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

4 In the Matter of the)
5 Protective Proceedings of:)
6 BRET BYRON BOHN,)
7 Respondent.)



Case No. 3AN-13-02737 PR

8 **PETITIONER'S RESPONSE TO NOTICE OF INTENT TO RULE ON**
9 **ADMINISTRATIVE RULE 37.7 REQUEST**

10 Department of Health and Social Services, Adult Protective Services, through the
11 Office of Attorney General (department), files its response and opposes Psych Rights'
12 request to publicize the case file, exhibits, recordings of proceedings and any other
13 material in this matter for the following reasons.

14 **I. The Public Access to Court Records is Not Absolute and the Intensity**
15 **of Public Interest in This Case Does Not Justify the Court Record Be**
16 **Made Public.**

17 Psych Rights correctly asserts that courts recognize public's right to have access to
18 court records but this is not an absolute right.¹ The US Supreme Court held that "every
19 court has supervisory power over its own records and files, and access has been denied
20 where the court files might have become a vehicle for improper purposes."² Even though
21 this issue and specifically Administrative Rule 37.7 has not been a subject of litigation in
22 Alaska courts, other jurisdictions have considered the same issue and decided to maintain
23 the confidentiality of private information of individuals especially in protective cases. For
24 instance in *Webster Groves School District v. Pulitzer Publishing Company*, the Eight
25 Circuit affirmed the district court's decision to seal the court file to prevent the public
26 dissemination of a juvenile's sensitive information when a newspaper sought to gain

¹ *Nixon v. Warner Communications*, 435 US 589, 597, 98 S. Ct. 1306, 1312 (1978).

² *Id.*, at 598.

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2 access to the proceedings.³ The court even considered redaction of certain parts of the
3 records but found it impossible to do so because it included documentation, evaluations
4 and other information regarding the juvenile's learning disabilities and other personal
5 information.⁴ In *Jaufre ex rel. Jaufre v. Taylor*; Louisiana District court, where parties
6 moved to seal the court records after a parent sued a school official for administering
7 corporal punishment on a minor, maintained the confidentiality of the records that made
8 references to the minor's detailed medical records including emotional condition and
9 problematic behavior.⁵ The court also withheld the disclosure of portions of the records
10 including pictures of injuries that could be humiliating or stigmatizing for the minor.⁶
11 Even in *Baby Doe v. Methacton School District* which is cited by Psych Rights, the
12 court's decision to disclose the court record to the public was driven by the court's desire
13 to make public aware of alleged wrongdoings of a public official.⁷

14 *In the Matter of Protective Proceeding of Bret Byron Bohn* is a guardianship
15 proceeding. Unlike *Baby Doe* where the focus of the matter was to show the wrongdoing
16 of a school district official, this matter is about Mr. Bohn and his capacity to manage his
17 own affairs. And similar to *Webster Grooves School District* and *Jaufre ex rel Jaufre*
18 matter, the records in this case make references to detailed medical information regarding
19 Mr. Bohn's medical condition – past and present- diagnosis, extensive medical notes
20 taken by all the medical professionals, laboratory results, and evaluations. Additionally,
21 records include statements and information regarding Mr. Bohn's family members,
22 relatives, friends, employees as well as acquaintances and his relationships with these
23 individuals. As such all the records, the exhibits, the videos, the testimony that Psych
24 Rights is seeking to have access includes highly private, sensitive and possibly

25 ³ 898 F.2d 1371 (Eighth Circuit, 1990).

26 ⁴ *Id.*, at 1377.

⁵ 351 F. Supp. 2d 514,519 (2005)

⁶ *Id.*, at 518.

⁷ 878 F. Supp. 40 (E.D. Pa. 1995)

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2 stigmatizing information on an adult who has been deemed to be incapacitated by this
3 court after days of testimony and evidence. Additionally, some of the most sensitive and
4 private information has already been made public by release of the court's order dated
5 February 7, 2014. In that order, Mr. Bohn's medical condition including diagnosis, the
6 testimony of experts as well as family members and others and his appearance and
7 physical condition as it appears in videos are discussed in a detailed manner. The court's
8 order also outlines the court's reasoning for its decision in appointing the Office of Public
9 Advocacy as Mr. Bohn's guardian. To the extent that the public may have any interest in
10 this proceeding, which the department does not believe that the public does, the public
11 has already been provided access to the information by the release of the court's order
12 and therefore any public interest in this matter should be considered to have been
13 satisfied at this time.

14
15 **II. There Is No "Incestuous" Relationship Between Adult Protective**
16 **Services, Office of Public Advocacy and the Providence Hospital**

17 Psych Rights asserts that there is an incestuous relationship between Adult
18 Protective Services, Office of Public Advocacy and Providence Hospital. There is no
19 relationship, "incestuous" or otherwise, between Adult Protective Services and Office of
20 Public Advocacy or Adult Protective Services and Providence Hospital.

21 The department, Adult Protective Services, is mandated to provide protection to
22 vulnerable adults under AS 47.24.⁸ The same statute requires certain persons including
23 but not limited to physicians, administrators of a health care facility, social workers to file
24 a report with the department if they have a reasonable cause to believe that a vulnerable
25 adult suffers from undue influence, abandonment, exploitation, abuse, neglect or self-
26 neglect.⁹ Once a report is filed with the department, the department is required to
investigate the report and take action on the report by providing services to the adult

⁸ AS 47.24.900 (21).

⁹ AS 47.24.010

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2 including but not limited to filing a protective proceeding with the court which may
3 include a petition for guardianship or conservatorship.¹⁰

4 In this case, Adult Protective Services filed a petition for guardianship after it
5 received a report of harm regarding Mr. Bohn and litigated the matter as the petitioner
6 under the applicable statutes and rules. Accordingly, each party acted independently and
7 under its own statutory authority during the proceedings. Release of Mr. Bohn's medical
8 records and private information will not shed further light on the statutory authority of the
9 parties in this case but will only violate Mr. Bohn's right to privacy.

10 **III. Neither Psych Rights nor Public's Interest Outweighs Mr. Bohn's**
11 **Interest in Privacy and Confidentiality.**

12 In its letter, Psych Rights questions the actions of the court and the parties and
13 provides an opinion as what should have happened in this case. The department contends
14 that Psych Rights disagreement with the court's actions or holding does not outweigh the
15 privacy considerations of Mr. Bohn. Any case or court proceeding may be cause for
16 disagreements with the court system or other agencies, but such a disagreement in itself
17 should not render that proceeding public, nor does it equate to a finding that the public
18 would have an interest in knowing the most private aspects of one's life including their
19 medical condition.

20 Furthermore, despite the fact the court has entered the ruling that this proceeding
21 to remain confidential and, despite the fact that none of the parties ever filed an
22 opposition for the proceedings to be confidential during the trial, much of Mr. Bohn's
23 private information is already in the public domain. In fact, Psych Rights cited the articles
24 and websites that the public may be able to access information regarding Mr. Bohn's
25 case. These sites include newspapers, blogs, as well as media pages such as Free Bret
26 Bohn Facebook website. Psych Rights also referred to the videos that are part of the court
record and were to remain confidential. While the court cannot un-ring that bell, and the
material that is already in the public domain cannot be turned off, there is no compelling

¹⁰ AS 47.24.013, AS 47.24.015, AS 47.24.017 and AS 47.24.019.

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2 reason to add to that material by including over 1900 pages of medical records. The
3 release of this information violates Mr. Bohn's right to privacy and confidentiality.

4 **CONCLUSION**

5 For the reasons stated above, what remains of Mr. Bohn's privacy, including the
6 additional medical records and testimony that was part of the detailed hearing should
7 remain privileged and confidential and should not be violated under the thin argument of
8 the public's right to know further than it already has. Therefore, it is respectfully
9 requested that the court deny Psych Rights' request to access and publicize the court
10 record in this matter.

11 DATED: April 3, 2014

12 MICHAEL C. GERAGHTY
13 ATTORNEY GENERAL

14 By: 

15 Nevhiz E. Calik Russell
16 Assistant Attorney General
17 Alaska Bar No. 0606043

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

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8 **CERTIFICATE OF SERVICE**

9 I certify that on this date, true and correct copies of the **PETITIONER'S**
10 **RESPONSE TO NOTICE OF INTENT TO RULE ON ADMINISTRATIVE RULE**
11 **37.7 REQUEST** and this **CERTIFICATE OF SERVICE** in this proceeding were
12 mailed to the following:
13

14 Tamara Hunter
15 Adult Protective Services
16 550 West 8th Avenue
17 Anchorage, AK 99501

James B. Gottstein, Esq.
Psych Rights
406 G Street, Suite 206
Anchorage, AK 99501

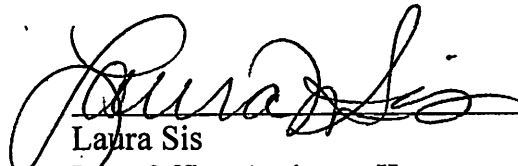
17 Mario L. Bird
18 Ross & Miner, PC
19 372 E. Fireweed Lane, Suite 201
20 Anchorage, AK 99503

Christopher Slottee
Atkinson, Conway & Gagnon, Inc.
420 L Street, Suite 500
Anchorage, AK 99501

19 Carolyn Perkins
20 Adult & Juvenile Representation
21 900 West 5th Avenue, Suite 702
22 Anchorage, AK 99501

Elizabeth Russo
Office of Public Advocacy
900 West 5th Avenue, Suite 525
Anchorage, AK 99501

22 Collene Brady-Dragomir
23 PO Box 113252
24 Anchorage, AK 99511


Laura Sis
Law Office Assistant II

4/3/2014
Date