

Law offices of
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686
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August 15, 2012

Fred A. Klus
Susan Brown
Internal Revenue Service
TE/GE Exempt Organizations
N14 W24200 Tower Place Suite 202
Waukehsa, WI 53188

via e-mail

Re: Supplemental Submission

Dear Mr. Klus and Ms. Brown:

At our July 24, 2012 teleconference, after I reiterated that the legal fees in question were the obligation of the Law Project for Psychiatric Rights (PsychRights®), and I was entitled to indemnification from PsychRights under Article IV, Section 8 of PsychRights' Bylaws because the actions were taken on behalf of PsychRights, you gave me until August 15, 2012, to provide proof that the actions were taken on behalf of PsychRights. Therefore, attached are:

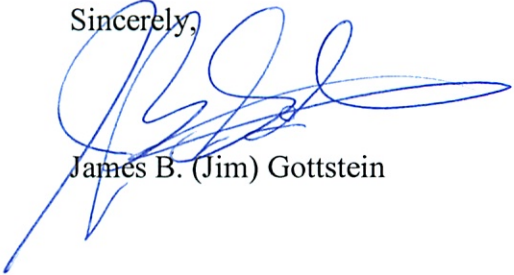
1. December 6, 2012, Entry of Appearance, Petition and Notice of Deposition in Case No. 3AN 04-545 P/G, Superior Court for the State of Alaska, Third Judicial District, at Anchorage;
2. August 14, 2012, letter from Donald E. Roberts, Jr., Vice President of PsychRights; and
3. June 7, 2012, article, Black Hats, White Hats and Financial Reckonings, by Robert Whitaker.

PsychRights' other board member, Christopher Cyphers, was in a fairly bad accident around the time of our teleconference and while he said he would also write a letter, I have not pushed him.

If the service does not accept that the actions were taken on behalf of PsychRights, I believe I am entitled to a full evidentiary hearing on the issue before an impartial decision-maker. I therefore request (demand) such a hearing.

Instead, I hope the Service will agree that I received no excess benefit.

Sincerely,


James B. (Jim) Gottstein

Enc.

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, AK 99501
907-274-7686 phone
907-274-9493 fax

Attorney for Respondent

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

In The Matter of the Guardianship of)
)
of [REDACTED] S. [REDACTED])
)
Respondent)

Case No. 3AN 04-545 P/G

ENTRY OF APPEARANCE

The Law Project for Psychiatric Rights hereby enters its appearance on behalf of,

[REDACTED] S. [REDACTED] the Respondent in this matter.

DATED: 12/6/2006.

Law Project for Psychiatric Rights

By: 
James B. Gottstein
ABA # 7811100

DESIGNATION OF ATTORNEY

I am the respondent in the above matter and employ the Law Project for Psychiatric Rights as my choice of attorney under AS 47.26.107(a)(3)(C), which is incorporated into the proceedings under the petition filed pursuant to AS 47.26.125(a), by AS 47.26.125(c).

[REDACTED]

Law Project for Psychiatric Rights
406 G Street, Suite 206
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907-274-7686 phone
907-274-9493 fax

Attorney for Respondent

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

In The Matter of the Guardianship of)
)
of [REDACTED] ([REDACTED] S. [REDACTED])
)
Respondent)
)

PETITION

Case No. 3AN 04-545P/G

Pursuant to AS 13.26.125(a), Respondent, [REDACTED] S. ([REDACTED] [REDACTED] (B.B.), by and
through his attorney, the Law Project for Psychiatric Rights, hereby petitions to:

- (1) Terminate the Guardianship.
- (2) Remove the Guardian and appoint a successor of Respondent's choice.
- (3) Amend the powers of the Guardian under the Guardianship Plan to the least restrictive necessary to meet Respondent's essential requirements for physical health and safety.
- (4) Review and reverse the decision of the guardian to consent to the administration of psychotropic medication against the wishes of Respondent.
- (5) Amend the powers of the Guardian to eliminate the authority to consent to mental health treatment.

DATED: 12/6/2006.

Law Project for Psychiatric Rights

By: 

James B. Gottstein, ABA # 7811100

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, AK 99501
907-274-7686 phone
907-274-9493 fax

Attorney for Respondent

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

In The Matter of the Guardianship of)

██████████ (██████████ S. ██████████)

Respondent)

) **NOTICE OF TAKING DEPOSITION**
) **OF**
) **DAVID EGILMAN, MD, MPH**

Case No. 3AN 04-545P/G

TO: James H. Parker, Esq.
Office of Public Advocacy
900 W 5th Ave., Suite 525
Anchorage, Alaska 99501

PLEASE TAKE NOTICE that on behalf of ██████████ Respondent,
James B. Gottstein of the Law Project for Psychiatric Rights, will take the telephonic
deposition of David Egilman, MD., MPH. on the 20th day of December, 2006, at the
hour of 10:00 A.M., at the offices of the Law Project for Psychiatric Rights, 406 G
Street, Suite 206, Anchorage, Alaska 99501. before a court reporter. The designation
of materials to be produced is attached and you are invited to attend.

DATED: December 6, 2006.

Law Project for Psychiatric Rights Inc.

By: 
James B. Gottstein, Esq.
LABA # 7811100

Attachment to Subpoena Duces Tecum
(Production of Documents)
David Egilman MD, MPH

1. Your curriculum vitae.
2. Subject to any applicable restrictions, all expert reports prepared by you within the last five years pertaining to psychiatric medications.
3. Subject to any applicable restrictions, all documents you have in your possession, or have access to, including those in electronic format, and have read, reviewed or considered, pertaining to the testing, marketing, efficacy, effectiveness, risks and harms of commonly prescribed psychiatric drugs in the United States, including but not limited to Haldol, Thorazine, Mellaril, Clozaril, Risperdal, Zyprexa, Seroquel, Abilify, Geodon, Lithium, Depakote, Prozac, Paxil, Zoloft, and Wellbutrin.

PsychRights®

Law Project for
Psychiatric Rights, Inc.

August 14, 2012

Department of the Treasury
Tax Exempt and Government Entities
Appeals Office
N14 W24200 Tower Place, Suite 202
Waukesha, WI 53188

RE: The Mission of the Law Project for Psychiatric Rights and the
dissemination of the Zyprexa Papers

Dear Internal Revenue Service:

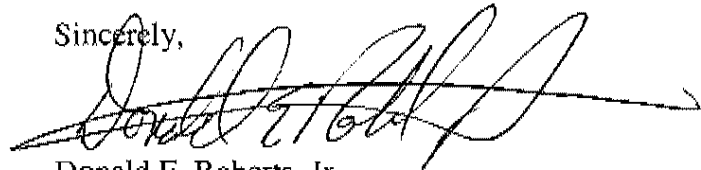
I was Vice President of the Law Project for Psychiatric Rights ("PsychRights®") in December of 2006 and have continuously served in that capacity since then.

With respect to the pending IRS action against Jim Gottstein, PsychRights' President, for alleged excess benefits relating to the payment of legal fees donated to the International Center for the Study of Psychology and Psychiatry, I understand the question has arisen whether the dissemination of the Zyprexa papers was consistent with the mission of PsychRights. Simply, of course it was. PsychRights' clearly stated mission is to "to mount a strategic legal campaign against forced psychiatric drugging and electroshock in the United States-" To do this effectively PsychRights requires information and needs to educate and inform the public about the real effects of the drugs forced upon people. This has always been part of implementing PsychRights' mission. The Zyprexa documents certainly show the level of deception Ely Lilly engaged in to make a profit and conceal actions that lead to the death and suffering of a great many people.

What begs to be asked is why the IRS is considering the donations in question as received by Jim Gottstein when it clearly should be treated as donations to PsychRights? Considering the federal government was able to recoup more than 1.4 billion dollars from Ely Lilly for its transgressions, Jim Gottstein and PsychRights should be rewarded for our efforts in bringing criminal activity to the light of day. Instead, the IRS seems to want to penalize Jim.

Under the penalties of perjury, I declare that the facts stated above are true, correct, and complete to the best of my knowledge and belief.

Sincerely,



Donald E. Roberts, Jr.

Mad in America

Science, Psychiatry and Community

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Black Hats, White Hats, and Financial Reckonings



Posted on [June 7, 2012](#) by [Robert Whitaker](#)

It is clear now that the marketing of atypical antipsychotics over the past 20 years was, in essence, a criminal enterprise, as the makers of these medications regularly violated the law governing the selling of new drugs. The manufacturers hid side effects and marketed the atypicals for off-label purposes, targeting in particular children and the elderly, and this led to legal actions by both state attorney generals and the U.S. Department of Justice. States sued the manufacturers to recover the millions of dollars their Medicaid programs shelled out for medically unwarranted prescriptions, while the U.S. Department of Justice charged Eli Lilly and other manufacturers with health care fraud under the False Claims Act.

As these legal actions have been settled, the manufacturers have paid large fines. I haven't kept track of all the settlements, but even a quick Google search tells of Astra Zeneca paying a \$500 million fine for its illegal marketing of Seroquel; Bristol Myers Squibb paying \$515 million for its illegal marketing of Abilify; Pfizer paying \$301 million for its illegal marketing of Geodon; and Eli Lilly paying \$1.4 billion for its illegal marketing of Zyprexa.

It should be noted, of course, that this illegal marketing of atypicals caused considerable harm. It resulted in millions of Americans, young and old, being prescribed powerful drugs that could cause diabetes and other harmful side effects, even though there was an absence of scientific reason to believe the drugs—when prescribed off-label—would provide a benefit.

However, while the companies have paid these fines for their illegal actions, the executives of these firms have gone unscathed. Instead, during the past 15 years, they were rewarded with stock options and bonuses worth billions of dollars. For instance, when I was researching *Anatomy of an Epidemic*, I reviewed the profits earned by Eli Lilly executives and employees on stock options from 1987 to 2000 (when the company brought Prozac and then Zyprexa to market), and determined that they netted around \$3.1 billion during that period.

Thus, from a financial standpoint, the moral of the atypical story appears to be this: crime pays. The executives at the pharmaceutical companies prospered, and so too the companies. Their illegal marketing of the atypicals turned these drugs into the top revenue-generating class of drugs in the country in 2009, with prescription sales totaling \$14.6 billion. The fines could be seen as just a cost of doing business, and actually, as money well spent given that the illegal marketing worked so well.

Now consider the financial bottom line for Jim Gottstein, an Alaska attorney who blogs on this site, and, at one point, released sealed court documents to the public related to Eli Lilly's illegal marketing of Zyprexa. His financial travails—thanks to a recent IRS decision—continue to get worse.

Here is a little background to this story.

In 2002, when Gottstein founded his non-profit organization, PsychRights, he set his sights on two goals. The first was to file a lawsuit challenging the state's rights to medicate patients forcibly, with the goal of making it more difficult for the state to do so. The second was to lobby Alaska's Mental Health Trust Authority to fund a Soteria-like home, where psychotic patients who didn't want to take neuroleptics could get residential care and help.

He succeeded in achieving both goals.

State laws governing the forced treatment of psychiatric patients date back to the late 1970s. Typically, courts have ruled that while patients have a right to refuse treatment, antipsychotics are understood to be a "medically sound treatment of mental disease," and thus hospitals can apply to a court to sanction forced treatment. At such hearings, hospitals regularly argue that if the patient were "competent," he or she would readily agree to take this "medically sound treatment," and courts consistently order patients to be medicated for that reason. Thus, patients may have a theoretical right to refuse treatment, but in practice it can be very different.

Gottstein, in his challenge of Alaska state law, made a different argument. In a case known as *Myers v. Alaska Psychiatric Institute*, he argued that the state could not show, through a review of the scientific literature, that antipsychotics were necessarily helpful, particularly over the long run. Thus, a person might have very good reason to refuse the medication; refusal should not necessarily be seen as a sign of incompetence.

In 2006, the Alaska Supreme Court agreed. "Psychotropic medication can have profound and lasting negative effects on a patient's mind and body," the court wrote in its *Myers* decision. The drugs "are known to cause a number of potentially devastating side effects." As such, the court ruled, a psychiatric patient could be forcibly medicated only if a court "expressly finds by clear and convincing evidence that the proposed treatment is in the patient's best interest and that no less intrusive alternative is available."

In Alaska case law, antipsychotics are no longer viewed as a treatment that will necessarily help psychotic people.

As for the Soteria project, Gottstein spent years pushing Alaska's Mental Health Trust Authority to fund such a home in Anchorage. His hope was that it could offer psychotic patients the type of care that Loren Mosher's Soteria Project did in the 1970s. The Soteria model involved using neuroleptics on a cautious, selective basis, and as Gottstein lobbied Alaska's Mental Health Trust Authority for support, he once again relied on the scientific literature to carry his argument that there was a sound medical reason to provide such care. In the summer of 2009, a seven-bedroom Soteria home opened a few miles south of downtown Anchorage.

Over the past decade, Gottstein and his Law Project for Psychiatric Rights have waged other battles as well. For instance, the Law Project for Psychiatric Rights filed a whistleblower lawsuit in Alaska federal court, arguing that Alaska physicians, healthcare providers, and pharmacies committed Medicaid fraud when they billed Medicaid for prescriptions of psychiatric drugs to children for non-approved uses. According to Medicaid rules, the federal government is supposed to provide Medicaid reimbursement only for outpatient drugs prescribed for an FDA-approved use, or for a use supported by a drug compendium (a text that will assess off-label uses of a drug as well.)

Thus, Gottstein argued that healthcare providers commit Medicaid fraud when they bill for drugs that don't meet this standard. While that legal action has so far failed — the trial court ruled, in essence, that the government is aware of this billing practice re psychiatric drugs already, and thus Gottstein lacked whistleblower status — the case is an example of the many ways that Gottstein has tried to curb the improper prescribing of antipsychotics and other psychiatric drugs to children.

His fight with Eli Lilly erupted in 2006. At that time, while representing a client in a forced medication case, Gottstein subpoenaed documents from Dr. David Egilman, an expert witness in the federal case against Eli Lilly for its illegal marketing of Zyprexa. After Egilman produced those documents, which were under seal in the federal case, Gottstein released them to the public, including the *New York Times*. (He argued that he could legally do so because Eli Lilly had not objected in a timely way to his subpoena.)

The documents, which federal judge Jack Weinstein later unsealed, detailed some of Eli Lilly's marketing misdeeds. A little more than two years later, Eli Lilly pled guilty to the federal charges, and agreed to pay a \$1.415 billion fine. That fine included a criminal penalty of \$515 million, which the Department of Justice announced was "the largest criminal fine for an individual corporation ever imposed in a United States criminal prosecution of any kind."

The *New York Times*, in its reporting on Eli Lilly's guilty plea, observed that the federal investigation had "gained momentum" after Gottstein released the documents in December 2006.

However, by this time Gottstein was fighting a legal battle of his own. Judge Weinstein rejected Gottstein's argument that he had a right to release the documents, and censured Gottstein for having done so. Eli Lilly then sued Gottstein for having made the documents public, arguing that it had been damaged by his actions.

To defend against that lawsuit, Gottstein has run up a legal bill of more than \$270,000. His non-profit, PsychRights, has paid \$10,000 of this (since it is under the auspices of PsychRights that Gottstein defends clients in forced medication cases). Gottstein personally paid \$125,000 to the attorneys. Finally, the International Center for the Study of Psychiatry and Psychology, where Gottstein was a board member, set up a legal defense fund for Gottstein, and in 2009 and 2010, paid \$16,761.50 to his attorneys.

At this moment, Gottstein still owes his attorneys another \$130,000.

But now the IRS has come calling. For unknown reasons, the IRS decided to investigate the Center's defense fund for Gottstein, and it recently determined that the Center's fundraising for this purpose was not in keeping with its stated mission. It also determined that it was improper because Gottstein was on the board. For those reasons, the IRS concluded that Gottstein was a "disqualified" person under IRS law, unable to receive such financial help, and thus the \$16,761.50 the Center paid to his attorneys was an "excess benefit" to him personally.

As such, the IRS is now demanding that he pay an excise tax of \$16,761.50, plus a penalty of \$558.30. If he fails to do so within an allotted time, the IRS will double the tax to \$33,523. Gottstein is fighting the IRS's decision in court.

Such is the story of two contrasting financial outcomes, and when I heard from Jim Gottstein of this latest financial setback, I could not help myself from writing a blog that, as my high school English teachers might have advised, sought to "compare and contrast."

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44 thoughts on "Black Hats, White Hats, and Financial Reckonings"

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1. David Ross, M.Ed., LPCC on [June 7, 2012 at 11:50 am](#) said:

Compare and contrast indeed!

Thanks for this Bob. The Myers decision might help support our efforts against involuntary outpatient treatment in Ohio.

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