**Subject:** Re: Involuntary Commitments and Psychotropic Medications
**From:** Jim Gottstein <jim.gottstein@psychrights.org>
**Date:** Thu, 02 Apr 2009 10:53:17 -0800
**To:** [redacted]

Hello Committee Members:

I have a few comments on the minutes of the March 5, 2009 Minutes.

**Involuntary Commitments.**

1. I am glad to see the provision that a hearing be held within 72 hours of arrival. AS 47.30.715 requires the judge to set the time for the hearing upon notification of arrival and notify the respondent and other parties of the date, time and location. It seems to me this should be added. The current practice of not scheduling a hearing until a petition for commitment is filed violates AS 47.30.715. I've mentioned this before, I believe, but not as many times as the other points.
2. The judges, at least in Anchorage, are issuing *ex parte* orders in violation of AS 47.30.700 if a screening investigation has not been completed first. I have raised this a number of times.
3. It is still my position that referring 30 day commitments to masters effectively flouts the requirement in AS 47.30.725(b) of a court hearing within 72 hours of arrival at a facility. I wouldn't want my silence to be interpreted as acquiescence. I just don't see how having a process that can add 144 additional hours to the maximum of the 72 allowed in AS 47.30.725(b) to even get to a hearing before a Superior Court judge can be considered compliance. It also seems to me that AS 47.30.725(b) contemplates immediate release if the judge finds the respondent does not meet commitment criteria. The 72 hour requirement is of constitutional dimension. *See*, the quote from *Wetherhorn* below.

**Forced Medication**

- Unlike in involuntary commitments, as I have repeatedly pointed out, requiring the hearing to be held as soon as possible flouts the Alaska Supreme Court's holding in *Myers*.

  > Unlike involuntary commitment petitions, there is no statutory requirement that a hearing be held on a petition for the involuntary administration of psychotropic drugs within seventy-two hours of a respondent's initial detention. The expedited process required for involuntary commitment proceedings is aimed at mitigating the infringement of the respondent's liberty rights that begins the moment the respondent is detained involuntarily. In contrast, so long as no drugs have been administered, the rights to liberty and privacy implicated by the right to refuse psychotropic medications remain intact. Therefore, in the absence of an emergency, there is no reason why the statutory protections should be neglected in the interests of speed. (156 P.3d at 381, footnotes omitted)

  The same must also apply to constitutional protections. If the respondent wants it held quickly, that, of course, is another matter.

- Staying a forced medication recommendation for only 48 hours if a respondent objects to the Master's recommendation to drug him/her against his will is not adequate. As I have said, there is no court order depriving the

respondent of her fundamental constitutional right not be forced to take drugs she doesn't want unless and until a Superior Court judge issues one. The recommendation is only that.

- As I have also said, there also needs to be a provision to stay a Superior Court order pending appeal to the Alaska Supreme Court. The normal process is that such an order would be stayed for ten days during which an appeal could be perfected and a further stay sought. The Superior Court should first consider whether the order should be stayed pending appeal and then, if it is denied, there should be a reasonable amount of time for the Supreme Court to consider it. Otherwise, an emergency motion for a stay has to be filed with the Alaska Supreme Court. The Alaska Supreme Court's Order Granting Stay Pending Appeal in S-13116 I think is helpful in understanding my comments. If that link doesn't work, you can also find it at http://psychrights.org/States/Alaska/CaseXX/S13116/080523StayOrder.pdf The rules should not be set up in a way that every request for a stay to the Alaska Supreme Court has to be done through an emergency motion.

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