

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686

Attorney for Plaintiff

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

ETTA BAVILLA,)
)
 Plaintiff,)
)
)
ALASKA DEPARTMENT OF)
CORRECTIONS,)
)
 Defendant.)
)

Case No. _____

COMPLAINT

(For Declaratory and Injunctive Relief)

COMES NOW, Etta Bavilla, Plaintiff in the above entitled action, and alleges as follows:

1. Plaintiff is a resident of the state of Alaska and is entitled to bring this action.
2. Defendant is an agency of the State of Alaska.
3. Plaintiff is currently incarcerated at the Hiland Mountain Correctional Center (Hiland), which is operated by Defendant.
4. On February 23, 2004, Defendant was notified that James B. Gottstein Esq., (Counsel) was representing Plaintiff with respect to a prospective forced psychiatric

medication order and that he needed notice and copies of relevant documents in the event such an order was sought by the Defendant. See, Exhibit A.

5. On or about Thursday, April 1, 2004, Plaintiff was informed the Department was going to seek such a forced psychiatric medication order and a hearing set for the following Monday, April 5, 2004, at 8:30 a.m. at Hiland.

6. No notice of this was given to Counsel by Defendant.

7. On April 1, 2004, Counsel faxed a letter to the Defendant informing Defendant that it was violating Plaintiff's constitutional rights and demanded copies of relevant documents, as well as moving for:

- (a) unhindered access between counsel and Plaintiff, subject only to necessary restrictions such as curfew and meal times in order to allow Plaintiff to assist in the preparation of her defense;
- (b) a one week continuance of the hearing to allow for preparation of Plaintiff's defense; and
- (c) an order allowing counsel to take the deposition of witnesses the Department intends to rely upon.

See, Exhibit 2.

8. Under the United States and Alaska constitutions, prior to a forced medication order being issued against her, Plaintiff is, among other things, entitled to

- (a) Meaningful notice, including, but not limited to;
 - (1) reasonable specificity regarding the alleged facts supporting the forced medication, and

- (2) the specific drug or drugs and dosage proposed to be involuntarily administered, and
 - (3) A reasonable amount of time to prepare a defense; and
- (b) Meaningful Opportunity to be heard, including
- (1) The right to have Counsel participate; and
 - (2) unhindered access between Counsel and Plaintiff, subject only to necessary restrictions such as curfew and meal times in order to allow Plaintiff to assist in the preparation of her defense; and
 - (3) the opportunity to discover the basis for Defendant's claim of right to forcibly medicate Plaintiff;
 - (4) the opportunity to challenge in a meaningful way whether the proposed medication is in Plaintiff's medical best interests; and
 - (5) a reasonable amount of time to prepare her defense; and
 - (6) the right to a full, fair hearing by an impartial, independent decisionmaker.

9. Upon information and belief, the procedures promulgated by the Department with respect to forced psychiatric medication are contained in Policy #807.16, Involuntary Psychotropic Medication, a copy of which is attached hereto as Exhibit 3 (Policy).

10. The Policy violates Plaintiff's rights under the United States and Alaska constitutions in a number of respects, including, but not limited to:

- (a) failing to provide the rights set forth in paragraphs 7 and 8, above; and

- (b) authorization of forced medication without a finding of dangerousness;
and
- (c) not requiring the "staff assistant" to act as an advocate for the patient;
and
- (d) not requiring the "staff assistant" to have a good understanding of the
psychiatric diagnosis and the issues that a case may present; and
- (e) failing to require the Defendant to disclose the evidence to be relied
upon by the Defendant prior to the commencement of the "Due Process
Hearing;" and
- (f) failing to provide for a stay of a forced medication order pending
internal administrative appeal; and
- (g) failing to require the Mental Health Review Committee to explain on
what basis it came to the conclusion that the forced medication was in
the best medical interest of the patient; and
- (h) failing to provide a full, fair hearing by an impartial, independent
decisionmaker; and
- (i) fails to allow for judicial determination of whether the requirements for
forced medication have been met; or
- (j) fails to allow for meaningful judicial review of whether the
requirements for forced medication have been met.

WHEREFORE, Plaintiff prays for relief as follows:

A. Injunctive relief prohibiting Defendant from employing procedures that deny Plaintiff her constitutional rights, including but not limited to:

(1) unhindered access between Counsel and Plaintiff, subject only to necessary restrictions such as curfew and meal times in order to allow Plaintiff to assist in the preparation of her defense;

(2) a continuance of the hearing sufficient to allow for preparation of Plaintiff's defense; and

(3) an order allowing counsel to take the deposition of witnesses the Department intends to rely upon; and

(4) an order requiring an initial judicial determination of whether the requirements for forced medication have been met.

(5) Meaningful notice, including, but not limited to;

(a) reasonable specificity regarding the alleged facts supporting the forced medication, and

(b) the specific drug or drugs and dosage proposed to be involuntarily administered, and

(c) A reasonable amount of time to prepare a defense; and

(6) Meaningful Opportunity to be heard, including

(a) The right to have Counsel participate; and

(b) unhindered access between Counsel and Plaintiff, subject only to necessary restrictions such as curfew and meal times in order to allow Plaintiff to assist in the preparation of her defense; and

- (c) the opportunity to discover the basis for Defendant's claim of right to forcibly medicate Plaintiff;
- (d) the opportunity to challenge in a meaningful way whether the proposed medication is in Plaintiff's medical best interests; and
- (e) a reasonable amount of time to prepare her defense,

and

(7) Permits forced psychotropic medication without a finding of a sufficient level of dangerousness to satisfy constitutional requirements, and

B. A judgment declaring that prior to a patient being subjected to forced psychiatric medication in a non-emergency the patient is entitled to:

(1) Meaningful notice, including, but not limited to;

- (a) reasonable specificity regarding the alleged facts supporting the forced medication, and
- (b) the specific drug or drugs and dosage proposed to be involuntarily administered, and
- (c) A reasonable amount of time to prepare a defense; and

(2) Meaningful Opportunity to be heard, including

- (a) The right to have Counsel participate; and
- (b) unhindered access between Counsel and Plaintiff, subject only to necessary restrictions such as curfew and meal times in order to allow Plaintiff to assist in the preparation of her defense; and

- (c) the opportunity to discover the basis for Defendant's claim of right to forcibly medicate Plaintiff;
- (d) the opportunity to challenge in a meaningful way whether the proposed medication is in Plaintiff's medical best interests; and
- (e) a reasonable amount of time to prepare a defense.

(3) The Policy violates Plaintiff's rights under the United States and Alaska constitutions by:

- (a) failing to provide the rights set forth in paragraphs 7 and 8, above; and
- (b) authorization of forced medication without a finding of dangerousness;
and
- (c) not requiring the "staff assistant" to act as an advocate for the patient;
and
- (d) not requiring the "staff assistant" to have a good understanding of the psychiatric diagnosis and the issues that a case may present; and
- (e) failing to require the Defendant to disclose the evidence to be relied upon by the Defendant prior to the commencement of the "Due Process Hearing;" and
- (f) failing to provide for a stay of a forced medication order pending internal administrative appeal; and
- (g) failing to require the Mental Health Review Committee to explain on what basis it came to the conclusion that the forced medication was in the best medical interest of the patient; and

- (h) failure to provide a full, fair hearing by an impartial, independent decisionmaker; and
- (i) fails to allow judicial review of dangerousness and best interest determinations; and
- (j) allowing involuntary psychotropic medication without a proper showing of dangerousness.

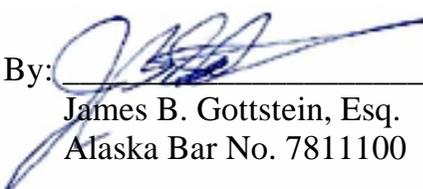
C. Actual costs and actual reasonable attorneys fees.

D. For other such relief as this Court may deem just and equitable in these circumstances.

Dated this 2nd day of April, 2004 at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

By: _____


James B. Gottstein, Esq.
Alaska Bar No. 7811100