

**FILED**

**FEB 20 2019**

APPELLATE COURTS  
OF THE  
STATE OF ALASKA

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Attorney for Applicant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

\_\_\_\_\_  
In the Matter of a )  
Request for Information )

Supreme Ct. No. S-16812  
Original Application

\_\_\_\_\_  
Trial Ct. Case No. 3AN-16-00695DN

**MOTION TO RE-TAKE JURISDICTION and GRANT RELIEF**

Dr. Peter Gøtzsche moves this Court (1) to re-take jurisdiction, and (2) grant his information request for access to 30 consecutive court files where a Petition for Court Approval of Administration of Psychotropic Medication under AS 47.30.839 was filed, starting on January 1, 2019 (Information Request).<sup>1</sup>

**A. Previous Proceedings**

This Original Application proceeding was filed on September 7, 2017, because Dr. Peter Gøtzsche's June 20, 2016, Information Request had not been acted on for over a year. The Original Application requested this Court either (a) grant the request, or (b) order the Superior Court to rule on the request for information within 30 days. On

<sup>1</sup> The amended request at the Superior Court is for files commencing January 1, 2017, which is now more than two years ago. The requested starting date is being revised here because Dr. Gøtzsche, would prefer the data be as current as possible. However, a January 1, 2017 starting date, would be preferable to no relief.

October 16, 2017, this Court granted the Original Application in part. More specifically, this Court ordered:

The Original Application is granted in part. The superior court is ordered to rule on the request for information. In doing so, a clear record of the court's analysis and the parties' arguments should be made. The court may order additional responses from the parties, if needed. In the event the request is granted, the court should apply Administrative Rule 9(e)(1) and (5) to determine the costs to be imposed for court time incurred researching, redacting, and copying. We do not retain jurisdiction.

(Order)

Following this Order a status conference was held before the Superior Court on November 1, 2017. A copy of the transcript is attached hereto. At the end of the status conference, the Superior Court judge indicated he would draft something and send it out for input and possible revisions. Tr. 25:17-18. Over fifteen months later no action has been taken by the Superior Court Judge, prompting this motion.

### **B. The Information Request**

Dr. Gøtzsche is an internationally recognized medical researcher who has published more than 70 papers<sup>2</sup> in "the big five"<sup>3</sup> and been cited over 15,000 times.<sup>4</sup> The Information Request is for the research protocol developed by Dr. Gøtzsche, "Forced admission and forced treatment in psychiatry: are patients' rights being respected?" to compare 30 consecutive involuntary medication cases in Alaska with 30 such cases in Denmark to evaluate if:

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<sup>2</sup> Attachment A to Original Application, pages 3-54.

<sup>3</sup> BMJ (f/k/a British Medical Journal), Lancet, Journal of the American Medical Association, Annals of Internal Medicine, and the New England Journal of Medicine.

<sup>4</sup> Attachment A to Original Application, page 1.

1. The petitions comply with the requirements of *Bigley* in Alaska and Danish requirements in Denmark.
2. Information is provided that documents that the patient cannot provide informed consent.
3. Information about the psychiatric drugs the patient takes or will be forced to take is accurate.
4. A less intrusive alternative is available.
5. The combination of drugs the patient takes is safe.
6. The arguments for using force are reasonable and documented.
7. The patients' rights have been respected.
8. There are striking similarities from case to case considering that patients are different.

Furthermore, the judge's ruling will be noted.<sup>5</sup>

With respect to confidentiality, the Research Protocol provides:

It is not necessary to know the patients' names. To preserve anonymity, these can be redacted before we get access to the documents, or we could sign a legally binding confidentiality agreement. In any case, we will report the results in a way that does not allow identification of any of the patients.<sup>6</sup>

Dr. Gøtzsche believes there are any number of ways to protect confidentiality and here proposes one that minimizes the burden on the Court System, while protecting confidentiality. More specifically, Dr. Gøtzsche respectfully suggests that his counsel be provided with copies of the court files and redact them prior to forwarding them to him for his study. Similarly, that counsel be provided the audio recordings and ordered to redact the transcripts prior to forwarding them to Dr. Gøtzsche. An alternative would be for court system personnel to perform the redactions prior to transmittal to counsel for Dr. Gøtzsche. Dr. Gøtzsche's only objection to the latter is the amount of time that is

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<sup>5</sup> Attachment A to Original Application, pages 4-5.

<sup>6</sup> Attachment A to Original Application, page 5.

likely to pass before this would be accomplished. In either case, Dr. Gøtzsche would pay for the costs pursuant to Administration Rules 9(e) (1) and (5).

### **C. Discussion**

#### **(1) Administration Rule 37.7's Criteria Overwhelmingly Weigh In Favor of the Request**

Rule 37.7(a) allows access to non-public court records if the requestor's interest in disclosure outweighs the potential harm to the person whose interests are being protected, including consideration of (1) risk of injury to individuals, (2) individual privacy rights and interests, (3) proprietary business information, 4) the deliberative process, or (5) public safety.

The public interest in having these proceedings analyzed for compliance with legal requirements is profoundly beneficial. The opportunity to have such an internationally recognized researcher analyze the extent to which proceedings under AS 47.30.839 comply with the requirements set forth in *Bigley v. Alaska Psychiatric Institute*<sup>7</sup> and compare them with Danish analogues will be extremely valuable. If the conclusion is that they have complied with legal requirements; good. If, on the other hand, the analysis shows people's rights are regularly being violated it is critically important to know so corrections can be made.

In *In the Matter of M.C.*,<sup>8</sup> the Massachusetts Supreme Court very recently noted with respect to civil commitments, "Openness ... enhances both the basic fairness of the [proceeding] and the appearance of fairness so essential to public confidence in the

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<sup>7</sup> 208 P.3d 168 (Alaska 2009).

<sup>8</sup> 2019 WL 438753, \_\_\_ N.E.3d \_\_\_ (Massachusetts February 5, 2019).

system." In Alaska, unlike Massachusetts, these proceedings are routinely closed to the public, so the Information Request becomes even more important.

With respect to the Rule 37.7(a) criteria, it is respectfully suggested there is essentially no risk of injury to individuals, no proprietary business information is involved, the deliberative process is not compromised in any way, and public safety is not implicated at all. This leaves individual privacy rights as a Rule 37.7(a) factor that might weigh against granting the Information Request. It is respectfully suggested that while the privacy interest is great, under Dr. Gøtzsche's proposed approach the risk to that privacy interest is extremely low.

Dr. Gøtzsche's preferred alternative is that his counsel be charged with redacting the court documents and transcripts prior to his receipt of the information. The exposure of respondents' confidential information would thus be restricted to Dr. Gøtzsche's counsel and the court reporter(s) preparing the transcripts. Both court reporters and attorneys regularly keep confidential information confidential. It is respectfully suggested that the risk to respondents' privacy and confidentiality interest is very small under Dr. Gøtzsche's preferred approach.

As an alternative, court personnel would be charged with redacting the court documents and transcripts. Admittedly, the risk to respondents' privacy interests is even smaller under this alternative as court personnel already have access to this information. Dr. Gøtzsche's concern about this alternative is the amount of time it would likely take to redact the court documents and transcripts. It is also respectfully suggested that even

though Dr. Gøtzsche would pay for costs associated with the transcription, copying and redacting, it would still be at least somewhat of a burden on the court system.

In sum, the Administration Rule 37.7(a) factors weigh very heavily in favor of granting the Information Request. In fact, at the November 1, 2017, status conference this was essentially accepted by all parties and the Court with the focus being on what additional notice, if any, should be provided to respondents whose cases are proposed for inclusion. *See*, attached transcript.

## **(2) No Additional Notice Should be Ordered**

Administration Rule 37.7(b) requires a request for access to non-public records be "served on all parties to the case unless otherwise ordered."

Since the Public Defender Agency was appointed attorney for all of the respondents who would be in the study, Dr. Gøtzsche's position is that notice to it and notice to API's attorney serves as notice to all parties. Tr. 3:4-7. The Public Defender Agency resisted this, stating that once a case was concluded, its representation ceased. Tr. 9:5-8.<sup>9</sup> However, under Civil Rule 81(e)(2), the Public Defender Agency remains the respondents' attorney until "one year has elapsed since the filing of any paper or the issuance of any process in the action or proceeding." Since the request here is for 30 consecutive court files, commencing January 1, 2019, the Public Defender Agency is still respondents' attorney and notice to it is notice to the respondents. API's position was

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<sup>9</sup> *See*, also the Public Defender Agency's September 20, 2017, Response to Original Application Requesting Access to Confidential Court files filed in this matter.

that each respondent be allowed to veto inclusion in the study (require affirmative consent). Tr. 8:8.

Both the Public Defender Agency and API suggested individual notice should be given to all respondents whose court cases are subject to the Information Request. Dr. Gøtzsche has no objection to individual notice *per se*, but respectfully suggests the practicalities make it unworkable and unwise. It is unworkable because psychiatric respondents' locations are often unknown following discharge. Tr. 11:21-23. It seems unwise because the process of attempting to locate the respondents and send them notice is a far greater threat to their confidentiality and privacy interests than just providing Dr. Gøtzsche with the requested information after respondents' names have been redacted.

The Superior Court judge suggested, for example, that he might send a letter to each of the respondents. Tr. 5:1-2. The Superior Court judge surmised it might take notifying 400 respondents before obtaining consent from thirty. Tr. 4:6. When Dr. Gøtzsche pointed out that it was pretty likely someone other than the respondents would learn of the request, the judge assumed that any such person would likely already know about the respondent having been put in API. Tr. 5:21-22, 6:7. If the judge is wrong, though, the potential impact of someone who did not know about the respondent being in API finding out could be catastrophic for such respondent. The same would be true if the Public Defender Agency or API were to undertake to notify respondents. In addition, to the extent there is an effort to locate the respondents, confidentiality would likely be breached even before notice was sent out.

The Superior Court judge ultimately recognized that even if one or more respondents objected, he still had to weigh whether access should be granted. Tr. 20:6-9. At the end of the status hearing the Court indicated it would "craft something and send it out for input and possible revisions." Tr. 25:17-18. It has been over fifteen months with nothing forthcoming.

It is respectfully suggested that under Administration Rule 37.7, the problems associated with providing individual notice apart from to the Public Defender Agency, including the likelihood that the notice process itself will breach privacy and confidentiality, balanced against the very slight risk of breaching privacy or confidentiality through redacting identifying information at the front end, and the benefit from having the research done,<sup>10</sup> weigh heavily in favor of the Court granting the Information Request without requiring individual notice other than to the Public Defender Agency.

### **(3) There is a Constitutional Right of Access to Legal Proceedings**

There is also a constitutional dimension to the Information Request.<sup>11</sup> In *Nixon v. Warner Communications*,<sup>12</sup> the United States Supreme Court recognized a general right to inspect and copy judicial records and documents. In *Baby Doe v. Methacton School*

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<sup>10</sup> The Superior Court acknowledged the benefit opening up heretofore secret proceedings for external evaluation or public evaluation, citing the change making Child In Need of Aid hearings open to the public. Tr. 21:1-11.

<sup>11</sup> It seems likely that Administration Rule 37.7 was adopted because of the public's right of access to court records.

<sup>12</sup> 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978).



*District*,<sup>13</sup> the question was whether documents filed in connection with a child sexual molestation case should be open for public inspection. The court discussed the general principles involved, including recognizing there is a constitutional right of public access:

In the United States, there is a strong tradition of public access to both criminal and civil trials and the resulting judicial records. This tradition is based on both the common law right to access doctrine as well as the First Amendment. *Pansy*, 23 F.3d at 780-81; *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1066, 1070 (3d Cir.1984). . . .<sup>14</sup>

In ordering the file open to the public, the court weighed Baby Doe and her family's great interest in keeping the records secret, against the public's right to access. One of the factors convincing the court to grant access was the importance to the public of being able to find out how the government handled the matter, in this case, the school district.<sup>15</sup>

It is respectfully suggested the public's interest in learning whether this Court's ruling in *Bigley* is being followed is as great as in the *Baby Doe* case. It is also respectfully suggested such information could also be of interest to this Court. No Alaska cases have been found on this issue, but it is possible the public's right to know what its government is doing to its citizens is even greater under the Alaska Constitution than under the United States Constitution.<sup>16</sup>

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<sup>13</sup> 878 F.Supp.40 (E.D.Pa. 1995).

<sup>14</sup> 878 F. Supp. at 41.

<sup>15</sup> 878 F.Supp at 42-3.

<sup>16</sup> See, e.g., *Myers*, 138 P.3d at 245 (citing *Breese v. Smith*, 501 P.2d 159, 170 (Alaska 1972)).

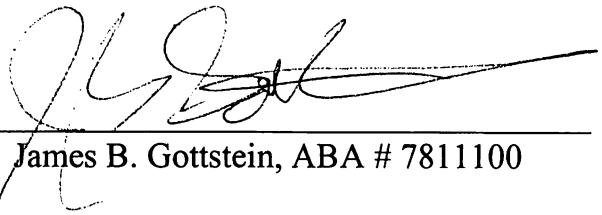
#### D. Conclusion

Dr. Gøtzsche is frustrated that more than 2½ years after submitting his Information Request, and over 15 months after this Court ordered the Superior Court to make a decision, no initial decision has even been made. Dr. Gøtzsche is very protective of patient confidentiality and in light of the minimal risk to respondents' privacy and confidentiality interests from his proposed procedure and the benefits to be realized by granting the Information Request, he respectfully requests this Court re-take jurisdiction and **APPROVE** the Information Request.

DATED February 20, 2019.

Law Project for Psychiatric Rights

By:



James B. Gottstein, ABA # 7811100

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

IN THE MATTER OF )  
 )  
REQUEST FOR INFORMATION, )  
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 )  
 )

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No. 3AN-16-00695 DN

SCHEDULING CONFERENCE

PAGES 1 THROUGH 26

BEFORE THE HONORABLE WILLIAM MORSE  
Superior Court Judge

Anchorage, Alaska  
November 1, 2017  
11:02 a.m.

APPEARANCE:

FOR THE PETITIONER: James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501

FOR THE STATE: Steven Bookman  
Attorney General's Office  
1031 W. 4th Avenue, Suite 200  
Anchorage, AK 99501

Linda Beecher  
Alaska Public Defender Agency  
900 W. 5th Avenue, Suite 200

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1 PROCEEDINGS  
 2 CTRM 601  
 3 (11:02:19)  
 4 THE COURT: Be seated, please. On the record  
 5 in 3AN-16-00695. Ms. Beecher, Mr. Gottstein, Mr.  
 6 Bookman are present. Just give me a second here.  
 7 This is a request being made by a Danish  
 8 doctor researcher who wants access to 30 commitment  
 9 file -- or administration of drug files. He seeks a  
 10 30 -- essentially random -- wants -- as I understand  
 11 it, he wants -- just to have 30 consecutive files, ones  
 12 beginning on a particular date. And the state and the  
 13 Public Defender Agency have filed some oppositions.  
 14 So I just got handed the material that was  
 15 filed in the Superior Court -- in the Supreme Court by  
 16 the AG and the public defender, so I haven't -- I mean,  
 17 I skimmed it for about three seconds, and I have a  
 18 couple of questions. Just procedurally how Mr.  
 19 Gottstein, you propose to do this?  
 20 So let's assume that we simply identified the  
 21 30-consecutive ones after a particular date. The rule  
 22 that you proceeding under 37 -- Administrative Rule  
 23 37.7(b) requires notice on all parties. So presumably  
 24 the individuals who are the subject of the petition  
 25 would have to be notified of the request and given an

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1 choose not to allow you to do that."  
 2 And your problem is solved by filling in with  
 3 another 10, or 15, or whatever beyond the original 30,  
 4 until you get 30 who don't oppose, if they take...  
 5 MR. GOTTSTEIN: I think that...  
 6 THE COURT: It may take 40, it may take 400,  
 7 I have no idea. But if there are objections, it seems  
 8 to me that those individuals need to make the object --  
 9 need to be given an opportunity to make those  
 10 objections.  
 11 MR. GOTTSTEIN: We don't have any objection  
 12 to that in theory. I would say that if you introduce a  
 13 -- kind of an selection criteria like that, and then  
 14 that kind of skews the -- you know, the blind or the --  
 15 you know, and...  
 16 THE COURT: That may be.  
 17 MR. GOTTSTEIN: Huh?  
 18 THE COURT: That may be.  
 19 MR. GOTTSTEIN: Yeah. And that they object  
 20 doesn't necessarily determine -- I mean, you kind of  
 21 indicated what your response would be.  
 22 THE COURT: Well, I mean...  
 23 MR. GOTTSTEIN: If I may, Your Honor. Here  
 24 is my concern is that -- I mean, how would you go about  
 25 asking them? Okay. So if you send a letter...

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1 opportunity to weigh in on -- on the request. So is  
 2 that part of our -- is that part of your proposal?  
 3 MR. GOTTSTEIN: Your Honor, I think,  
 4 technically -- and I know that the Public Defender  
 5 Agency disagrees, but they've represented all these  
 6 respondents, and under the rule, service on the  
 7 attorney is service on the respondents.  
 8 We don't have any objection, you know, to  
 9 notifying them, but it seems to me that, actually, the  
 10 process of notifying them and requesting their response  
 11 may be the -- kind of the most likely confidentiality  
 12 problem. You know, some people -- you know, some  
 13 people that have -- had any other involvement may --  
 14 you know, I mean, in other words -- you know, if you  
 15 send...  
 16 THE COURT: Well, that may be, but...  
 17 MR. GOTTSTEIN: ...-- if you send a letter to  
 18 them, maybe someone else opens it. If you call them --  
 19 and I would note that the rule says -- and they will be  
 20 served, unless otherwise ordered. And it -- so...  
 21 THE COURT: Well, why wouldn't I give some  
 22 individual the opportunity to voice an opinion about  
 23 that? I mean, presumably some number of these folks --  
 24 I have no idea, I'm just making this number up -- a  
 25 tenth, a third, who knows, will say, "No thank you. I

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1 THE COURT: I'd write a letter that somebody  
 2 would help me draft and I would say, "This Danish  
 3 researcher would like to evaluate medical psychiatric  
 4 legal procedures looking at real cases and we would  
 5 like to utilize your file and the information will be  
 6 probably the subject of a publicized research paper, in  
 7 which no names of participants are revealed."  
 8 And we would maybe say, you know -- you  
 9 suggested that somebody redact the files from -- redact  
 10 the names of the respondents from the court files,  
 11 setting aside how precisely that occurs. I mean, in  
 12 theory, that -- yes, that could be done. "Here is the  
 13 file papers with the name eliminated." So, I mean, you  
 14 would explain all that to that individual.  
 15 MR. GOTTSTEIN: So my con -- and this -- my  
 16 concern is that there is someone who, you know, wants  
 17 to preserve that confidentiality, which this whole  
 18 proceeding is about. Such a letter was to be sent and  
 19 then say, some significant other, or a roommate, or  
 20 something gets a -- you know, opens it, then...  
 21 THE COURT: It's not likely that it there is  
 22 going to be a great surprise. If some -- if these  
 23 folks typically have been committed for some period of  
 24 time, I probably -- nec -- maybe all -- 100 percent of  
 25 the time, before a -- a petition for Medica -- or,

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1 whatever it's called -- administration of psychotropic  
 2 medications is applied. I think you're -- almost a  
 3 hundred percent of the time they're going to be sitting  
 4 at API or one of the other facilities. I mean, these  
 5 aren't people who you just randomly pick off the street  
 6 and say I am going to administrate drugs to you. So  
 7 family members probably know about them.  
 8 But beyond that we've given notice to the  
 9 individual and we have taken on the risk that somebody  
 10 else will know what is going on, by virtue of the  
 11 initiation of the original petition. I acknowledge  
 12 that, you know, you're sending out a second letter, or  
 13 second notice, or whatever it is that we're sending  
 14 out, but that doesn't -- that doesn't -- the danger  
 15 there doesn't seem to be particularly great.  
 16 MR. GOTTSTEIN: Your Honor, I don't have any  
 17 objection to that. I just thought I'd note that as a  
 18 concern that I have. It...  
 19 THE COURT: So then...  
 20 MR. GOTTSTEIN: It seems like the most likely  
 21 breach of confidentiality is in the asking of the  
 22 people.  
 23 THE COURT: That may be, but what am I  
 24 supposed to say to somebody if we do it the way you are  
 25 proposing and we just randomly pull these files, and

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1 they find out later, through some source, that the  
 2 court has turned over their files to somebody and that  
 3 information has now been, you know, scrutinize by this  
 4 fellow, even though the names might not be there. I  
 5 think the people would be more than a little upset,  
 6 particularly when the rule calls for notice, and I  
 7 can't see any real reason not to notify them, other  
 8 than this, you know, slight danger that some other  
 9 person who doesn't already know about their history  
 10 will become aware of it. The letter is going to come  
 11 from -- you know, you can have it come from the court  
 12 system, you can have it come from P.O. Box 10. So at  
 13 least it's not like -- it's not going to come from API,  
 14 for example. The letter itself is not going to rev --  
 15 the envelope itself will not reveal that it's from API,  
 16 so.  
 17 So what is the state's current -- and I  
 18 haven't read the submission.  
 19 MR. BOOKMAN: Uh-huh (affirmative).  
 20 THE COURT: So what is the state's current  
 21 position if we -- if we make the selection, we notify  
 22 the folks and we end up with 30 people who say, "Sure,  
 23 that's fine by me?"  
 24 MR. BOOKMAN: I think the real issue -- I  
 25 don't really have anything to add to the papers. We

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1 filed them at the Supreme Court. I think the real key  
 2 question is, notice and agreement from the patients.  
 3 And if they somehow manage to affirmatively indicate  
 4 their consent, I think that's sort of their business.  
 5 THE COURT: If they -- I mean, assuming we  
 6 can find 30 people who consent to this process --  
 7 however we define who, then the state has no objection?  
 8 MR. BOOKMAN: If they affirmatively consent.  
 9 THE COURT: Okay.  
 10 MR. BOOKMAN: I think there will be some  
 11 practical problems, Your Honor. I do think that of  
 12 many people at API have been committed before, but  
 13 certainly not all of them. And many people who are  
 14 discharged, are discharged to places and then moved, or  
 15 they are discharged to a homeless shelter, and so I  
 16 would be concerned...  
 17 THE COURT: Well, I think you will have some  
 18 difficulty locating.  
 19 MR. BOOKMAN: I would be concerned that they  
 20 would have to affirmatively indicate their consent.  
 21 THE COURT: Oh, I -- no, I -- I'm not going  
 22 to say it's being turned over unless you object. I am  
 23 going to say, "You have to affirmatively consent."  
 24 MR. BOOKMAN: Yeah. And I do agree that  
 25 service on the public defender would not be sufficient.

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1 I don't -- I think that's correct.  
 2 THE COURT: Ms. Beecher?  
 3 MS. BEECHER: Yes, Your Honor. We basically  
 4 addressed two process issues in our response. One  
 5 being that we disagree with Mr. Gottstein that service  
 6 on the public defender would be appropriate. We don't  
 7 -- in my view, we would very unlikely to even have open  
 8 files on any of these individuals. Of the normal acute  
 9 stays, actually are quite short, and so if you're  
 10 looking at the time frame for the files that Mr.  
 11 Gottstein is requesting, it's -- just would be very  
 12 unlikely that any of those individuals would be current  
 13 clients.  
 14 THE COURT: My -- speaking out loud, I would  
 15 assume that your representations of that individual,  
 16 for purpose of service, would cease at some point, and  
 17 probably ceases once the medication has been  
 18 administered and the file has been closed.  
 19 MS. BEECHER: Correct.  
 20 THE COURT: You don't become the service  
 21 agent for all time.  
 22 MS. BEECHER: Correct. And typically the  
 23 case is closed and it's -- and that court  
 24 administrative order -- the court -- the cases are  
 25 closed upon discharge, so -- and, again, just because

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1 of the nature of the time frames involved, it would be  
 2 very unlikely we would actually have current open cases  
 3 for any of these individuals. There might be some, but  
 4 that would be longstanding clients.  
 5 THE COURT: I'm sure there is -- there is  
 6 going to be a sliding handful of, you know, a dozen in  
 7 any given moment that are probably open. You know, I'm  
 8 making that number up, but just...  
 9 MS. BEECHER: Yeah, I'd have to look at the  
 10 statutes...  
 11 THE COURT: I mean...  
 12 MS. BEECHER: ...but I think that is prac...  
 13 THE COURT: ...five come in the front door  
 14 and five go out the back door, and those 12 change, you  
 15 know.  
 16 MS. BEECHER: Right. But I think the  
 17 subsidiary issue in the position we took in the  
 18 appellate court was that -- it's not clear to us that  
 19 our authorizing statute would allow us to represent  
 20 individuals in this matter. We weren't appointed by  
 21 the court to take a position on -- on behalf of...  
 22 THE COURT: Right.  
 23 MS. BEECHER: ...any of the respondents or  
 24 acting in any other role, so really we just address the  
 25 service issue. And just again, I think we would agree

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1 with the state's position, which is that the individual  
 2 need notice. Probably some of these individuals also  
 3 have public guardians and I think they would also need  
 4 notice.  
 5 MR. BOOKMAN: Oh! Yeah.  
 6 MS. BEECHER: So I would just throw that out  
 7 as well.  
 8 MR. BOOKMAN: Yeah, that's a good point.  
 9 THE COURT: But let's back up a bit. Let's  
 10 assume that I have to give them personal notice, and  
 11 that the public defender is -- would be limited  
 12 theoretically to currently active representation. But  
 13 the larger group of people of that 30 plus, we're going  
 14 to have to contact in order to get 30 who consent, are  
 15 going to have to be located -- not -- have to be  
 16 served, not by the public defender or service on the  
 17 public defender doesn't suffice. So you're going to  
 18 have to figure out where do you -- where do you send  
 19 the letter to?  
 20 So when -- does anyone have an idea, when you  
 21 -- when you close the API file, is there a discharge  
 22 address?  
 23 MS. BEECHER: No.  
 24 MR. GOTTSTEIN: Isn't there usually a -- a  
 25 referral to some other provider?

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1 MR. BOOKMAN: Well, that -- it...  
 2 MS. BEECHER: Not in the legal paperwork. It  
 3 might be in the medical...  
 4 MR. BOOKMAN: Yes. I...  
 5 MS. BEECHER: We always -- we always -- we  
 6 don't get it. I mean,...  
 7 THE COURT: Well, I -- well, let -- let's  
 8 split it up into two things. First, you want the court  
 9 file, right?  
 10 MR. GOTTSTEIN: Yes.  
 11 THE COURT: The court file...  
 12 MR. BOOKMAN: The court files, as I  
 13 understand it...  
 14 THE COURT: ...rarely...  
 15 MR. BOOKMAN: ...will just say, "This patient  
 16 has gone voluntary," or, "This patient has left the  
 17 facility" and therefore this case is closed.  
 18 THE COURT: I mean, it usually says -- I  
 19 mean, the starting thing is there is some police  
 20 department, some emergency room somewhere and they  
 21 needed to be evaluated. And then once they get  
 22 committed -- you know, once you have the initial  
 23 evaluation, there is usually a second pair -- a pair of  
 24 petitions typically for the commitment and in smaller  
 25 subset, a petition for the administration. Those folks

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1 typically are sitting at API when the petition to  
 2 administer is filed. And I don't remember seeing  
 3 anything about addresses or contact. It may be there,  
 4 but off the top of my head, I don't remember seeing  
 5 that typically in a -- in the legal file. So the only  
 6 place that you are probably going to see it is maybe in  
 7 the medical file that maybe says, you know, "Patient  
 8 lives on" -- "last known address was," or "Was  
 9 discharged to facility 'X'" or "address 'Y'".  
 10 MR. GOTTSTEIN: Your Honor, if I may. Yeah,  
 11 I think that there is -- two things. One is what Dr.  
 12 Gøtzsche is requesting access to, which is the court  
 13 files. And then the other issue is, well, how do we  
 14 notify people? And I don't think there is any reason  
 15 not to go beyond the court file and into other -- you  
 16 know, other records to try to find the person.  
 17 THE COURT: Right. In spite -- what happen  
 18 -- well, what are you going to -- I mean, you're going  
 19 to ha -- assuming I am posing a notice and consent  
 20 thing, we have a chicken and an egg problem here, which  
 21 is, I'm not giving you the legal file until I get  
 22 consent, and I can't get notice until I give you the  
 23 legal file. So I suppose I could, you know, take 30  
 24 files, find a name and an address, give you the name  
 25 and address, force you notice and only if I get

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1 consent, do I turn over more than that. And, so, maybe  
 2 we end up having, you know, a hundred, two hundred  
 3 files before we get to 30 people who we can actually  
 4 reach. I don't know how else you're going to get -- I  
 5 -- I can't think off the top of my head how you are  
 6 going to get access to these people.  
 7 Well, I suppose there is another way to go  
 8 about it, which is to say, starting tomorrow, or  
 9 January 1st, the public defender -- you can serve the  
 10 public defender with that request for newly opened  
 11 petitions. Still going to have to get consent from the  
 12 individual, but at least the individual will be, you  
 13 know, sort of -- we're not searching for the old ones,  
 14 we're dealing with some active ones. So, you know,  
 15 maybe we would say something like -- or maybe we do it  
 16 somewhat differently. The state includes in its  
 17 petition a -- a request for consent, but that consent  
 18 is only given once the person is discharged.  
 19 I mean, I'm not letting some guy who is --  
 20 who the state thinks has, you know, mental illness  
 21 problems, to be giving consent in the midst of those  
 22 problems. I would probably say, you have to give  
 23 consent once somebody says you're no longer committable  
 24 currently.  
 25 MR. GOTTSTEIN: Your Honor, I guess -- I

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1 mean, one problem I have with that is just that it  
 2 really introduces, you know, kind of the skewing and  
 3 potentially...  
 4 THE COURT: That's your -- that's his  
 5 problem, not mine. I mean, I don't -- I'm not here to  
 6 -- I think I have to file notice requirements, and if  
 7 that skews his research, that's an unfortunate thing,  
 8 and it may mean that the research is inva -- isn't  
 9 valid. I have no idea. But I don't think that I can  
 10 change the notice for -- forego the notice requirement  
 11 just to maintain the quote, "purity," end quote of the  
 12 database.  
 13 MR. GOTTSTEIN: So my concern is that -- in  
 14 fact that, you know, the proceedings might actually be  
 15 different if they know that it's going to be subject  
 16 to, you know, a research protocol.  
 17 THE COURT: Then you should be happy. If you  
 18 think they are going to get improved compliance with  
 19 the law, if they know that they are being birddogged,  
 20 everybody wins. And that may -- I mean, I understand  
 21 your point, but if, by that comment, you mean you only  
 22 want past records, then you've got -- you know, you're  
 23 going to have more difficult time getting the consent  
 24 of the 30, just because you're not going to be able to  
 25 find those folks.

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1 MR. GOTTSTEIN: So all of these  
 2 considerations -- I'm just -- maybe offer that you  
 3 consider whether or not the notice requirement -- I  
 4 mean, the rule says, "unless otherwise ordered," and  
 5 that if -- if these records are redacted -- and, you  
 6 know, and this is someone in Denmark that's done the  
 7 research -- you know, really what is the exposure of,  
 8 you know, confidential information connected to  
 9 anybody. And is it really necessary to give notice?  
 10 THE COURT: Well, I think that this  
 11 administrative rule applies to all court files. Some  
 12 of which are name changes, some of which are, you know,  
 13 traffic offenses, some are boring -- not particularly  
 14 confidential -- like information likely to be in the  
 15 file. You know, the whole spectrum. And one far into  
 16 the spectrum where you have the very most private  
 17 information is going to be, you know, financial  
 18 information and medical information.  
 19 So the API -- well, the legal records for  
 20 someone that involves this kind of thing is -- I would  
 21 think particularly private and deserving of protection.  
 22 It's a non-public file, in the first place, as opposed  
 23 to every divorce file, where you're -- it's still  
 24 personal information. So I think that has to be  
 25 particularly protective of the privacy interest and the

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1 information contained in it. Because my guess is that  
 2 there is going to be -- even in the legal file, there  
 3 is going to be, at a minimum, the petition and  
 4 information regarding the person's behavior and the  
 5 proposed medication. You know, whatever else would be  
 6 in that kind of -- you know, perhaps, transcript of  
 7 that proceeding.  
 8 Or f -- I presume that you're looking for --  
 9 your request would include not merely the paper file,  
 10 but the hearing record.  
 11 MR. GOTTSTEIN: Yes, Your Honor.  
 12 THE COURT: Okay. So...  
 13 MR. GOTTSTEIN: And I agree that it is very  
 14 private and it deserves protection, and my only point  
 15 is that really how much is that really going to be  
 16 invaded. And I'd also mention that it is pretty  
 17 typical in re -- you know, medical research that -- I  
 18 mean, that is one of the provisions of HIPAA that  
 19 allows this sort of thing, as long as, you know, there  
 20 is no personal identify -- you know, identifying  
 21 information. And that is, as I understand, even an  
 22 exception to HIPAA.  
 23 THE COURT: I have a vaguely recollection of  
 24 DIRISA -- you know, a research component to HIPAA. I'm  
 25 not familiar with the -- you know, the precise language

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1 or the criteria for that, but I know there is such a  
 2 thing.  
 3 MS. BEECHER: Yes, that's correct, Your  
 4 Honor. Again, when we received these pleadings,  
 5 because we were not, frankly, appointed to represent  
 6 anyone, nor were we asked to weigh in on the merits, as  
 7 an amicus or any other capacity, but I do think there  
 8 are merits that should be addressed and is looking  
 9 concerning to me that the respondents don't really have  
 10 a voice here in terms of looking at either HIPAA  
 11 protections or the constitutional privacy protections  
 12 that govern, particularly, mental health records, as  
 13 the court's discussed. So, again, our concern, I  
 14 think, is just with the process to be...  
 15 THE COURT: Sure. But what's the...  
 16 MS. BEECHER: ...with the protection to...  
 17 THE COURT: How do I -- those are legitimate  
 18 concerns. How do you suggest that I give voice to  
 19 them, other than me making up arguments, as opposed to  
 20 appointing the public defender to represent this  
 21 generic group of people. And I can hear the squawk  
 22 already.  
 23 MS. BEECHER: Well, I'm not sure how Mr.  
 24 Steiner would respond to that. I think there is some  
 25 question about our role here. Again, as we pointed out

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1 to the appellate court, we could have some respondents  
 2 that say, "Fine, open it up." But we could have other  
 3 responses that say, "No." We don't have a live  
 4 controversy client here at this point. Right?  
 5 I don't know what these folks -- if they are  
 6 impacted by the request and what they want, so I can't  
 7 really speak to the merits, other than sort of very  
 8 generically. But I think it's concerning to have this  
 9 flushed out without -- or have it -- something ordered  
 10 without really a...  
 11 THE COURT: And how -- how do you propose...  
 12 MS. BEECHER: (indiscernible - simultaneous  
 13 speech) exploration.  
 14 THE COURT: ...the voice of those who have  
 15 concerns and don't want it to be revealed or resistant  
 16 to its disclosure? How do I give voice to those folks?  
 17 MS. BEECHER: I'm not certain, Your Honor,  
 18 but I do think that some briefing should be undertaken  
 19 with regard to both the HIPAA protections, if we are  
 20 going to delve into their medical records, and then,  
 21 also, with due consideration of the constitutional  
 22 privacy issues, because it's clear that the Supreme  
 23 Court provides, you know, privacy protections --  
 24 particularly, health records.  
 25 THE COURT: So, to me, the way you do that is

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1 you say that the 30 people or 40 people that you select  
 2 according to the intake criteria, which is, you know,  
 3 the first 30 after January 1, 1918, or however you want  
 4 to define it. Or January 1, 2017, I don't care.  
 5 However that is, that's the notice. They get to say,  
 6 "I want it," "I don't want it." And if they say, "I  
 7 don't want it at all," I suppose I have to weigh -- you  
 8 know, I don't know whether that is an absolute veto in  
 9 an individual case or not. It may be that somebody  
 10 says, "Under no circumstances," and other people might  
 11 say, "Yeah, I think that's a great idea to evaluate it,  
 12 as long as my name isn't revealed." Who knows. I  
 13 don't know what they are going to say.  
 14 MS. BEECHER: Right. And...  
 15 THE COURT: And there may be some people who  
 16 found the entire experience troubling enough that they  
 17 would like research to be done.  
 18 MS. BEECHER: Correct.  
 19 THE COURT: And part of what I'm -- I'm  
 20 thinking back -- and I can't remember the precise case,  
 21 but I think it ended up being a -- I think there was a  
 22 report or decision of the result of -- remember when --  
 23 I think Barb Malchik was involved with a CINA world --  
 24 opening up CINA cases.  
 25 MS. BEECHER: Yes.

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1 THE COURT: And ultimately, I think, as a  
 2 result, the courtroom is now open to CINA cases,  
 3 although you can't ta -- you know, you're not supposed  
 4 to reveal. In the olden days you couldn't walk into a  
 5 CINA proceeding, now the public can. And I can't  
 6 remember -- but there was something like that, and I  
 7 meant to see if I could track that case down. That  
 8 suggests to me -- and the p -- and I remember the  
 9 court's reasoning was that it's a good idea to open up  
 10 some of these heretofore secret proceedings for  
 11 external evaluation or public evaluation. That's a  
 12 gross of simplification. That's just my memory.  
 13 Something like that in the CINA world. Which would  
 14 suggest that, you know, this basic concept of having  
 15 someone come in and evaluate the process is something  
 16 that is acceptable, if it could be crafted right.  
 17 MR. BOOKMAN: Your Honor, if I may, I believe  
 18 there is provisions in the civil commitment statutes  
 19 that talk about whether hearings will be open or closed  
 20 is a decision left to the respondent, which, I think  
 21 indicates a real public policy that we're supposed to  
 22 check with the respondent about that.  
 23 THE COURT: Well, that may be, but I...  
 24 MR. BOOKMAN: I mean, as I see it, the  
 25 current request is for past information. I see the



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1 chicken and egg problem. I do not think that it is the  
 2 patient's problem that this can't be gathered, and in  
 3 any meaningful way. And, so, at this point there is no  
 4 request for information in -- to come in the future --  
 5 to come in next January. So it would seem to me...

6 THE COURT: Well, I realize that, but, you  
 7 know, if you think if I deny it, he's not going to turn  
 8 around and try and figure out some workaround, so.

9 MR. BOOKMAN: Well, maybe if he learns that  
 10 there would be knowledge of the patient, sort of as  
 11 this is going on, maybe the doctor would decide that  
 12 this research isn't valid, as the court's suggested. I  
 13 don't know. I think the patient has to be notified.

14 THE COURT: I agree with that proposition, so  
 15 how do we do that?

16 MR. BOOKMAN: I believe it's Mr. Gottstein's  
 17 burden to come up with a solution. The patients aren't  
 18 here. If this were a civil case, I'd say it's a Rule  
 19 19 problem and enjoin the parties.

20 THE COURT: Do you know what's going to  
 21 happen? Mr. Gottstein is going to enjoin every  
 22 petition as far as starting January 1, 20... -- it's  
 23 going to be a standard form, request to intervene.

24 MR. GOTTSTEIN: Your Honor, I wouldn't do  
 25 that, but -- and, you know, I'm not saying that

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1 starting January 1st, 2018. You know, maybe the best  
 2 that we could do and ask them, you know, going forward  
 3 -- I mean, that may be the best that we can do. But,  
 4 you know -- and even though I haven't made that request  
 5 -- that's not the request -- it doesn't mean I wouldn't  
 6 agree to it. But I -- again, I -- I mean, this whole  
 7 endeavor is for the court to weigh the privacy interest  
 8 versus, you know, the benefitter interest in having  
 9 this research done. And then -- so, again, when you  
 10 look at the actual privacy interest with all the  
 11 identifying information redacted, it's really pretty  
 12 hard to see how that really negatively impacts the  
 13 respondents.

14 And while I don't have any problem with the  
 15 concept of giving them a voice, it just seems to me  
 16 that maybe in those circumstances, and the difficulties  
 17 involved, this court can say, "Well, we're not going to  
 18 give notice."

19 THE COURT: Let's assume hypothetically that  
 20 the legal file includes the address on discharge. So  
 21 that at least a logistical problem of giving the  
 22 address is minimized, and I'm doubtful very much that  
 23 is the case. But if I require notice, he's got to  
 24 know the name of the person who he is supposed to give  
 25 notice to right out of the shoot. So, in theory, I

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1 could hand him a list of 30 names and any addresses  
 2 contained in the file and require him to give some  
 3 notice. And I suppose I can just give him the names  
 4 and -- yeah, and as a practical matter, in the vast  
 5 majority of those files are not going to have that  
 6 address or contact number, they're just going to have a  
 7 name. Is it problematic to hand over the name?

8 MR. GOTTSTEIN: Your Honor, I think that  
 9 illustrates that the process of trying to obtain -- to  
 10 give notice is actually the most violative of  
 11 confidentiality issue -- preserving confidentiality.

12 THE COURT: Okay. So if I don't give notice,  
 13 what is it that you want? Who is going to do this  
 14 redaction? And why sh -- and you suggested that you  
 15 would do it. Why should I allow you to do it? I'm not  
 16 talking about you, personally, but why should I allow  
 17 somebody who is outside of the court system family who  
 18 already has access to these files. I don't know -- you  
 19 know -- some number of clerks are allowed to look at  
 20 them, I suppose.

21 MR. GOTTSTEIN: Your Honor, it -- to me, it's  
 22 a burden, you know, on the court system. I would agree  
 23 to actually do the redaction myself. Then, I think, in  
 24 terms of the hearings -- the recordings of the  
 25 hearings, maybe we could give those to a court

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1 reporter, with instructions to redact the hearings --  
 2 the transcripts.

3 THE COURT: Who pays for that?

4 MR. GOTTSTEIN: I think the...

5 THE COURT: I assume the researcher does.

6 MR. GOTTSTEIN: Huh?

7 THE COURT: I assume the researcher does.

8 MR. GOTTSTEIN: Correct.

9 THE COURT: I am going to think about this  
 10 and I am going to do it -- because we're all sort of  
 11 making this up as we go along and the public defender  
 12 is at a particular tenuous position of not having a  
 13 client, but having some sort of ghost clients on up.  
 14 But, you know, you're trying to protect some  
 15 theoretical and important rights, but you don't have  
 16 real clients. You're in a kind of weird position. But  
 17 at any rate, I will craft something and send it out for  
 18 input and possible revisions.

19 So is there anything else?

20 MR. BOOKMAN: I have nothing.

21 MR. GOTTSTEIN: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 (Off record - 11:37 a.m.)

24 \*\*\*END\*\*\*

25

CERTIFICATE

THIRD DISTRICT

STATE OF ALASKA

I, Georgi Ann Haynes, Certified Professional Court Reporter for the Third Judicial District, State of Alaska, hereby certify:

That this transcript was prepared to the best of my knowledge and ability from a recording, recorded by someone other than H&M Court Reporting, therefore "indiscernible" portions appear in the transcript.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 18th day of February, 2019.



Georgi Ann Haynes  
Notary Public in and for Alaska  
My commission expires: 10/05/2015

IN THE SUPREME COURT FOR THE STATE OF ALASKA

FILED

\_\_\_\_\_  
In the Matter of a )  
Request for Information )  
 )  
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\_\_\_\_\_  
Trial Ct. Case No. 3AN-16-00695DN

Supreme Ct. No. S-16812

FEB 20 2019

**Order**  
Original Application

APPELLATE COURTS  
OF THE  
STATE OF ALASKA

Date of Order: \_\_\_\_\_

On consideration of the Motion to Re-take Jurisdiction and Grant Relief filed by  
Dr. Peter Gøtzsche, **IT IS ORDERED:**

1. The Motion is granted.
2. Within 30 days of the date of this Order the Clerk of the trial courts in Anchorage, shall deliver to James Gottstein, counsel for Dr. Gøtzsche, (a) a copy of the Court files of 30 consecutive cases, starting on January 1, 2019, where a Petition for Court Approval of Administration of Psychotropic Medication under AS 47.30.839 was filed, and (b) audio recordings of all hearings in such cases,.
3. Mr. Gottstein shall redact the court files and transcripts of the hearings to remove the names of the respondents prior to forwarding them to Dr. Gøtzsche. No other distribution of the files or transcripts may be made.
4. Costs shall be paid by Dr. Gøtzsche pursuant to Admin Rule 9(e)(1) and (5).

Entered by direction of the Court.

Clerk of the Appellate Courts

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

IN THE SUPREME COURT FOR THE STATE OF ALASKA

\_\_\_\_\_  
In the Matter of a )  
Request for Information )  
\_\_\_\_\_) )  
Trial Ct. Case No. 3AN-16-00695DN

Supreme Ct. No. S-16812  
Original Application

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of

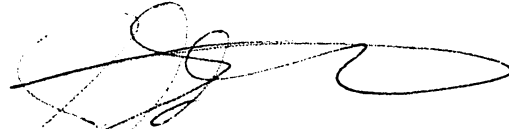
1. Motion to Re-Take Jurisdiction and Grant Relief;
2. (Proposed) Order; and
3. This Certificate of Service,

were hand delivered to:

Steven Bookman  
1031 W. 4th Ave., Ste 200  
Anchorage, Alaska 99501

Linda Beecher  
900 W 5th Ave., Suite 200  
Anchorage, Alaska 99501.

Dated February 20, 2019.



\_\_\_\_\_  
Jim Gottstein