects" that do not allow her to accurately perceive the world around her. Had there been a dispute about whether Ms. Myers actually hears voices that direct her to do things, this would be a closer question. As it is, given the undisputed factual testimony concerning the voices that command her, Coon allows psychiatrists to testify regarding Ms. Myers' diagnosis and the danger she presents to herself and/or others.

Ms. Myers' expert testimony did not address the questions of the dangers posed by Ms. Myers to herself or others in her current mental state. Indeed, Ms. Myers' experts have not examined her. The experts she offered addressed the advisability of treating a patient with her diagnosis with psychotropic medications. As I explained in my earlier Order, I considered the expert testimony offered by Ms. Myers to be of limited relevance for the purpose of ruling on her capacity and ability to provide informed consent, and not because I considered that the statutory scheme calls for the superior court to second guess the proposed treatment plan. I

found the testimony relevant because Myers testified that she was an activist for mentally ill patients in the past, that she has undergone treatment herself for mental illness and because she demonstrated to me an understanding and familiarity with the issues involved in treatment of the mentally ill. This included the nature of the general discussion and debate in the medical community regarding certain treatment approaches to mental illness. Had Ms. Myers refused medication against medical advice without being able to demonstrate that a valid debate exists among qualified experts in the psychiatric community, that would have been probative on the issue of her capacity.<sup>1</sup> For these reasons, I do not believe the Daubert factors preclude my consideration of either the State's experts or Ms. Myers' experts.

2. Vagueness of AS 47.30.730.

Respondent further argues in her Motion that the prescribed procedure in petitioning for a 30-day involuntary commitment under AS 47.30.730 is unconstitutionally vague, because the requirement for an allegation that she is "likely to cause harm to self or others or is gravely disabled" insufficiently describes the nature of conduct for which involuntary committal may be instituted. However, as the State correctly points out in its Opposition brief, Subsection (a)(7) of this statutory section further requires that the petition for commitment "list the facts and specific behavior of the respondent supporting the allegation" of the likelihood that the respondent may cause harm to herself or others, or is gravely disabled. I conclude that this requirement is sufficient to provide Ms. Myers with the

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<sup>1</sup> As it is, I made a finding that a valid debate does exist among qualified experts regarding the use of psychotropic medications for schizophrenia.

opportunity both to identify and contest the allegations of her behavior and other pertinent facts which form the basis for the petition for commitment.

3. Adequate Listing of Facts in Petition

Respondent argued that the Petition for Commitment did not sufficiently list the facts and specific behavior required under AS 47.30.730(a)(7), because it only lists "conclusory allegations" regarding Ms. Myers' condition. Memorandum in Support, at 8. However, in addition to the allegations identified by Respondent in her brief, the Petition also stated that Ms. Myers "reportedly isn't eating well and reportedly may be sleeping in the crawl space under her apartment." The Petition included an additional assertion that Ms. Myers was "making reference to ghosts." In my March 14 Order granting the State's Petition for Administration of Psychotropic Medication, I specifically found that Ms. Myers' apparent occupation of the crawlspace of her apartment to sleep or read posed a danger to herself. At the hearing, the testimony was that the space is unheated. Only a sheet of plastic separates it from the ground under the building and Ms. Myers appears to have been there in January, when a drop in temperature would pose a risk of harm to her. I noted this testimony in my Order of March 14, 2003, at 10. However, the specifics of this risk of harm were not elaborated upon in the original petition. I concluded that the above-stated recitation of facts in the Petition for Commitment, while sparse, was sufficient to support the allegations of Ms. Myers mental illness and likelihood of causing harm to herself. This conclusion is based, in part, upon the fact that the statute requires that the Petitions be prepared in a very short timeframe.

4. Undefined Limits for State Authority to Administer Medications

Ms. Myers contends that the State cannot be given "carte blanche" authority by the court to administer medications to her, because AS 47.30.837 requires that a patient be given all information that is material to the patient's decision to give or withhold consent.<sup>2</sup> Ms. Myers argues that the Petitioner failed to give this information to her as required by statute. The testimony at the hearing supported the finding that the State either actually provided, or attempted to provide, this information to Ms. Myers to the extent that she would allow it to be provided. She did not participate in at least some of the discussion.<sup>3</sup>

Beyond the requirement for informational disclosure, however, Ms. Myers challenges the limitation on a court's authority to modify or restrict a treatment plan once the court has issued an order approving the facility's petition under AS 47.30.839. AS 83.30.839(g) states in relevant part that if the court finds that the patient is not capable of providing informed consent, "the court shall approve the facility's proposed use of psychotropic medication." Treatment by use of a locked quiet room, electroconvulsive therapy, adverse conditioning, lobotomy, psychosurgery or other comparable form of treatment are addressed in AS 47.30.825(d)-(g). Experimental treatments are prohibited under AS 47.30.830, and the same statute provides that if a treatment "is experimental as applied to a particular patient or would involve a significant risk of mental or physical harm to the patient, the matter may be referred to the commissioner for a determination."

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<sup>2</sup>The statute also sets forth several specific items of information that the treatment facility is required to impart to the patient. See AS 47.30.837(d)(2)(A-F).



Referral to the commissioner triggers the facility's duty to provide copies of all documents to the patient, patient's attorney and guardian. The patient and/or representatives of the patient are also entitled to provide evidence to the commissioner on the question. AS 47.30.830. However, the initial determination that a treatment may be experimental as applied to a particular patient and/or the determination that a particular treatment may be harmful to a particular patient is a decision made by the personnel of the facility.

The state argues persuasively that this statutory scheme evidences a clear intent by the legislature to restrict the court from substituting its judgment on medical matters for those of the treating facility's physicians, but counsel for Ms. Myers raises a serious concern that approval of the State's Petition may subject her to a medication that she considers to have actually harmed her in the past, without providing the opportunity to present differing medical experts. She argues that standards within the medical community evolve as medical science advances and that some medications and/or medical procedures that were the accepted standards in the past are now looked upon with great disfavor and/or even recognition that they were indeed harmful. Where a patient, such as Ms. Myers, has a history of undergoing a medical treatment she found to be harmful, where she is found to lack capacity to make her own medical decisions and a valid debate exists in the medical/psychiatric community as to the safety and effectiveness of the proposed treatment plan, it is troubling that the statutory scheme apparently does not provide a mechanism for presenting scientific evidence challenging the proposed treatment plan. The decision to grant the State's Petitions was made based upon the express

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<sup>3</sup> I do not reach the question of whether API would be required to provide such information to a guardian

language in the statute, which I do not find to be ambiguous. The superior court's role appears to be limited to deciding whether Ms. Myers has sufficient capacity to give informed consent, as defined by AS 47.30.839.

CONCLUSION

I previously granted both the State's Petition for Involuntary Commitment and Petition for Administration of Psychotropic Medication. For the reasons stated in my prior rulings and as set forth above, Ms. Myers' Motion to Dismiss is denied.

DATED 3/21/03

Morgan Christen  
MORGAN CHRISTEN  
Superior Court Judge

I certify that on 3/24/03  
a copy of the above was mailed/faxed to  
each of the following at their addresses of record:  
James Gottstein 274-9492  
Jeffrey Killip 258-6872

HW  
Hillary Williams  
Administrative Assistant

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authorized to make health decisions on behalf of Ms. Myers.