

PsychRights®

Law Project for
Psychiatric Rights, Inc.

December 17, 2006

Special Master Peter H. Woodin
JAMS
280 Park Avenue, 28th floor
New York, NY 10017

Draft

via e-mail

Re: Your December 15, 2006, Order in MDL 1596

Dear Mr. Woodin:

On December 16, 2006, I e-mailed you requesting certain information regarding the Order you signed December 15, 2006, under your "authority as Special Discovery Master" in MDL 1596 "to oversee the implementation of the orders of the United States District Court for the Eastern District of New York relating to discovery, including Case Management Order No. 3 ("CMO-3")" and indicated I would try to respond more fully this weekend. You have not responded to my request, but even without it, some things can be said. By doing so, I am not agreeing that the MDL 1596 court has jurisdiction over me or the documents that came into my possession in what I believe is full compliance with CMO-3.¹ I am not entering an appearance, or otherwise participating in *In re: Zyprexa Products Liability litigation*, MDL No. 1596, United States District Court, Eastern District of New York (MDL 1596) in any manner whatsoever.² Instead, I am using this mechanism to inform you of events which was not conveyed to you by Lilly and the PSC that demonstrate that the materials were produced in full conformance with CMO-3. You might thereafter decide *sua sponte* to vacate the Order.

Background

The Law Project for Psychiatric Rights (PsychRights) is a tax-exempt, public interest law firm whose mission is to mount a strategic litigation campaign against forced (court ordered) psychiatric drugging and electroshock around the country. The massive amounts of forced drugging in this country, amounting to probably at least a million cases a year,³ is resulting in decreased, rather than increased, public safety; causing an almost unimaginable amount of physical harm, including death; turning many patients into drooling zombies; and preventing at least half the people who currently become

¹ I did not have a copy of CMO-3 until I received the fax from Mr. Fahey on the afternoon of Friday, December 15, 2006, a copy of which is enclosed.

² I am not signing this lest that somehow be deemed sufficient to confer jurisdiction and to emphasize this I am merely providing you, as a courtesy, with a draft, effect.

³ See, e.g., Mary L. Durham, "Civil Commitment of the Mentally Ill: Research, Policy and Practice," in Bruce D. Sales and Saleem A. Shah, eds., *Mental Health and Law Research, Policy and Services* (Durham, N.C.: Carolina Academic Press, 1996), pp. 17-40 (p.17). This is a citation for involuntary commitment as I understand it, but presumably most, if not all are subject to forced drugging and there is also a large number of people now under outpatient forced drugging court orders.

diagnosed with "serious and persistent mental illness" (f/k/a "chronic mental illness") from recovering⁴ and going on to the full, rich lives they could otherwise enjoy.⁵

In large part, this state of affairs has been created by the lies told by the manufacturers of psychiatric drugs, particularly the neuroleptics, of which Zyprexa (olanzapine), the subject of MDL 1596, is perhaps the biggest seller.⁶ I do know people who find these drugs, even Zyprexa, helpful; I think these individuals should certainly be allowed to use them, but they should be told the truth in order to make an informed decision. My impression is that Eli Lilly's lies about Zyprexa form the basis of the plaintiffs' claims in MDL 1596, but that is not PsychRights' focus. PsychRights' focus is helping people avoid being forcibly drugged pursuant to court orders, where the courts have been, in my view, duped by Eli Lilly and other pharmaceutical company prevarications.

In addition to the compilations of published studies, PsychRights' website has been the first to publish some material on psychiatric medication, and as well has produced some original analysis. For example, I believe PsychRights was the first to post the February 18, 2004, Dr. Andrew Mosholder's *Report on Suicidality in Pediatric Clinical Trials with Paroxetine* (Paxil) and other antidepressant drugs that the Food and Drug Administration (FDA) ordered Dr. Mosholder to suppress.⁷ Another example is the Allen Jones "Whistleblower Report" on the fraud involved in the Texas Medication Algorithm Project (TMAP),⁸ which has been downloaded from the PsychRights website approximately 50,000 times,⁹ and which just this week played what would appear to be a pivotal role in the Texas Attorney General's decision to join a lawsuit against Johnson and Johnson, and five related companies, for allegedly misrepresenting the safety and effectiveness of an anti-psychotic drug, and unduly influencing at least one state official to make that drug a standard treatment in public mental health programs.¹⁰

⁴ See, the assembled *full* (not just the abstracts) published peer-reviewed studies available on the Internet at <http://psychrights.org/Research/Digest/NLPs/neuroleptics.htm> and <http://psychrights.org/Research/Digest/NLPs/neuroleptics.htm>.

⁵ See, the assembled proof of the effectiveness of non-drug therapies, and selective use of drug therapies, available at <http://psychrights.org/Research/Digest/Effective/effective.htm>.

⁶ The New York Times today reports that Zyprexa's sales were \$4.2 billion last year.

⁷ The original file that was uploaded is at <http://psychrights.org/Research/Digest/AntiDepressants/Mosholder/MosholderReporttwo24.pdf>. Under intense pressure and presumably because the report had already been leaked, the FDA subsequently allowed release of the report and this better copy is now on PsychRights' website at <http://psychrights.org/Research/Digest/AntiDepressants/Mosholder/MosholderReport.pdf>.

⁸ <http://psychrights.org/Drugs/AllenJonesTMAPJanuary20.pdf>

⁹ See, <http://psychrights.org/stats/>.

¹⁰ See, "State's mental facilities duped into using drug: Abbott alleges lawsuit claims state official pushed drug, was rewarded with money," *Austin Statesman*, December 16, 2006, accessed on the Internet December 17, 2006, at <http://www.statesman.com/search/content/news/stories/local/12/16/16drugs.html>.

With respect to Zyprexa, for example, Ellen Liversidge, whose son had been killed by the drug,¹¹ provided PsychRights with the FDA's response to her *Freedom of Information Act* ("FOIA") request regarding adverse events reported from all of the so-called "atypical" neuroleptics, of which Zyprexa is one.¹² Since March, 2003, PsychRights has also posted documents which the author of *Mad in America*, Robert Whitaker, received from the FDA under a FOIA request regarding Zyprexa's approval, as well as Grace E. Jackson, M.D.'s affidavit regarding, among other things, the clinical trials contained in these FOIA documents. These documents belie Eli Lilly's public, or at least proxy, claims.¹³ As will be described below, these documents, which may not appear anywhere else on the Internet, are what caused Dr. Egilman to contact me. Before discussing those events, however, some more background is in order.

Just last summer, in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006), in PsychRights' first case, the Alaska Supreme Court invalidated Alaska's forced psychiatric drugging procedures as unconstitutional for not requiring *the court* to find such drugging to be in the person's *best interests*, and that there are no less restrictive alternatives. The last paragraph of the *Myers* decision thus holds:

We conclude that the Alaska Constitution's guarantees of liberty and privacy require an independent judicial determination of an incompetent mental patient's best interests before the superior court may authorize a facility like API to treat the patient with psychotropic drugs. Because the superior court did not determine Myers's best interest before authorizing psychotropic medications, we VACATE its involuntary treatment order. Although no further proceedings are needed here because Myers's case is now technically moot, we hold that in future non-emergency cases a court may not permit a treatment facility to administer psychotropic drugs unless the court makes findings that comply with all applicable statutory requirements and, in addition, expressly finds by clear and convincing evidence that the proposed treatment is in the patient's best interests and that no less intrusive alternative is available.

At 138 P.3d, 252, the Alaska Supreme Court gave the following guidance:

¹¹ More specifically, her son died of profound hyperglycemia after taking Zyprexa for two years and gaining 100 pounds without any warning from the label or prescribing doctor.

¹² PsychRights has posted these flat text files at <http://psychrights.org/Research/Digest/NLPs/FDAFOIAs/>, was then able to get to have these parsed into a pretty clean 35 megabyte database that is available at [http://psychrights.org/Research/Digest/NLPs/FDAFOIAs/FDAAtypicalNLPAdverseEventReportingSystem\(AERS\).mdb](http://psychrights.org/Research/Digest/NLPs/FDAFOIAs/FDAAtypicalNLPAdverseEventReportingSystem(AERS).mdb), and has been trying to get someone to analyze this data ever since.

¹³ See, <http://psychrights.org/States/Alaska/CaseOne/30-Day/ExhC-FDAonOlanzapineSave.pdf> and <http://psychrights.org/States/Alaska/CaseOne/30-Day/ExhibitD-Olanzapine.htm>, respectively.

Evaluating whether a proposed course of psychotropic medication is in the best interests of a patient will inevitably be a fact-specific endeavor. At a minimum, we think that courts should consider :

[...]

(B) information about the proposed medication, its purpose, the method of its administration, the recommended ranges of dosages, *possible side effects and benefits*, ways to treat side effects, and risks of other conditions, such as tardive dyskinesia;

[emphasis added].

In reaching its conclusion, the Alaska Supreme Court discussed the rights involved, as follows:

When a law places substantial burdens on the exercise of a fundamental right, we require the state to "articulate a compelling [state] interest" and to demonstrate "the absence of a less restrictive means to advance [that] interest."

* * *

In the past we have recognized that Alaska's constitutional rights of privacy and liberty encompass the prerogative to control aspects of one's personal appearance, privacy in the home, and reproductive rights. We have noted that "few things [are] more personal than one's own body," and we have held that Alaska's constitutional right to privacy "clearly... shields the ingestion of food, beverages or other substances."

* * *

Because psychotropic medication can have profound and lasting negative effects on a patient's mind and body, we now similarly hold that Alaska's statutory provisions permitting nonconsensual treatment with psychotropic medications implicate fundamental liberty and privacy interests

[footnotes and citations omitted].

Clearly, the documents in question here are highly relevant to the constitutionally-required court inquiry before it can make an informed decision about whether to order forced psychiatric drugging, which might very well include Zyprexa.

Production of the Subpoena'd Documents

Out of the blue, on or about November 29, 2006, Dr. Egilman called me to ask if I had *FOIA* documents pertaining to Zyprexa. He identified himself as one of plaintiffs' retained experts in Zyprexa damages litigation. I directed him to the location of the *FOIA*

information available on PsychRights' website, and also mentioned to him the Adverse Events database. During the course of the conversation, I learned that he had access to secret Eli Lilly documents pertaining to Zyprexa. I told him that I wanted access to those documents, and would undertake a case from which to subpoena them. Dr. Egilman told me he was subject to a protective order to provide notification of such a subpoena. I informed him that I understood, and indicated that, typically, forced drugging hearings occur very quickly and that they are often scheduled for hearing the same day they are filed, but that I always ask for a short continuance to prepare.¹⁴

Since I knew at the time that I would be away from Alaska from December 22, 2006, until January 15, 2007, I proceeded to try to acquire a suitable case in earnest.¹⁵ In spite of the impediments to doing so interposed by the Alaska Psychiatric Institute, I was able to acquire a suitable case in the evening of December 5, 2006. This case, however, was not within an AS 47.30.839 court ordered forced drugging proceeding, but involved a guardianship wherein the public guardian, the Alaska Office of Public Advocacy (OPA), was granted full guardianship powers under AS 13.26.090 through .155, including the power to "approve administration of psychotropic medications," meaning the right to agree to the forced drugging of its ward, who was now PsychRights' client.

The next morning I filed papers to, among other things terminate the guardianship and remove the guardian's right to consent to forced drugging, the court issued four deposition subpoenas at my request, including one to Dr. Egilman setting his telephonic deposition for December 20, 2006, a copy of which is attached. It is my belief that Dr. Egilman promptly notified Eli Lilly of this subpoena, a belief which is supported by a December 14, 2006, letter from Eli Lilly's Alaska counsel, Brewster Jamieson, a copy of which is enclosed.¹⁶ Over the weekend, in reviewing the paperwork, I realized that the subpoena's requirement for Dr. Egilman to "bring with" him the subpoena'd materials didn't make any sense for a telephonic deposition, so on Monday, December 11, 2006, the court issued an amended subpoena, a copy of which is enclosed, that required Dr. Egilman to deliver the subpoena'd materials to me prior to the deposition. This amended subpoena, a copy of which is enclosed, was served on Dr. Egilman by e-mail which states, in its entirety:

Dear Dr. Egilman,

I have (hopefully) attached an amended subpoena. I assume that you will also accept service of this amended subpoena in this manner. If not please notify me immediately.

In reviewing the original subpoena I realized it did not take into account that this was a telephonic deposition. Therefore the amended one

¹⁴ See, AS 47.30.839(e).

¹⁵ These efforts are chronicled at <http://psychrights.org/States/Alaska/CaseXX.htm>.

¹⁶ It is noted that this letter recites a copy of Dr. Egilman's letter transmitting the subpoena, which was not included in either the fax or hard copy of the letter received by PsychRights.

orders [you] to deliver the material to me prior to the date and time set for the deposition, rather than bring it with you.

In order for the deposition to go smoothly and as efficiently as possible by allowing me to review them ahead of time, *please deliver the subpoena'd materials to me as soon as you can.*

[emphasis added]. I registered the Internet domain ZyprexaDocuments.Net that same day, December 11, 2006, in order to set up a secure method, via "file transfer protocol," for Dr. Egilman to deliver the subpoena'd documents to me. I then so informed Dr. Egilman.

Subpoena'd materials began being uploaded on December 12, 2006, but ceased after I e-mailed Dr. Egilman a copy of the after-hours Jamieson letter of December 14, 2006, which I received on December 15, 2006, and which is enclosed.¹⁷

Analysis

Section 14 of the CMO provides:

14. Subpoena by other Courts or Agencies

If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the designating party in writing of all of the following: (1) the discovery materials that are requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. In no event shall confidential documents be produced prior to the receipt of written notice by the designating party and a reasonable opportunity to object. Furthermore, the person receiving the subpoena or other process shall cooperate with the producing party in any proceeding related thereto.

Alaska Civil Rule 45(d), as is typical, provides in pertinent part:

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena

¹⁷ I e-mailed this letter to Dr. Egilman because the fax cover sheet did not indicate it had been faxed to him.

for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

Thus, CMO-3 recognizes, as it must, that MDL 1596 has no authority to enjoin enforcement of a subpoena in another proceeding, and gives the party seeking protection a mechanism to do so in the forum from which such subpoena(s) might issue.¹⁸ I fully expected Eli Lilly to follow the specified procedure, instructing Dr. Egilman to invoke Civil Rule 45(d). I expected, we would then be making our respective arguments to the court here as to why the documents should or should not be produced. In my view, the proper disposition of the question would be in favor of my client's right to inform the court of the extreme harm caused by Zyprexa, which Eli Lilly has successfully hidden for so long, while making its billions off the pill.

However, since Eli Lilly sat on its rights under CMO-3 and Civil Rule 45(d)(1), it has lost them. The documents came into my possession free of any restrictions in full compliance with CMO-3 and Civil Rule 45(d)(1). Apparently, recognizing this, various Lilly Lawyers have sent me all kinds of threatening letters, copies of which are attached, and gotten you to issue the order, which I, respectfully, do not believe is within your authority or within the jurisdiction of the MDL 1596 court.

Normally, if one disputes the validity of an order, one is still required to comply until such time as the validity has been determined. There are usually opportunities for appeal, stay, etc., and where special masters are appointed, as in CMO-3, the judge in the case often determines disputed issues rather than the master. Since I have yet to see the order of reference to you, I don't know the specifics of your appointment. However, I don't believe it really matters in this case, because it is my understanding that the rule that one must comply with an order until relieved of it, only applies if the court has jurisdiction. The MDL 1596 court does not have such jurisdiction and I therefore do not believe I am bound. This matter is properly within the jurisdiction of the Alaska Superior Court from which the subpoena was issued with Eli Lilly having filed a motion to quash and return of the documents.

Perhaps in light of this, you will *sua sponte* vacate the order, which, it is respectfully suggested will eliminate confusion over the proper posture of this matter.

¹⁸ This is confirmed by the December 15, 2006, letter from Richard Meadow of the Lanier Law Firm to Lilly, in which he states that he informed Lilly that this is what they needed to do when he talked to them on December 13, 2006. This is further confirmed by an e-mail from Eli Lilly's local counsel, on Sunday, December 17, 2006, after 4:00 p.m., in which Eli Lilly served me, via e-mail, with a motion it had filed the previous Friday to quash the subpoena, a copy of which motion is enclosed.

IN THE ~~DISTRICT~~/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Guardianship
of B.B.

Respondent ~~XXXXXXXXXX~~
XXX

~~XXXXXXXXXX~~

CASE NO. 3AN-04-545 P/G

SUBPOENA FOR TAKING DEPOSITION

To: **David Egilman, MD, MPH**
Address: **8 North Main Street, Attleboro, Massachusetts 02703**

You are commanded to appear and testify under oath in the above case at:

Date and Time: December 20, 2006 at 10:00 AST, 2:00 PM EST

~~Office of:~~ Telephone No. 907) 274-7686

Address: n/a

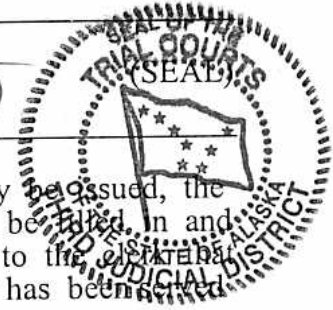
Notice, as required by Civil Rule 45(d), has been served upon James H. Parker
on December 6, 2006. You are ordered to bring with you _____
See attached

12/6/06
Date

Subpoena issued at request of
James B. Gottstein, Esq.
Attorney for Respondent
Address: 406 G Street, Suite 206
Telephone: 274-7686

If you have any questions, contact the person
named above.


Deputy Clerk



Before this subpoena may be issued, the
above information must be filed, in and
proof must be presented to the clerk of the
a notice to take deposition has been served
upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is
addressed, _____, in _____,
Alaska. I left a copy of the subpoena with the person named and also tendered mileage and
witness fees for one day's court attendance.

Date and Time of Service

Service Fees:
Service \$ _____
Mileage \$ _____
TOTAL \$ _____

Signature

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____.

(SEAL)

Clerk of Court, Notary Public or other
person authorized to administer oaths.
My commission expires _____

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.

X-Mailer: QUALCOMM Windows Eudora Version 7.0.1.0
Date: Mon, 11 Dec 2006 09:54:05 -0900
To: "David Egilman" <degilman@egilman.com>
From: Jim Gottstein <jim.gottstein@psychrights.org>
Subject: Amended subpoena
Cc: jim.Gottstein@psychrights.org

Dear Dr. Egilman,

I have (hopefully) attached an amended subpoena. I assume that you will also accept service of this amended subpoena in this manner. If not please notify me immediately.

In reviewing the original subpoena I realized it did not take into account that this was a telephonic deposition. Therefore the amended one orders to deliver the material to me prior to the date and time set for the deposition, rather than bring it with you.

In order for the deposition to go smoothly and as efficiently as possible by allowing me to review them ahead of time, please deliver the subpoena'd materials to me as soon as you can.



[DEgilmanAmendedSubpoena.pdf](#)

Note New E-mail Address

James B. (Jim) Gottstein, Esq.

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501
USA
Phone: (907) 274-7686) Fax: (907) 274-9493
jim.gottstein[-at-]psychrights.org
<http://psychrights.org/>

Psych Rights®
Law Project for
Psychiatric Rights

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of unwarranted forced psychiatric drugging. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging interventions against their will. Extensive information about this is available on our web site, <http://psychrights.org/>. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.

IN THE ~~DISTRICT~~/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Guardianship
of B.B.

~~XXXXXXXXXX~~

~~XX~~

~~Defendant(s)~~

CASE NO. 3AN-04-545 P/G
AMENDED
SUBPOENA FOR TAKING DEPOSITION

To: David Egilman, Md, MPH
Address: 8 North Main Street, Attleboro, Massachusetts 02703

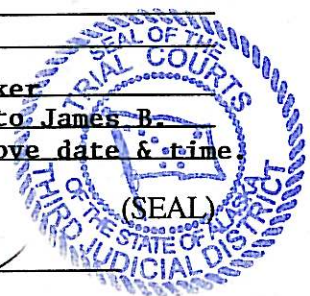
You are commanded to appear and testify ~~under oath~~ ^{/telephonically} in the above case at:

Date and Time: December 20, 2006 at 10:00 am AST, 2:00pm EST

Offices of: Law Project for Psychiatric Rights

~~Address:~~ telephone No (907) 274-7686

Notice, as required by Civil Rule 45(d), has been served upon James Parker
on December 6 2006. You are ordered to ~~bring with you~~ deliver to James B. Gottstein
the material set forth on the attached prior to the above date & time.



12/11/2006
Date

J. Backman
Deputy Clerk

Subpoena issued at request of
James B. Gottstein, Esq.

Attorney for B.B.

Address: 406 G. St, Suite 206,

Telephone: 274-7686

If you have any questions, contact the
person named above.

Before this subpoena may be issued, the
above information must be filled in and
proof must be presented to the clerk that
a notice to take deposition has been served
upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is
addressed, _____, in _____,
Alaska. I left a copy of the subpoena with the person named and also tendered mileage and
witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:

Service \$ _____

Mileage \$ _____

TOTAL \$ _____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____.

(SEAL)

Clerk of Court, Notary Public or other
person authorized to administer oaths.
My commission expires _____

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

1. Your curriculum vitae.
2. All expert reports prepared by you within the last five years pertaining to psychiatric medications.
3. 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.



FACSIMILE COVER PAGE

Date: December 14, 2006

Client No.: 9867.38

Operator: Nanci

Please deliver the following pages to:

To: James B. Gottstein, Esq.274-9493
 Elizabeth Russo, Esq.....258-6872

From: Brewster H. Jamieson, Esq.

Re: *In the Matter of the Guardianship of B.B*

If you do not receive the total number of pages (3), please call 907-277-9511

Original Document to be mailed: Yes No

MESSAGE

A Professional Corporation
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

www.Lanepowell.Com
T . 907.277.9511
F . 907.276.2631

Law Offices
Anchorage, Alaska; Olympia, Washington;
Portland, Oregon; Seattle, Washington
London, England

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Please be advised that, if this communication includes federal tax advice, it cannot be used for the purpose of avoiding tax penalties unless you have expressly engaged us to provide written advice in a form that satisfies IRS standards for "covered opinions" or we have informed you that those standards do not apply to this communication.



Brewster H. Jamieson, Esq.
Direct Dial (907) 264-3325
JamiesonB@LanePowell.com

December 14, 2006

James B. Gottstein, Esq.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501-2164

David Egilman, MD, MPH
8 North Main Street
Attleboro, Massachusetts 02703-2282

Re: *In the Matter of the Guardianship of B.B.*

Dear Dr. Egilman and Mr. Gottstein:

We represent Eli Lilly and Company in connection with the subpoena served on Dr. Egilman in the above-captioned action. Lilly's General Counsel recently received a letter from Dr. Egilman, notifying Lilly that Dr. Egilman had been subpoenaed for a deposition in this matter. Dr. Egilman provided a copy of the subpoena to General Counsel. From the letter, a copy of which is enclosed, we conclude that Dr. Egilman (i) has been retained as a consulting expert in the product liability actions pending against Lilly in various state and federal courts, (ii) has possession of, or access to, confidential discovery materials that have been produced by Lilly in those actions and (iii) understands his obligations under Case Management Order No. 3, *In re Zyprexa Products Liability Litigation*, MDL No. 1596 (E.D.N.Y.), to notify Lilly that he has received a subpoena that seeks production of those confidential discovery materials and to cooperate with Lilly in any proceeding related to maintaining the confidentiality of said materials.

Lilly possesses the materials to which Dr. Egilman refers, but it has made a copy of them available to plaintiffs' counsel in the MDL for use only (i) in connection with those proceedings and (ii) under the strict confidentiality protections contained in CMO-3. Because the subpoena issued by Mr. Gottstein seeks, in essence, materials in possession of Lilly, Lilly objects, pursuant to Rule 45(d)(1) of the Alaska Rules of Civil Procedure, to their disclosure, production or use in the above-captioned matter. As the MDL Court recognized when it issued CMO-3, these materials contain trade secrets and other confidential research, development and commercial information regarding a marketed product in a competitive industry. Thus, we ask Dr. Egilman to refrain from producing them and Mr. Gottstein to refrain from further seeking production of the materials unless and until the Superior Court

Re: *In the Matter of the Guardianship of B.B*
December 14, 2006
Page 2 of 2

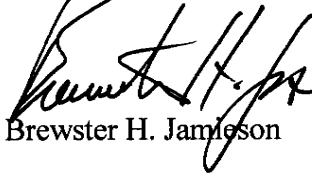
rules that production is required. Because Dr. Egilman is obligated to cooperate with Lilly under CMO-3, we ask that he confirm that he will refrain from producing the materials.

If either of you insists on producing the materials pursuant to the subpoena without resort to the court, Lilly will (i) seek to intervene in the matter and ask the Superior Court to quash the subpoena and (ii) seek relief from the MDL court under CMO-3. We understand that the parties are close to an agreement that would extend the production date (without prejudice to anyone's objections) by a few weeks to accommodate the schedules of all who are involved in this matter. If this does not occur, please advise me immediately.

Thank you for your cooperation.

Very truly yours,

LANE POWELL LLC



Brewster H. Jamieson

nlb

cc: Andrew R. Rogoff, Esq.
Rachel B. Weil, Esq.
Elizabeth Russo, Esq.

009867.0038/157693.1

PsychRights[®]

Law Project for
Psychiatric Rights, Inc.

Brewster H. Jamieson
Lane Powell
301 W. Northern Lights Blvd., Suite 301
Anchorage, Alaska 99503-2648

December 15, 2006

Re: In the Matter of the Guardianship of B.B.

Dear Mr. Jamieson:

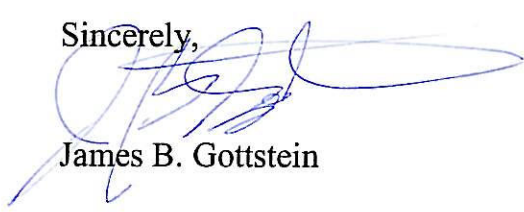
Your fax yesterday regarding the above was received in my office after I had left for the day. I note it refers to an enclosed letter from Dr. Egilman, but said letter was not included in the fax. Presumably, it is included in the mailed hard copy.

In any event, I should probably first inform you it is not precisely accurate to characterize the agreement we were working on with the State as extending the production date. Certain material has already been produced. Also, due to Eli Lilly's emergence, whether the agreement to postpone the depositions will end up being signed by PsychRights is up in the air at this point.

I am skeptical of your assertion that Eli Lilly has standing to invoke Civil Rule 45(d)(1). I have never seen Case Management Order No. 3, *In re: Zyprexa Products Liability Litigation*, MDL No. 1596 (Protective Order). However, in an abundance of caution, I am temporarily acting as if Civil Rule 45(d)(1) has been properly invoked. You must, however, immediately provide me with compelling authority for your assertion that Civil Rule 45(d)(1) has been properly invoked. If convincing, I will consider that Civil Rule 45(d)(1) has been properly invoked and act accordingly. Otherwise, I assume you will take whatever steps you deem necessary to protect your client's interests.

Finally, you assert that the materials subject to the Protective Order contain trade secrets and other confidential research, development and commercial information. I haven't had a chance to review the material in any detail, but I haven't seen anything that I don't think is discoverable and it is hard for me to see how at least some of it is confidential in any way.

Sincerely,



James B. Gottstein

cc: via e-mail

David Egilman, MD, MPH
Elizabeth Russo, Esq.
James Parker, Esq.



THE
LANIER
LAW FIRM

FAX COVER SHEET

PLEASE DELIVER IMMEDIATELY!

DATE: December 15, 2006	NUMBER OF PAGES INCLUDING COVER PAGE: 13
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IF YOU ARE NOT RECEIVING A CLEAR COPY OF THIS DOCUMENT OR ARE NOT RECEIVING ALL MATERIALS TRANSMITTED, PLEASE CONTACT US AT (212) 421-2800.

TO:	James B. Gottstein, Esq. Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, Alaska 99501 Phone: 907-274-7686 Fax: 907-274-9493
------------	--

(HARD COPY OF THIS TRANSMISSION WILL ___ WILL NOT BE SENT BY REGULAR MAIL)

FROM:	Blair Robert Poole - Paralegal
MESSAGE:	Please see attached.

FILE NO.: 2074 - In re Zyprexa Products Liability Litigation

The information contained in this facsimile transmission is attorney privileged and confidential information intended only for the use of the individual or entity named herein. If you are not intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone and return the original message to us via U.S. mail at the address indicated on the letterhead above.



THE
LANIER
LAW FIRM

December 15, 2006

**VIA E-MAIL
AND REGULAR MAIL**

Andrew Rogoff, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103-2799

Re: **In re Zyprexa MDL (Subpoena to Dr. Egilman)**

Dear Andy:

This letter confirms my receipt of your letter this afternoon and, in addition to substantively addressing your letter, also serves to set forth the history concerning my knowledge and involvement with the underlying issues that you have addressed concerning the subpoena that was served by James Gottstein, Esq., upon Dr. David Egilman.

Please be advised that until December 13, 2006, no individual at The Lanier Law Firm, including me, had any knowledge that a subpoena had been served upon Dr. Egilman. Such knowledge was first acquired when PSC Member, James Shaughnessy, Esq., directed an e-mail to the PSC in which he notified the PSC that Dr. Egilman was served with a subpoena.

On December 13, 2006, you contacted my office to determine if Dr. Egilman was retained by The Lanier Law Firm. I acknowledged that he was and I advised you to immediately file a motion to quash the subpoena in both Alaska and Massachusetts. Thereafter, I communicated with Dr. Egilman that nothing should be done in accordance with the subpoena until this issue was addressed by Lilly before the Court.

After receiving your letter this afternoon, I again communicated with Dr. Egilman. During my conversation with Dr. Egilman I addressed your letter and asked him if and when he complied with the subpoena. Dr. Egilman informed me that he had already complied with the subpoena by transmitting documents to James B. Gottstein, Esq., prior to my conversation with him on December 13, 2006.

HOUSTON
The Lanier Law Firm, PC
6810 FM 1960 West 77069
Post Office Box 691448
Houston, Texas 77269-1448
713.659.5200 • Fax: 713.659.2204

LONGVIEW
The Lanier Law Firm, PC
131 East Tyler Street
Longview, Texas 75601
903.234.2300 • Fax: 903.234.2346

NEW YORK
The Lanier Law Firm, PLLC
Tower 56
126 East 56th Street, 6th Floor
New York, New York 10022
212.421.2800 • Fax: 212.421.2878

The following responses address *in seriatim* your numbered requests:

1. Attached hereto as Exhibit A to this letter is list of all bates numbered pages that have been transmitted by Dr. Egilman to Mr. Gottstein.

2. I have requested that Dr. Egilman provide my office with all confidential materials that have been provided to him by any individual involved in Zyprexa litigation.

3. I have instructed Dr. Egilman to not comment publicly on any such confidential materials.

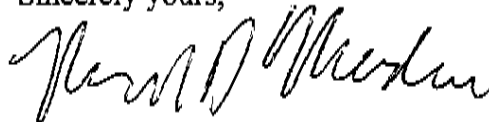
4. The only person to whom Dr. Egilman has provided confidential materials, if such materials are deemed confidential, is:

James B. Gottstein, Esq.
Law Office of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501-2164

Please further note that by providing a copy of this letter to Mr. Gottstein concerning Lilly's position that such materials were provided in violation of a court order, I am demanding the return of such materials to the PSC and I am further conveying Lilly's demand that no disclosure of such materials be made until such time as Lilly has had the opportunity to file its motion and be heard on this matter by Judge Weinstein of the Eastern District of New York.

Last, I am confirming that neither I, nor anyone else employed by my firm who is bound by the confidentiality requirements of this litigation, will comment publicly on any of the confidential materials. Obviously, I cannot make such representations for individuals who are beyond my control.

Sincerely yours,



Richard D. Meadow

cc: Andrew Rogoff, Esq. (via e-mail)--
W. Mark Lanier, Esq. (via e-mail)
James B. Gottstein, Esq. (via facsimile)

Pepper Hamilton LLP

Attorneys at Law

FAX INFORMATION SHEET

Date: December 15, 2006
 ID Number: 32288
 Identifier:

<u>Recipient's Name</u>	<u>Company</u>	<u>General Number</u>	<u>Fax Number</u>
James B. Gottstein, Esquire	Law Offices	907-274-7686	907-274-9493

Sender: Andrew R. Rogoff
 Sender's Direct Line: 215-981-4881
 Sender's Email Address: rogoffa@pepperlaw.com

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◆ ◆ CONFIDENTIALITY NOTE ◆ ◆

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Operator's Use Only

Start Time: : am [] pm [] End Time: : am [] pm []

Operator:

Pepper Hamilton LLP
Attorneys at Law

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

Andrew R. Rogoff
direct dial: 215-981-4881
direct fax: 215-689-4519
rogoffa@pepperlaw.com

December 15, 2006

VIA E-MAIL, FAX AND FEDERAL EXPRESS

James B. Gottstein, Esquire
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501-2164

Re: In re Zyprexa MDL

Dear Mr. Gottstein:

We represent Eli Lilly and Company. We have been told that you have provided copies of materials to the New York Times that were (i) produced by Eli Lilly and Company in connection with In re Zyprexa Product Liability Litigation, MDL No. 1596 (E.D.N.Y.), and (ii) stamped "Confidential - Subject to Protective Order" pursuant to case management orders issued in that litigation. If such materials were provided to you by anyone subject to the protective order entered by the federal court, the person providing these items acted in violation of that order. We intend to ask the court overseeing the multidistrict litigation to issue sanctions against anyone who has violated the order.

If you have any materials that are, or may be, subject to the MDL protective order, we demand that you:

1. Identify those materials and immediately return them to us.
2. Refrain from further publishing or publicizing those materials, including using them on any website run by you or others.
3. Request the return of these materials from anyone to whom they have been provided.

Philadelphia

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Harrisburg

Orange County

Princeton

Wilmington

Pepper Hamilton LLP
ATTORNEYS AT LAW

James B. Gottstein, Esquire
Page 2
December 15, 2006

4. Identify the persons to whom you provided any such materials.

If we learn that any individuals have violated the orders of the federal court, we intend to seek all appropriate sanctions, whether before that court or, if appropriate, from bar disciplinary authorities. We request your cooperation in this regard.

Sincerely yours,



Andrew R. Rogoff

ARR/jls

Pepper Hamilton LLP

Attorneys at Law

3000 Two Logan Square
 Eighteenth and Arch Streets
 Philadelphia, PA 19103-2799
 215.981.4000
 Fax 215.981.4750
 www.pepperlaw.com

FAX INFORMATION SHEET

Date: December 15, 2006
 ID Number:

<u>Recipient's Name</u>	<u>Company</u>	<u>General Number</u>	<u>Fax Number</u>
James B. Gottstein, Esquire		907-274-7686	907-274-9493

Sender: Sean P. Fahey
 Sender's Direct Line: 215-981-4296
 Sender's Email Address: faheys@pepperlaw.com

Total Pages Including Cover: 19

Comments:

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◆ ◆ If total pages are not received, or an error occurred during this transmission,
 please call the sender at the direct line listed above. ◆ ◆

◆ ◆ CONFIDENTIALITY NOTE ◆ ◆

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Operator:

Pepper Hamilton LLP
Attorneys at Law

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

Sean P. Fahey
direct dial: 215-981-4296
direct fax: 215-689-4642
faheys@pepperlaw.com

December 15, 2006

VIA E-MAIL, FAX AND FEDERAL EXPRESS

James B. Gottstein, Esquire
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501-2164

Re: In re Zyprexa MDL

Dear Mr. Gottstein:

As you know, my firm represents Eli Lilly and Company. I am in receipt of your December 15, 2006 letter, and by now you have received the message left with your office by Special Master Peter H. Woodin, the Special Discovery Matter appointed by Judge Weinstein to enforce (among other things) compliance with Case Management Order No. 3. For your convenience, a copy of CMO-3 is enclosed. As Special Master Woodin conveyed to you, in the clearest of terms, your possession of the documents produced by Eli Lilly and Company in connection with In re Zyprexa Product Liability Litigation, MDL No. 1596 (E.D.N.Y.) is in violation of CMO-3. As he instructed, you are to immediately return all such documents in your possession to him. His address is as follows:

Special Master Peter H. Woodin
JAMS
280 Park Avenue, 28th Floor
New York, New York 10017

Philadelphia

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Harrisburg

Orange County

Princeton

Wilmington

Pepper Hamilton LLP
Attorneys at Law

James B. Gottstein, Esquire
Page 2
December 15, 2006

If you do not confirm in writing that you will immediately return these documents, by the close of business today, I will be left with no choice but to file a complaint with the Alaska attorney discipline board, and seek sanctions against you in the Zyprexa MDL, for your willful violation of a Federal order.

Please contact me immediately with such written confirmation.

Sincerely yours,



Sean P. Fahey

SPF/jls
Enclosures

A. SIMON CHREIN
United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN, NY 11201
(718) 260-2600

August 5, 2004

Christopher A. Seeger, Esq.
Seeger Weiss LLP
One William Street
New York, NY 10004-2502

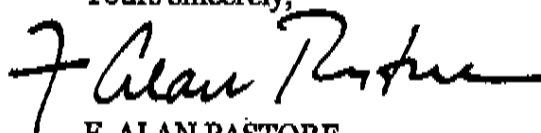
Re: *In re Zyprexa Products Liability Litigation*
04 MDL 1596 (JBW)

Dear Mr. Seeger:

Enclosed please find a copy of **Case Management Order No 3 (Protective Order)** in the above-entitled multidistrict litigation, cojointly "so ordered" by both Senior District Judge Jack B. Weinstein (on August 3, 2004) and Magistrate Judge A. Simon Chrein (on August 3, 2004).

N.B. that you are directed to serve a copy of it on all parties upon receipt.

Yours sincerely,



F. ALAN PASTORE

Secretary

Honorable A. Simon Chrein
United States Magistrate Judge
(718) 260-2502 • Private Line
(718) 260-2500 • Chambers
f_alan_pastore@nyed.uscourts.gov

Enclosure

DOCKET & FILE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION

MDL No. 1596

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MOVANT'S COUNSEL IS DIRECTED
TO SERVE A COPY OF THIS ORDER
ON ALL PARTIES UPON RECEIPT

CASE MANAGEMENT

FEDERAL ORDER NO. 3 (PROTECTIVE ORDER)

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled, the Court enters this Protective Order pursuant to Rule 26 of the Federal Rules of Civil Procedure.

1. Discovery Materials

This Order applies to all products of discovery and all information derived therefrom, including, but not limited to, all documents, objects or things, deposition testimony and interrogatory/request for admission responses, and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories, or subpoena ("discovery materials"). This Order is limited to the litigation or appeal of any action brought by or on behalf of plaintiffs, alleging personal injuries or other damages arising from plaintiffs' ingestion of olanzapine, commonly known as Zyprexa® ("Litigation") and includes any state court action where counsel for the plaintiff has agreed to be bound by this order.

2. Use of Discovery Materials

With the exception of documents or information that has become publicly available without a breach of the terms of this Order, all documents, information or other

discovery materials produced or discovered in this Litigation and that have been designated confidential shall be used by the receiving party solely for the prosecution or defense of this Litigation, to the extent reasonably necessary to accomplish the purpose for which disclosure is made, and not for any other purpose, including any other litigation or judicial proceedings, or any business, competitive, governmental, commercial, or administrative purpose or function.

3. **"Confidential Discovery Materials" Defined**

For the purposes of this Order, "Confidential Discovery Materials" shall mean any information that the producing party in good faith believes is properly protected under Federal Rule of Civil Procedure 26(c)(7).

The terms of this Order shall in no way affect the right of any person (a) to withhold information on alleged grounds of immunity from discovery such as, for example, attorney/client privilege, work product or privacy rights of such third parties as patients, physicians, clinical investigators, or reporters of claimed adverse reactions; or (b) to withhold information on alleged grounds that such information is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence. If information is redacted on the basis it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, the redacting party shall identify on a separate log that identifies the document subject to redaction and the reason for such redaction.

Where large volumes of discovery materials are provided to the requesting party's counsel for preliminary inspection and designation for production, and have not been reviewed for confidentiality purposes, the producing party reserves the right to so designate and redact appropriate discovery materials after they are designated by the requesting party for production. During the preliminary inspection process, and before production, all discovery materials reviewed by the requesting party's counsel shall be treated as Confidential Discovery material.

4. **Designation of Documents as "Confidential"**

a. For the purposes of this Order, the term "document" means all tangible items, whether written, recorded or graphic, whether produced or created by a party or

another person, whether produced pursuant to subpoena, to discovery request, by agreement, or otherwise.

b. Any document which the producing party intends to designate as Confidential shall be stamped (or otherwise have the legend recorded upon it in a way that brings the legend to the attention of a reasonable examiner) with a notation substantially similar to the following:

Zyprexa MDL 1596: Confidential-Subject to Protective Order

Such stamping or marking will take place prior to production by the producing person, or subsequent to selection by the receiving party for copying. The stamp shall be affixed in such a manner as not to obliterate or obscure any written material.

c. A party may preliminarily designate as "Confidential" all documents produced by a third party entity employed by the party for the purposes of document management, quality control, production, reproduction, storage, scanning, or other such purpose related to discovery, by notifying counsel for the other party that all documents being produced are to be accorded such protection. Once said documents are produced by such third party vendor, the designating party will then review the documents and, as appropriate, designate them as "Confidential" by stamping the document (or otherwise having the legend recorded upon it in a way that brings its attention to a reasonable examiner) as such.

5. Non-Disclosure of Confidential Discovery Materials

Except with the prior written consent of the party or other person originally producing Confidential Discovery Materials, or as hereinafter provided under this Order, no Confidential Discovery Materials, or any portion thereof, may be disclosed to any person, including any plaintiff, except as set forth in section 6(d) below.

6. Permissible Disclosures of Confidential Discovery Material

Notwithstanding paragraph 5, Confidential Discovery Materials may be disclosed to and used only by:

- a. counsel of record for the parties in this Litigation and to his/her partners, associates, secretaries, legal assistants, and employees to the extent considered reasonably necessary to render professional services in the Litigation ,
- b. inside counsel of the parties, to the extent reasonably necessary to render professional services in the Litigation;
- c. court officials involved in this Litigation (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);
- d. any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;
- e. where produced by a plaintiff, in addition to the persons described in subsections (a) and (b) of this section, a defendant's in-house paralegals and outside counsel, including any attorneys employed by or retained by defendant's outside counsel who are assisting in connection with this Litigation, and the paralegal, clerical, secretarial, and other staff employed or retained by such outside counsel or retained by the attorneys employed by or retained by defendant's outside counsel. To the extent a defendant does not have in-house counsel, it may designate two individuals employed by such defendant (in addition to outside counsel) to receive Confidential Discovery Materials produced by plaintiff;
- f. where produced by defendant Eli Lilly and Company, in addition to the persons described in subsections (a) and (b) of this section, plaintiff's attorneys in other filed litigation alleging injuries or damages resulting from the use of Zyprexa® including their paralegal, clerical, secretarial and other staff employed or retained by such counsel, provided that

such counsel have agreed to be governed by the terms of this Order and shall sign a copy of the order;

g. where produced by any defendant, outside counsel for any other defendant, including any attorneys employed by or retained by any other defendant's outside counsel who are assisting in connection with this Litigation, and the paralegal, clerical, secretarial, and other staff employed or retained by such outside counsel;

h. persons noticed for depositions or designated as trial witnesses, or those who counsel of record in good faith expect to testify at deposition or trial, to the extent reasonably necessary in preparing to testify;

i. outside consultants or outside experts retained for the purpose of assisting counsel in the Litigation;

j. employees of counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designating programs for handling data connected with this action, including the performance of such duties in relation to a computerized litigation support system;

k. employees of third-party contractors performing one or more of the functions set forth in (j) above;

l. any employee of a party or former employee of a party, but only to the extent considered necessary for the preparation and trial of this action; and

m. any other person, if consented to by the producing party.

Any individual to whom disclosure is to be made under subparagraphs (d) through (m) above, shall sign, prior to such disclosure, a copy of the Endorsement of Protective Order, attached as Exhibit A. Counsel providing access to Confidential Discovery Materials shall retain copies of the executed Endorsement(s) of Protective Order. Any party seeking a copy of an endorsement may make a demand setting forth the reasons therefor to which the opposing party will respond in writing. If the dispute cannot be resolved the demanding party may move the Court for an order compelling production upon a showing of good cause. For testifying experts,

a copy of the Endorsement of Protective Order executed by the testifying expert shall be furnished to counsel for the party who produced the Confidential Discovery Materials to which the expert has access, at the time the expert's designation is served, or at the time the Confidential Discovery Materials are provided to the testifying expert, whichever is later.

Before disclosing Confidential discovery materials to any person listed in subparagraphs (d) through (m) who is a Customer or Competitor (or an employee of either) of the party that so designated the discovery materials, but who is not an employee of a party, the party wishing to make such disclosure shall give at least three (3) business days advance notice in writing to the counsel who designated such discovery materials as Confidential, stating that such disclosure will be made, identifying by subject matter category the discovery material to be disclosed, and stating the purposes of such disclosure. If, within the three (3) business day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Court has denied such motion. As used in this paragraph, (a) the term "Customer" means any direct purchaser of products from Lilly, or any regular indirect purchaser of products from Lilly (such as a pharmacy generally purchasing through wholesale houses), and does not include physicians; and (b) the term "Competitor" means any manufacturer or seller of prescription medications.

The notice provision immediately above applies to consultants and/or independent contractors of Competitors to the extent the consultants or contractors derive a substantial portion of their income, or spend a substantial portion of their time working for a pharmaceutical company that manufactures prescription medical products in the neuroscience area.

7. Production of Confidential Materials by Non-Parties

Any non-party who is producing discovery materials in the Litigation may agree to and obtain the benefits of the terms and protections of this Order by designating as "Confidential" the discovery materials that the non-party is producing, as set forth in paragraph 4.

8. Inadvertent Disclosures

a. The parties agree that the inadvertent production of any discovery materials that would be protected from disclosure pursuant to the attorney-client privilege, the work product doctrine or any other relevant privilege or doctrine shall not constitute a waiver of the applicable privilege or doctrine. If any such discovery materials are inadvertently produced, the recipient of the discovery materials agrees that, upon request from the producing party, it will promptly return the discovery materials and all copies of the discovery materials in its possession, delete any versions of the discovery materials on any database it maintains and make no use of the information contained in the discovery materials; provided, however, that the party returning such discovery materials shall have the right to apply to the Court for an order that such discovery materials are not protected from disclosure by any privilege. The person returning such material may not, however, assert as a ground for such motion the fact or circumstances of the inadvertent production.

b. The parties further agree that in the event that the producing party or other person inadvertently fails to designate discovery materials as Confidential in this or any other litigation, it may make such a designation subsequently by notifying all persons and parties to whom such discovery materials were produced, in writing, as soon as practicable. After receipt of such notification, the persons to whom production has been made shall prospectively treat the designated discovery materials as Confidential, subject to their right to dispute such designation in accordance with paragraph 9.

9. Declassification

a. Nothing shall prevent disclosure beyond that limited by this Order if the producing party consents in writing to such disclosure.

b. If at any time a party (or aggrieved entity permitted by the Court to intervene for such purpose) wishes for any reason to dispute a designation of discovery materials as Confidential made hereunder, such person shall notify the designating party of such dispute in writing, specifying by exact Bates number(s) the discovery materials in dispute. The designating party shall respond in writing within 20 days of receiving this notification.

c. If the parties are unable to amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court for a ruling that discovery materials stamped as Confidential are entitled to such status and protection under Rule 26 of the Federal Rules of Civil Procedure and this Order, provided that such motion is made within forty five (45) days from the date the challenger of the confidential designation challenges the designation or such other time period as the parties may agree. The designating party shall have the burden of proof on such motion to establish the propriety of its Confidential designation.

d. If the time for filing a motion, as provided in paragraph 9.c, has expired without the filing of any such motion, or ten (10) business days (or such longer time as ordered by this Court) have elapsed after the appeal period for an order of this Court that the discovery material shall not be entitled to Confidential status, the Confidential Discovery Material shall lose its designation.

10. Confidential Discovery Materials in Depositions

a. Counsel for any party may show Confidential Discovery Materials to a deponent during deposition and examine the deponent about the materials so long as the deponent already knows the Confidential information contained therein or if the provisions of paragraph 6 are complied with. The party noticing a deposition shall obtain each witness' endorsement of the protective order in advance of the deposition and shall notify the designating party at least ten (10) days prior to the deposition if it has been unable to obtain that witness' endorsement. The designating party may then move the Court for an Order directing that the witness abide by the terms of the protective order, and no confidential document shall be shown to the deponent until the Court has ruled. Deponents shall not retain or copy portions of the

transcript of their depositions that contain Confidential information not provided by them or the entities they represent unless they sign the form described, and otherwise comply with the provisions in paragraph 6. A deponent who is not a party shall be furnished a copy of this Order before being examined about potentially Confidential Discovery Materials. While a deponent is being examined about any Confidential Discovery Materials or the Confidential information contained therein, persons to whom disclosure is not authorized under this Order shall be excluded from being present.

b. Parties (and deponents) may, within thirty (30) days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as Confidential. Until expiration of such thirty (30) day period, the entire transcript, including exhibits, will be treated as subject to Confidential protection under this Order. If no party or deponent timely designates a transcript as Confidential, then none of the transcript or its exhibits will be treated as confidential.

11. Confidential Discovery Materials Offered as Evidence at Trial

Confidential Discovery Materials and the information therein may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives notice to counsel for the party or other person that designated the discovery materials or information as Confidential in accordance with the Federal Rules of Evidence and any local rules, standing orders, or rulings in the Litigation governing identification and use of exhibits at trial. Any party may move the Court for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as Confidential and, if so, what protection, if any, may be afforded to such discovery materials or information at trial.

12. Filing

Confidential Discovery Materials shall not be filed with the Clerk except when required in connection with matters pending before the Court. If filed, they shall be filed in a sealed envelope, clearly marked:

"THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL PURSUANT TO THAT PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF THE COURT"

and shall remain sealed while in the office of the Clerk so long as they retain their status as Confidential Discovery Materials. Said Confidential Discovery Materials shall be kept under seal until further order of the Court; however, said Confidential Discovery Materials and other papers filed under seal shall be available to the Court, to counsel of record, and to all other persons entitled to receive the confidential information contained therein under the terms of this Order.

13. Client Consultation

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients in this Litigation and, in the course thereof, relying generally on examination of Confidential Discovery Materials; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 6.

14. Subpoena by other Courts or Agencies

If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the designating party in writing of all of the following: (1) the discovery materials that are requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the

litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. In no event shall confidential documents be produced prior to the receipt of written notice by the designating party and a reasonable opportunity to object. Furthermore, the person receiving the subpoena or other process shall cooperate with the producing party in any proceeding related thereto.

15. Non-termination

The provisions of this Order shall not terminate at the conclusion of this Litigation. Within ninety (90) days after final conclusion of all aspects of this Litigation, counsel shall, at their option, return or destroy Confidential Discovery Materials and all copies of same. If counsel elects to destroy Confidential Discovery Materials, they shall consult with counsel for the producing party on the manner of destruction and obtain such party's consent to the method and means of destruction. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the discovery materials not more than one hundred twenty (120) days after final termination of this Litigation. Outside counsel, however, shall not be required to return or destroy any pretrial or trial records as are regularly maintained by that counsel in the ordinary course of business; which records will continue to be maintained as confidential in conformity with this Order.

16. Modification Permitted

Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

17. Responsibility of Attorneys; Copies

The attorneys of record are responsible for employing reasonable measures to control and record, consistent with this Order, duplication of, access to, and distribution of Confidential Discovery Materials, including abstracts and summaries thereof.

No duplications of Confidential Discovery Materials shall be made except for providing working copies and for filing in Court under seal; provided, however, that copies may

be made only by those persons specified in sections (a), (b) and (c) of paragraph 6 above. Any copy provided to a person listed in paragraph 6 shall be returned to counsel of record upon completion of the purpose for which such copy was provided. In the event of a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order and new counsel shall sign this Order.

18. No Waiver of Rights or Implication of Discoverability

a. No disclosure pursuant to any provision of this Order shall waive any rights or privileges of any party granted by this Order.

b. This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation; nor shall this order imply that Confidential Discovery Materials are properly discoverable, relevant, or admissible in this or any other litigation. Each party reserves the right to object to any disclosure of information or production of any documents that the producing party designates as Confidential Discovery Materials on any other ground it may deem appropriate.

c. The entry of this Order shall be without prejudice to the rights of the parties, or any one of them, or of any non-party to assert or apply for additional or different protection. Nothing in this Order shall prevent any party from seeking an appropriate protective order to further govern the use of Confidential Discovery Materials at trial.

19. Improper Disclosure of Confidential Discovery Material

Disclosure of discovery materials designated Confidential other than in accordance with the terms of this Protective Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.



Hon. A. Simon Chreim
United States Magistrate Judge

Dated: August 3, 2004
Brooklyn, New York

SO ORDERED as appearing act of
Magistrate Judge and parties.
No objection being taken.
J.B.W.

Hon. Jack B. Weinstein
Senior District Judge

Dated: 8/3, 2004
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION

MDL No. 1596

-----x
THIS DOCUMENT RELATES TO:

ALL ACTIONS
-----x

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated Confidential are provided to me subject to the Protective Order ("Order") dated _____, 2004 (the "Protective Order"), in the above-captioned litigation ("Litigation"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential pursuant to the Order.

I further agree that I shall not disclose to others, except in accord with the Order, any Confidential Discovery Materials, in any form whatsoever, and that such Confidential Discovery Materials and the information contained therein may be used only for the purposes authorized by the Order.

I further agree to return all copies of any Confidential Discovery Materials I have received to counsel who provided them to me upon completion of the purpose for which they were provided and no later than the conclusion of this Litigation.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material will continue even after this Litigation concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Eastern District of New York, for the purposes of any proceedings relating to enforcement of the Order.

I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: _____

By: _____

Brewster H. Jamieson, ASBA No. 8411122
LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone: 907-277-9511
Facsimile: 907-276-2631
Email: jamiesonb@lanepowell.com
Attorneys for Intervenor

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

Eli Lilly and Company,

Proposed Intervenors,

In the Matter of the Guardianship of B.B.

Respondent.

Case No. 3AN-04-545 P/G

**ELI LILLY AND COMPANY'S MOTION TO
INTERVENE AND QUASH SUBPOENA
DUCES TECUM ISSUED BY RESPONDENT**

Intervenor, Eli Lilly and Company (hereinafter referred to as "Intervenor" or "Lilly"), by and through its undersigned counsel, hereby moves to intervene in this matter pursuant to Civil Rule 24(a). Additionally, Lilly hereby moves to quash the subpoena duces tecum served on David Egilman, MD issued by counsel for Respondent. In support of its motions, Lilly avers the following:

1. Lilly is a defendant in federal multidistrict litigation captioned In re Zyprexa Products Liability Litigation, MDL No. 1596 (E.D.N.Y.). Pursuant to Case Management Order No. 3 ("CMO-3") issued by the MDL (see Exhibit A), Lilly has produced voluminous materials that have been marked confidential.

2. Pursuant to CMO-3, David Egilman, MD, who agreed to be bound by the terms of said order, possesses certain confidential materials.

3. Dr. Egilman has been subpoenaed in this matter (see Exhibit B), and has been directed by counsel for Respondent to produce certain documents. In response – and in violation of CMO-3 – Dr. Egilman has produced confidential Lilly materials to counsel for Respondent.

4. Intervention as a matter of right is proper under Rule 24(a) for the following reasons: (1) the application to intervene is timely; (2) Lilly has an interest in the property at issue in this action; (3) the disposition of the current action will impair or impede Lilly's ability to protect its interests; and (4) Lilly's interests are not adequately represented or protected by the existing parties.

5. Lilly respectfully requests this Court to issue an order (a) requiring the return of such confidential materials to Lilly, (b) prohibiting the use of such materials in this matter, and (c) prohibiting Dr. Egilman from testifying about such confidential material.

6. Lilly requests permission to fully brief this matter.

WHEREFORE, Lilly, as Intervenor, respectfully moves the Court for leave to intervene in this action as a matter of right pursuant to Civil Rule 24(a), to quash the subpoena duces tecum served on Dr. Egilman by counsel for Respondent, and for such other relief as the Court deems just and proper.

DATED this 15th day of December, 2006.

LANE POWELL LLC
Attorneys for Intervenor

By: 

Brewster H. Jamieson, ASBA No. 8411122