

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

In the Matter of
a Request for Information,

CASE NO. 3AN-16-00695 DN

ORDER

Proposed Procedures

Dr. Peter C. Gotzsche seeks access to redacted copies of the 30 most recent court files in which there has been a Petition of Court Approval of Administration of Psychotropic Medication pursuant to AS 47.30.939. On 30 January 2020 the Court issued an Order that provided, in part:

The Court proposes the following:

1. Court staff will pull files that meet the criteria that Gotzsche has set.
2. Court staff will select 45 cases that contain a contact address for the respondent.
3. Court staff will send a notice to those 45 respondents explaining the research project and the proposal to send to Gotzsche a copy of the paper file (and possibly the audio recording) from which identifying information has been redacted. The notice will seek their permission to send the redacted information to Gotzsche.
4. The Court will bill at \$30 per hour¹ Gotzsche for the time staff works to pull the files, to inspect them for contact addresses, to redact identifying information, and to send the notices.

¹ See Admin. Rule 9(e)(5).

5. The Court will send to Gotzsche up to 30 files from those persons who give consent or who do not respond to the notice. If the first set of 45 files does not produce 30 files, then staff will pull additional files, sending additional notices until 30 files are identified.

There remains the problem of the audio recordings of hearings. The most secure and expensive option is for the Court to have the hearings transcribed and to redact names and other identifiers. Gotzsche would bear the cost. A less expensive option is to delete the beginning and end of each hearing where it is most likely that the judicial officer referred to the patient's name. That would likely mean that there would be references to the patient's name in the body of testimony. Perhaps the court staff could provide only redacted log notes.

The Court invites the parties' responses to the new proposal and their suggestions about how to handle the audio recordings.

Gotzsche has indicated that he will bear the expense of transcribing the audio recording of the hearings in the selected cases. The Court will begin the selection of the first 45 court files. It will begin with the most recent case and work backwards in chronological sequence.

6. Gotzsche shall submit a proposed Notice to be sent to the respondents. The Notice shall explain Gotzsche's research project.

7. Gotzsche shall propose a mechanism whereby the Court provides a transcriber with the audio recordings and the transcriber produces transcripts that do not contain identifiers of the respondent. Since Gotzsche is

willing to bear the expense of the transcription he will have to set up a payment arrangement with the transcriber.

8. The Court has not previously focused on the case files that API has on specific respondents. Does Gotzsche want those files? If so, then AS 47.30.845 is implicated. It provides, in part:

Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660--47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

- (1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;
- (2) the patient or an individual to whom the patient has given written consent to have information disclosed;
- (3) a person authorized by a court order;
- (4) a person doing research or maintaining health statistics if the anonymity of the patient is assured and the facility recognizes the project as a bona fide research or statistical undertaking;...

The Department of Health and Social Services has issued a relevant regulation. It provides, in part:

- a) The department will retain control and custody of information submitted under this chapter. Except as provided in (b) of this section and allowed under (c) of this section, the department will disclose that information only in the form of nonidentifying aggregate data and only as allowed under (c) of this section.
- (b) Subject to (c) of this section, the department will limit the use of identifying information to purposes directly related to the

administration of mental health or substance abuse programs.
Subject to (c) of this section, the department will

...

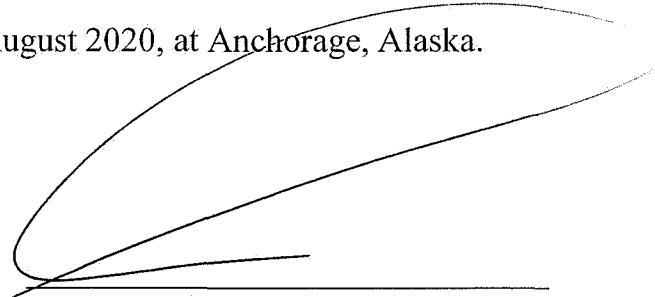
(2) disclose information for an approved research project;
... and

(4) allow access to computer records as provided in 7 AAC 85.210.

(c) The department will not disclose identifying information under
(b) of this section unless the disclosure is specifically authorized by
state or federal law.

9. Both Gotzsche and API are invited to suggest how Gotzsche
can get access to API files. If those files need to be redacted to remove identifying
information, then who would do the redaction? The Court is unwilling to turn over
to counsel for Gotzsche the raw, unredacted API files for him to redact.

DONE this 24th day of August 2020, at Anchorage, Alaska.

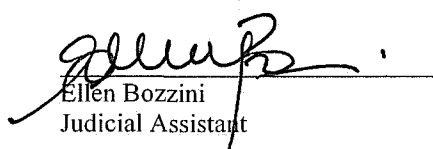


William F. Morse
Superior Court Judge

CERTIFICATE OF SERVICE

I certify that on 24 August 2020
a copy of the above was mailed/emailed to each of the
following at their addresses of record:

J. Gottstein
AGO: S. Bookman
PDA: L. Beecher



Ellen Bozzini
Judicial Assistant

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