

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

In the Matter of the Necessity	)	
for the Hospitalization of:	)	
	)	
WILLIAM BIGLEY,	)	Case No. S-13353
	)	
Respondent.	)	
_____	)	Case No. 3AN-08-1252 PR

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a correct copy of the **OPPOSITION OF EMERGENCY MOTION TO ENFORCE STAY And OPPOSITION TO NON-EMERGENCY MOTION FOR SANCTIONS** in this matter was faxed/hand-delivered to:

Public Defender Agency  
Fax No. 868-2588

Beth Russo, OPA  
Fax No. 269-3535

and faxed/mailed to:

Law Project for Psychiatric Rights, Inc.  
James B. Gottstein, Esq.  
406 G Street, Suite 206  
Anchorage, AK 99501  
Fax No. 274-9493  
[also hand-delivered on December 11, 2008]

Ron Adler  
Alaska Psychiatric Institute  
2900 Providence Drive  
Anchorage, AK 99508  
Fax No. 269-7128

Marieann Vassar  
3080A Leighton Street  
Anchorage, AK 99517  
Fax No. 338-0711

*Anna Osypow* 12/11/08  
Signature Date

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

1  
2 **IN THE SUPREME COURT FOR THE STATE OF ALASKA**

3 WILLIAM BIGLEY, )  
4 Appellant, )  
5 vs. ) Case No. S-13353  
6 ALASKA PSYCHIATRIC INSTITUTE, )  
7 Appellee. ) Civil Case No. 3AN 08-1252 PR

8 **OPPOSITION TO EMERGENCY MOTION FOR STAY OF ORDER**  
9 **AUTHORIZING FORCED PSYCHIATRIC DRUGGING<sup>1</sup>**

10 The Alaska Psychiatric Institute ("API"), through the Office of the  
11 Attorney General, opposes Appellant William S. Bigley's ("Mr. Bigley") Emergency  
12 Motion for Stay of Order Authorizing Forced Psychiatric Drugging.

13 Appellant fundamentally misunderstands the need for clarification of the  
14 November 25, 2008 order, as well as the effect of the clarification. An Emergency  
15 Motion to Stay the Clarification Order is at best misplaced, and at worst inappropriate.  
16 The December 3, 2008 order clarifying the November 25, 2008 order did not authorize  
17 API to continually medicate Appellant, it allows the hospital to medicate the Appellant  
18 in a crisis under AS 47.30.838. API respectfully requests that this motion be denied for  
19 the reasons set forth below.  
20  
21

22  
23 <sup>1</sup> The State's opposition to this stay is distinct from the other pending stay  
24 requested by Mr. Bigley, prohibiting the use of medications under AS 47.30.839(a)(2).  
25 The state does not object to a limited stay to decide the concerns under  
26 AS 47.30.839(a)(2). The state does however, object to this Court granting a stay  
prohibiting API from emergency medicating under AS 47.30.838, as it applies to the  
Clarification order granted by the Superior Court on December 3, 2008, granting the use  
of medications according to AS 47.30.838, in a crisis situation.

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



1  
2 On November 25, 2008 Superior Court Judge William Morse granted the  
3 Petition for Court Approval of Administration of Psychotropic Medication (filed  
4 October 27, 2008, with extensive testimony heard through November 19, 2008) and  
5 Petition for 90-day Commitment (filed November 17, 2008, with testimony heard on  
6 November 21, 2008) ("November order").<sup>2</sup>

7  
8 The November order granted API the ability to medicate Mr. Bigley under  
9 47.30.839(a)(2). This authorizes API to continually and regularly medicate Mr. Bigley  
10 while at API in order to treat his severe paranoid and delusional schizophrenia.

11 In the November order, Judge Morse issued the order granting a stay until  
12 December 15, 2008, "or until further order of this Court or the Alaska Supreme Court."<sup>3</sup>  
13 The November order concluded that due to the pending appeal it was necessary to stay  
14 the November order until after the Supreme Court oral argument so that the November  
15 order does not "effectively moot the Supreme Court's stay of the earlier (but different)  
16 order"<sup>4</sup> and perhaps the appeal.<sup>5</sup> He later modified the order to extend the stay until  
17

18  
19 <sup>2</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
20 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
21 *90-day Commitment, Case No. 3AN-08-1252 PR.*

22 <sup>3</sup> *Id.* page 34.

23 <sup>4</sup> *William S. Bigley v. Alaska Psychiatric Institute, Supreme Court No. S-13116,*  
24 *May 23, 2008. Trial Court No. 3AN-08-00493 PR.*

25 <sup>5</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
26 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
*90-day Commitment, Case No. 3AN-08-1252 PR, pg. 33.*

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

1  
2 December 17, 2008. API then filed a Motion for Expedited Consideration and a Motion  
3 for Clarification of Order "to clarify the order to allow for the administration of  
4 emergency medications under the guidelines of AS 47.30.838," on December 2, 2008.<sup>6</sup>

5 On December 3, 2008 Judge Morse granted the Expedited Consideration  
6 stating that "the court has ruled on this and the underlying substantive motion without  
7 further input from William Bigley and James Gottstein because the issues were fully  
8 addressed at the recent hearing and should have been more clearly articulated by the  
9 Court in its decision."<sup>7</sup> Judge Morse specifically ordered that "API may administer  
10 psychotropic medication on more than three occasions if there are future crisis situations  
11 as defined by [47.30] .838(a)(1) pursuant to [47.30]. 838(c) and [47.30].839(a)(1)."<sup>8</sup>  
12 Mr. Bigley then filed the present "Emergency Motion for Stay of Order Authorizing  
13 Forced Psychiatric Drugging on December 8, 2008."  
14  
15  
16

17 **II. LEGAL STANDARD FOR GRANTING STAY**

18  
19  
20 <sup>6</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley*, "Motion  
21 for Clarification of Order," Case No. 3AN-08-1252 PR, **attached at Exhibit 1.**

22 <sup>7</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley*, "Order  
23 Granting Expedited Consideration," Case No. 3AN-08-1252 PR, December 3, 2008,  
24 **attached at Exhibit 3.**

25 <sup>8</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley*, "Order  
26 Granting Motion for Clarification of Order," Case No. 3AN-08-1252 PR, December 3,  
2008, **attached at Exhibit 4.**

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

1  
2           **A. Appellant Does Not Establish The Necessity For Emergency Action**  
3           **Based On Irreparable Harm, As Medications are Not Per Se**  
4           **Irreparable Harm**

5           Because certain individuals perceive that the risks associated with  
6           psychotropic medication outweigh its benefits, Mr. Bigley contends that irreparable harm  
7           will result if he receives treatment at API. However, Mr. Bigley fails to address the fact  
8           that the Superior Court rejected these same arguments that psychotropic medications “do  
9           more harm than good” after considering *all* of the evidence, not just that of Mr. Bigley’s  
10          experts, who advocate Mr. Bigley’s position.<sup>9</sup>

11          The Superior Court determined that medication is in Mr. Bigley’s best  
12          interest, despite evidence of the potential side effects or perceived dangers of medication.<sup>10</sup>  
13          It recognized that no evidence was presented by Mr. Bigley of a viable alternative to

14          ///

15          ///

16          ///

17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

<sup>9</sup>          *In the Matter of the Necessity for the Hospitalization of William Bigley, Order, Petition for Court Approval of Administration of Psychotropic Medication, Petition for 90-day Commitment, Case No. 3AN-08-1252 PR.*

<sup>10</sup>         As noted in the November order at 21 – 23, Mr. Bigley has not articulated a reasonable objection to either medication in general or to the ordered medication.

1  
2 medication,<sup>11</sup> discussed evidence pertaining to Mr. Bigley's specific prior experience with  
3 medication,<sup>12</sup> and narrowly tailored its order to the specific medication to be provided<sup>13</sup>.

4           The stay granted by this Court in May and the pending stay necessitated that  
5 API clarify its ability to medicate only when emergency situations as prescribed in  
6 AS 47.30.838 exist. Clarification was needed in order to ensure that API has the ability to  
7 emergency medicate to protect the life, mental and physical safety of the patient and  
8 others.<sup>14</sup> The state strongly objects in this opposition to emergency medications under  
9 AS 47.30.838 being stayed. This Court granted a stay of only the medications petition  
10 granted on May 19, 2008 (May stay), and made no mention of whether emergency  
11 medications were prohibited in the order granting the stay.<sup>15</sup> As noted by Judge Morse,  
12  
13  
14  
15  
16

17 <sup>11</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
18 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
*90-day Commitment, Case No. 3AN-08-1252 PR, at 30.*

19 <sup>12</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
20 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
*90-day Commitment, Case No. 3AN-08-1252 PR, at 26.*

21 <sup>13</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
22 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
*90-day Commitment, Case No. 3AN-08-1252 PR, at 34.*

23 <sup>14</sup> AS 47.30.838.

24  
25 <sup>15</sup> *William S. Bigley v. Alaska Psychiatric Institute, Supreme Court No. S-13116,*  
*May 23, 2008. Trial Court No. 3AN-08-00493 PR.*

1  
2 Mr. Bigley has deteriorated significantly since May.<sup>16</sup> Since May 2008, Mr. Bigley has  
3 had multiple police contacts, been jailed over fourteen times, has received emergency  
4 medications in jail, has lost his apartment, has a distant relationship with his court-  
5 appointed guardian, has lost most of his community supports, and has been at API six  
6 times since August 2008.<sup>17</sup> Given this deterioration, clarification of the order was both  
7 necessary and proper so that API could comply with the various stays and protect  
8 Mr. Bigley during his current ninety-day commitment.  
9

10 The Superior Court has determined, consistent with the evidence, that the  
11 administration of medication to Mr. Bigley is within the standard of care for psychiatry, is  
12 appropriate for Mr. Bigley and that no less restrictive alternative treatment is available.  
13 The Superior Court recognized the high risk to Mr. Bigley associated with the "no  
14 treatment"<sup>17</sup> alternative and supported the authorization of medication, in part upon evidence  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

<sup>16</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order, Petition for Court Approval of Administration of Psychotropic Medication, Petition for 90-day Commitment, Case No. 3AN-08-1252 PR, at 32.*

<sup>17</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order, Petition for Court Approval of Administration of Psychotropic Medication, Petition for 90-day Commitment, Case No. 3AN-08-1252 PR, hearing of November 5-17, 2008, pgs. 1-3.*

1  
2 of Mr. Bigley's own history while on medication<sup>18, 19</sup>. However, in light of the May stay,  
3 the Superior Court briefly stayed its November order to ensure the pending appeal is not  
4 rendered moot. This stay is not and should not be applicable to the clarification regarding  
5 emergency medication to allow API to care for Mr. Bigley while protecting him and others  
6 and complying with the law.

7  
8 **B. API will Not be Adequately Protected Without the Ability to  
Emergency Medicate Under AS 47.30.838.**

9 Prohibiting API from administering emergency medications under  
10 AS 47.30.838, would deny API the ability to protect the safety and welfare of its patients  
11 without having to resort to unacceptable alternatives such as four-point, physical  
12 restraint.<sup>20</sup> It would essentially force Mr. Bigley into a situation where he must remain in  
13 API due to an inability to function outside of the facility, but in API<sup>21</sup>, he cannot be treated  
14 by any method other than forced restraints should he become a danger to himself or others.  
15 Because of this, the Superior Court's finding that the no-treatment alternative was not  
16

17  
18 <sup>18</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
19 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
20 *90-day Commitment, Case No. 3AN-08-1252 PR, at 28.*

21 <sup>19</sup> At many times in Mr. Bigley's history, he voluntarily took medication and was  
22 better able to function in society while voluntarily taking medication. *See* November  
23 order at 22 – 23.

24 <sup>20</sup> See Exhibit 2, page 8.

25 <sup>21</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley, Order,*  
26 *Petition for Court Approval of Administration of Psychotropic Medication, Petition for*  
*90-day Commitment, Case No. 3AN-08-1252 PR, pg. 33.*

1  
2 viable or in Mr. Bigley's best interest should be given considerable weight when  
3 contemplating a stay that would include emergency medications. Extending a stay to  
4 include emergency medications pending appeal would put API in the untenable position of  
5 having committed Mr. Bigley without the ability to protect Mr. Bigley if he presents an  
6 immediate harm to himself or others.

7  
8 API has a significant interest in ensuring that undue litigation does not  
9 prevent proper care and treatment for its patients. If Mr. Bigley's motions to this Court  
10 were granted, such a result would occur: a trial court could repeatedly find under the  
11 relevant law that medication is in Mr. Bigley's best interests, and requests for multiple  
12 stays would prevent such medication from ever being administered. Mr. Bigley would  
13 be forced to stay in the hospital because he cannot function outside of a structured  
14 environment due to his deterioration, with no hope of any level of recovery. Otherwise,  
15 API would have to discharge Mr. Bigley in order to avoid violating the law if  
16 emergency medications are necessary. This essentially leaves Mr. Bigley in a vacuum  
17 where – despite a finding that medication is appropriate and necessary – no such  
18 medication can be given in order to stabilize Mr. Bigley. As the Superior Court noted,  
19 “the endless cycle of arrest, emergency medication while incarcerated, evaluation at  
20 API and discharge to homelessness and further degradation must be ended.”<sup>22</sup> Should a  
21 stay be granted as to emergency medications, this cycle would continue.  
22  
23

24  
25 <sup>22</sup> *Id.* at 31.  
26

1  
2 A finding that a stay is appropriate in this instance would result in  
3 substantial harm to API's interest in providing the medical treatment that the Superior  
4 Court has found to be appropriate, and may leave API with no options in a crisis.

5 **C. There is No Clear Showing of Probable Success on the Merits.**

6 API has the mission of providing acute care to the mentally ill. A stay  
7 pending appeal in the context of court-ordered administration of medication has the  
8 practical effect of preventing API from administering treatment and fulfilling its  
9 mission. That aside, prohibiting emergency medication would make it impossible for  
10 API to protect Mr. Bigley in a crisis regardless of harm to self or others. Significantly,  
11 harm is not limited to physically hurting himself or others through violence, but also  
12 includes harms such as putting people at risk of infection due to unhygienic behaviors.<sup>23</sup>  
13 Harm also includes not sleeping for days on end, or preventing the effective psychiatric  
14 treatments of other patients, or disturbing the sleep or rest of other patients.<sup>24</sup> Also,  
15 other patients at API have the right to be free from harm and abuse, including verbal  
16 abuse, by peers. All patients at API have the right to appropriate medical treatment and  
17 therapies, and should be allowed the opportunity to be treated at API without the risk of  
18 living with a peer who is verbally and physically threatening because he remains  
19 untreated, while API has no alternatives.  
20  
21  
22

23  
24 <sup>23</sup> See exhibit 2.

25 <sup>24</sup> *Id.*  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

API is not a long-term home for the mentally ill. One of the purposes of civil commitment is that the commitment has, "a reasonable expectation of improving [the patient's] mental condition." AS 47.30.655(6). API practices an evidence-based medical approach to treating psychiatric illness. Housing someone at API is not treatment. The stay requested by Mr. Bigley forces API into the untenable position of housing him during commitment without providing necessary treatment. Extending the stay to include a prohibition against emergency medication elevates the position of API to unconscionable.

Because these significant interests are not adequately protected, Mr. Bigley must make a clear showing of probable success on the merits<sup>25</sup>. Mr. Bigley makes no such showing, but instead insists that the Superior Court was erroneous because it did not accept Mr. Bigley's position that drugs do more harm than good. If API is prevented from taking action when a crisis arises under the criteria of AS 47.30.838, the statutory scheme for involuntary commitment and treatment will be impeded. Mr. Bigley has failed to show how this significant interest is protected.

///  
///  
///

---

<sup>25</sup> *Powell v. Anchorage*, 536 P.2d 1228 (Alaska 1975) at 1272 (quoting *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970), modified in other respects, 483 P.2d 198 (Alaska 1971)).

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

1  
2 **III. ARGUMENT**

3 **A. API Appropriately Filed its Motion for Clarification of Order to the**  
4 **Superior Court-- the Only Court with Subject Matter Jurisdiction to**  
5 **Decide Underlying Matters of the Civil Case Giving Rise to this**  
6 **Appeal.**

7 The Motion for Clarification requested that that the Superior Court clarify  
8 the order to allow for the administration of emergency medication under the guidelines  
9 of AS 47.30.838. API was not seeking a grant from AS 47.30.839(a)(1) to continually  
10 use court-ordered medications for treatment, as Appellant alleges. Rather, API  
11 requested the Motion for Clarification to ensure Appellant's rights, safety and best  
12 interests are protected, despite the legal complexities of this case.

13 Alaska Rules of Appellate Procedure Rule 203 does not divest the  
14 Superior court of jurisdiction to address any and all matters underlying the order of the  
15 civil case.<sup>26</sup> Rather, Rule 203, when correctly applied, "indicates that the trial court  
16 retains ongoing jurisdiction to decide matters that arise in the underlying litigation—  
17 even matters affecting the appeal."<sup>27</sup> The appellate court is empowered to "modify or  
18 vacate" orders made by the trial court, but is not required to do so.<sup>28</sup> According to this  
19  
20  
21  
22

23 <sup>26</sup> *Hertz v. Carothers*, 174 P. 3d. 243, 248 (2008).

24 <sup>27</sup> *Jackson v. State*, 926 P. 2d. 1180, 1184 (1996).

25 <sup>28</sup> *Id.*  
26

1  
2 Court, the language of Rule 203 "necessarily implies that the trial court retains the  
3 authority to issue orders. . . in relation to the . . . appeal."<sup>29</sup>

4 In the present case, the Order Granting Motion for Clarification of Order  
5 is clearly an order clarifying an underlying matter. Judge Morse stated in his Order  
6 Granting Expedited Consideration that the Superior Court "ruled on this and the  
7 underlying substantive motion . . . because the issues were fully addressed . . . and  
8 should have been more clearly articulated by the Court[.]"<sup>30</sup>

9  
10 This Court is now "empowered" by Rule 203 to modify or vacate that  
11 order, but the Superior Court appropriately retained jurisdiction of the case to clarifying  
12 its own order, as was necessary to protect both Mr. Bigley and API.<sup>31</sup>

13 **B. Clarification Order is Not a Dramatic Change to the November**  
14 **Order.**

15 Mr. Bigley incorrectly asserts that Judge Morse's Clarification Order  
16 authorized API to administer medications to Mr. Bigley under AS 47.30.839 (a)(1),  
17 granting API the authority to medicate Mr. Bigley at any time, without further court  
18 order. This is not what the Clarification Order authorized. API sought court-ordered  
19 administration of medications based on Mr. Bigley's inability to give informed consent,  
20 and API's wish to use psychotropic medication in a non-crisis situation.

21  
22 <sup>29</sup> *Id.*

23 <sup>30</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley*, "Order  
24 Granting Expedited Consideration," Case No. 3AN 08-1252PR, December 3, 2008.

25 <sup>31</sup> *Jackson v. State*, 926 P. 2d. 1180, 1184 (1996).

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

1  
2 Mr. Bigley fundamentally misunderstands the law in asserting that the  
3 clarification order granted continued administration of psychotropic medications, under  
4 .839(a)(1)<sup>32</sup>. The Clarification Order does allow API to medicate Mr. Bigley when he  
5 poses an immediate risk of harm to himself or others: API may, if medically  
6 appropriate and if all of the criteria under .838 are met, emergency medicate Mr. Bigley  
7 in order to protect Mr. Bigley or others. AS 47.30.838 and 47.30.839 are fundamentally  
8 different.  
9

10 In contrast to AS 47.30.839(a)(2), the purpose of AS 47.30.839(a)(1) is to  
11 allow API to seek a court order for emergency medications in crisis situations for a  
12 patient who can either benefit from treatment modalities other than medication or is  
13 voluntarily taking psychotropic medications, yet continues to need crisis intervention. It  
14 is not to continually medicate patients who are incapable of informed consent and  
15 require therapeutic medication, yet refuse medications. If a patient is capable of  
16 informed consent, yet presents an immediate harm to others or to himself, he may still  
17 be emergency medicated, despite his refusal, if the conditions under AS 47.30.838(a)  
18 exist. AS 47.30.838(a) does not authorize API to medicate as a doctor wishes to  
19 prescribe for treatment, but only if there is a crisis situation that requires immediate use  
20  
21  
22  
23  
24

25 <sup>32</sup> AS 47.30.839(a)(1) is referred to as "Forced Drugging Under the Police Power"  
26 by Mr. Bigley.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

of medications to preserve the life of, or prevent significant physical harm to, the patient or another person[.]<sup>33</sup>

API sought court-ordered administration of medications for Mr. Bigley in order continually treat him with medications to improve his mental condition. However, as the stay is pending, they are left with no alternatives but to resort to protecting Mr. Bigley as prescribed in AS 47.30.838.

**C. Clarification Order Grants API the Ability to Protect without Violating the Law.**

If this court were to decide to extend a stay to include the prohibition of emergency medications, it would ratify the current harmful cycle Mr. Bigley finds himself living: severely mentally ill, cycling from jail to API and to homelessness. API does not wish to contribute to this cycle, or find a way around .838(c) by discharging Mr. Bigley, to have him readmitted after jail, which then creates a new admission, whereby API may emergency medicate if necessary up to three times before seeking a court-order to emergency medicate.<sup>34</sup> That is the purpose of .839(a)(1). If a person can benefit from other treatment modalities, or is taking medications at API willingly, but may continue to need emergency medications due to safety concerns, API seeks court-ordered medications. This is not the case with Mr. Bigley. API cannot treat Mr. Bigley without medications, and he cannot survive outside of the hospital at this time.

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

<sup>33</sup> AS 47.30.838(a).

<sup>34</sup> AS 47.30.838(a)-(c).

1  
2           Significantly, this Court's May 23, 2008, order granting a stay of the  
3 May 19, 2008, order was only granting a stay of the May order based on AS 47.30.839,  
4 and did not prohibit the use of emergency medications for Mr. Bigley.<sup>35</sup> As such, it is  
5 apparent through testimony of Mr. Bigley's guardian and the Alaska DOC, that  
6 Mr. Bigley has been emergency medicated for his own protection, in several of his  
7 multiple arrests.<sup>36</sup>

8  
9           API requested and received the order to continue to medicate Mr. Bigley  
10 under AS 47.30.839(a)(2), which Judge Morse explained was all that was required of  
11 the state in the October 27, 2008 status conference. While API and Mr. Bigley are  
12 awaiting the outcome of the two stays filed by Mr. Bigley to this court, API needs the  
13 ability to medicate Mr. Bigley in a crisis situation. It is only because of the legal  
14 complexities of this case that API is in the position where it must seek approval to  
15 medicate under AS 47.30.838, if there is a crisis while this case moves through the  
16 courts and Mr. Bigley is at API.

17  
18           Because the purpose of the AS 47.30.838 statute is to legally allow the  
19 administration of psychotropic medications when there is a present crisis situation, and  
20 it is necessary to preserve life and protect safety, it is difficult to believe that this Court

21  
22 \_\_\_\_\_  
23 <sup>35</sup> *William S. Bigley, v. Alaska Psychiatric Institute*, Supreme Court Case No. S-13116, Order, page 3, May 23, 2008.

24 <sup>36</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley*, Petition  
25 for Grant of Court-Order Medications, Case No. 3AN-08-1252 PR, hearing of  
26 November 5-19, 2008.

1  
2 intended Mr. Bigley to remain at API, untreated, for an indefinite amount of time, with  
3 no hope of regaining his baseline without medications, and then to further the harm to  
4 Mr. Bigley by prohibiting API from emergency medicating regardless of the  
5 consequences to patients' health or safety.

6 **D. Granting the Stay of Emergency Medications would put Mr. Bigley in**  
7 **Danger, Forcing API to Ignore its Obligations under Alaska Mental**  
8 **Health Policy.<sup>37</sup>**

9 Preventing the administration of emergency medications to Mr. Bigley is  
10 contrary to the mission of API to provide acute care to the mentally ill, and puts API at risk  
11 for being unable to protect the physical and mental well-being of their patients. It would  
12 also be contrary to the Superior Court's conclusions in its November order, namely that  
13 Mr. Bigley's "...deterioration over the past year is troubling and will likely continue if he  
14 is not medicated."<sup>38</sup> As noted in the order, if Mr. Bigley "...were released from API  
15 without having first been stabilized with psychotropic medication, he would not be able  
16 to care for himself." Mr. Bigley has not yet achieved a level of stability that would  
17 allow for release from API, and has exhibited a variety of psychotic behaviors.<sup>39</sup> Given  
18 Mr. Bigley's current commitment to API, and this Court's own conclusion that without  
19 stabilization, he would be unable to care for himself outside of API, API is left with  
20  
21

22 <sup>37</sup> AS 47.30.001 *et seq.*, "Mental Health."

23 <sup>38</sup> *In the Matter of the Necessity for the Hospitalization of William Bigley*, Order,  
24 Petition for Court Approval of Administration of Psychotropic Medication, Petition for  
25 90-day Commitment, Case No. 3AN-08-1252 PR, pg. 29.

26 <sup>39</sup> Affidavit of Dr. Khari, *see Exhibit 2, page 6.*

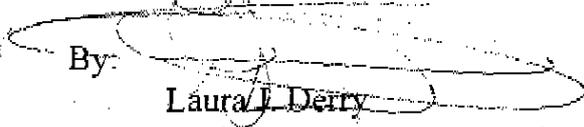
1  
2 unconscionable choices (1) leaving Mr. Bigley untreated despite all evidence showing  
3 his life was dramatically different prior to "refusing" medications; (2) releasing  
4 Mr. Bigley due to the inability to medically treat him as per the normal standard of care;  
5 (3) rendering API unable to protect Mr. Bigley should a crisis arise; or (4) using highly  
6 dangerous mechanical restraints, regardless of further harm to Mr. Bigley's well-being.  
7  
8 Surely these alternatives are not in Mr. Bigley's best interests. API must be allowed to  
9 medicate Mr. Bigley should a crisis arise in order to best protect its patients.

#### 10 IV. CONCLUSION

11 Mr. Bigley's Emergency Motion for Stay of Order Authorizing Forced  
12 Psychiatric Drugging should be denied to ensure API the ability to protect the health,  
13 safety and welfare of its patients should a crisis situation arise while Mr. Bigley's  
14 various cases are awaiting resolution.

15 DATED: 12/11/2008

16  
17 TALIS J. COLBERG  
ATTORNEY GENERAL

18  
19 By: 

Laura J. Derry  
Assistant Attorney General  
Alaska Bar No. NA14011

20  
21  
22  
23  
24  
25  
26  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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

In the Matter of the Necessity )  
for the Hospitalization of: )  
 )  
WILLIAM BIGLEY, )  
 )  
Respondent. )

Case No. 3AN-08-1252 PR

MOTION FOR EXPEDITED CONSIDERATION

The Alaska Psychiatric Institute ("API"), through the Office of the Attorney General, moves for an order, pursuant to Civil Rule 77(g), granting expedited consideration of its Motion for Clarification of Order filed this date. An order granting the administration of medication ("the order") was issued by this Court on November 25, 2008, and simultaneously stayed. Given Mr. Bigley's continued instability during his commitment at the facility, API requests clarification of the order so that emergency medication may be administered to Mr. Bigley should his behaviors become such that he is a danger to himself or others. A decision is needed on the principal motion by December 5, 2008. This motion for expedited consideration is supported by the attached affidavit.

DATED: 12/3/08

TALIS J. COLBERG  
ATTORNEY GENERAL

By: *Erin A. Pohland*  
Erin A. Pohland  
Assistant Attorney General  
Alaska Bar No. NA14009

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

Exhibit 1  
Page 1 of 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

In the Matter of the Necessity )  
for the Hospitalization of: )  
WILLIAM BIGLEY, )  
Respondent. )

Case No. 3AN-08-1252 PR

AFFIDAVIT

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

Erin Pohland, being first duly sworn upon oath, deposes and says:

1. I am the assistant attorney general assigned to the above-captioned matter.
2. A decision is needed on API's Motion for Clarification of Order by December 5, 2008.
3. Expedited consideration is necessary because Respondent William S. Bigley ("Mr. Bigley") may present behaviors as a result of his mental illness that require emergency medication to prevent significant harm to himself or others. Given that API has already administered emergency medication on three occasions under AS 47.30.838, and the court-ordered medication order under AS 47.30.839 has been stayed, such clarification is necessary in order to ensure the safety of Mr. Bigley and other persons at API should he exhibit violent behaviors. Mr. Bigley is not currently stable enough to be released from API.

///  
///  
///

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

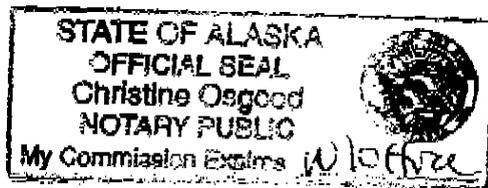
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

4. I contacted Jim Gottstein, attorney for Mr. Bigley, via electronic mail on December 3, 2008, in an effort to resolve these issues. This attempt was unsuccessful.

Further your affiant saith naught.

Erin A. Pelland

SUBSCRIBED AND SWORN to before me this 3<sup>RD</sup> day of December, 2008.



Christine Osgood

Notary Public in and for Alaska

My commission expires: 11/07/11

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

Exhibit 2  
Page 2 of 10

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

In the Matter of the Necessity )  
for the Hospitalization of: )  
 )  
WILLIAM BIGLEY, )  
 )  
Respondent. )

Case No. 3AN-08-1252 PR

MOTION FOR CLARIFICATION OF ORDER

The State of Alaska, Alaska Psychiatric Institute ("API"), by and through the Office of the Attorney General, hereby moves for clarification of this Court's order of November 25, 2008 ("the order"), granting the administration of court-ordered medication and 90-day commitment for Respondent William S. Bigley ("Mr. Bigley"). Specifically, given the conclusions reached in the order regarding Mr. Bigley's mental health status, Mr. Bigley's continued instability and commitment at API, and the stay in place for this order, API respectfully requests that this Court clarify the order to allow for the administration of emergency medication under the guidelines of AS 47.30.838.

In his continued commitment at API, Mr. Bigley has not yet stabilized. As noted in the attached affidavits from his treating physician, Dr. Kahnaz Khari, and the Interim Medical Director of API, Dr. Jenny Love, Mr. Bigley exhibits at times self-harming behaviors or violent tendencies.<sup>1</sup> When Mr. Bigley exhibits such behaviors, the medical staff at API may evaluate him and determine that the administration of emergency medication is medically appropriate to prevent significant physical harm to Mr. Bigley or to others. Generally, emergency medication is the standard of care in emergency psychiatric situations.<sup>2</sup> Thus far in Mr. Bigley's most-recent commitment,

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

<sup>1</sup> See Affidavit of Dr. Kahnaz Khari ("Khari Affidavit"), attached at Exhibit 1, and Affidavit of Dr. Jenny Love ("Love Affidavit"), attached at Exhibit 2.

<sup>2</sup> See Love Affidavit.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

recent commitment, emergency medication has been administered three times.<sup>3</sup> Under AS 47.30.838(c), API's staff may administer emergency medication no more than three times without court approval under AS 47.30.839. API filed for and was granted approval for the administration of medication by order of this Court on November 25, 2008. Due to the stay also issued in the order, however, API may not administer this medication to him until December 17, 2008. As a result of the stay and the statutory limits on emergency medication, API is unable to administer either the medication ordered by this Court or further dosages of emergency medication should Mr. Bigley become a danger to himself or others.

As noted in the order, if Mr. Bigley "...were released from API without having first been stabilized with psychotropic medication, he would not be able to care for himself." Mr. Bigley has not yet achieved a level of stability that would allow for release from API, and has exhibited a variety of psychotic behaviors.<sup>4</sup> Given Mr. Bigley's current commitment to API, and this Court's own conclusion that without stabilization, he would be unable to care for himself outside of API, API requests clarification of the order to allow for the administration of emergency medication if a crisis period should arise. Such a clarification would allow API to keep Mr. Bigley within the safety of the facility, and would further ensure the safety of Mr. Bigley and others within the hospital. Without such a clarification, API may be left with no choice but to release Mr. Bigley from the hospital, as it cannot continue to house a patient who presents a danger to himself or to others with no appropriate method of treating that patient. At this point, releasing Mr. Bigley would be detrimental to the patient and in opposition to the opinions expressed in the order. As such, API requests that this Court

///  
///  
///

<sup>3</sup> See Khari Affidavit.  
<sup>4</sup> See Khari Affidavit.

Exhibit 2  
Page 4 of 10

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

clarify the order so as to allow the continued administration of emergency medication as necessary and appropriate under AS 47.30.838.

DATED: 12/3/08

TALIS J. COLBERG  
ATTORNEY GENERAL

By: *Erin A. Pohland*  
Erin A. Pohland  
Assistant Attorney General  
Alaska Bar No. NA14009

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

Exhibit 2  
Page 5 of 10



on October 22, 27, and November 24, 2008. These medications were administered pursuant to AS 47.30.838.

Further your affiant saith naught.

*D. Khari, K. MO*

SUBSCRIBED AND SWORN to before me on this 3<sup>rd</sup> day of  
December, 2008.



*Leilua T. Fadely*

Notary Public in and for Alaska  
My commission expires with office

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

In the Matter of the Necessity	)	
for the Hospitalization of:	)	
	)	
WILLIAM BIGLEY,	)	
	)	
Respondent.	)	
		Case No. 3AN-08-1252 PR

**AFFIDAVIT**

STATE OF ALASKA	)	
	)	ss.
THIRD JUDICIAL DISTRICT	)	

Dr. Jenny Love, being first duly sworn upon oath, deposes and says:

1. I am the Interim Medical Director of Alaska Psychiatric Institute ("API").
2. William Bigley ("Mr. Bigley") at times demonstrates self-harming behaviors that have a high potential for acute and/or permanent damage.
3. These behaviors have included punching the walls with a closed fist multiple times until the hand is deformed from edema (swelling) and possibly resulting in fracture of the hand/finger/forearm bones, and banging his head on the wall to the extent that he becomes dysphoric and possibly causing an acute concussive injury to the brain, multiple episodes of which could contribute to persistent brain damage.
4. Placing Mr. Bigley within a "quiet room" or seclusion does not stop the self-harming behaviors.
5. There are two ultimate avenues to discontinue this behavior: 4 or 5 point restraints or emergency psychotropic medication.
6. Although the 4/5 point physical restraints may allow Mr. Bigley to "calm down" enough to relieve the crisis event, it is well known to have the inherent

risks of further self-injury due to an acute agitated patient straining against the restraints. These injuries (from physical restraints) include, but are not limited to: dislocation of the extremities, fracture of the long bones (humerus, forearm, hands, fingers, foreleg, rarely femur), muscle tissue breakdown possibly resulting in acute kidney failure, hyperthermia possibly resulting in acute neurological damage and rarely death.

7. Emergency psychotropic medication allows the patient to "calm down" enough to relieve the crisis event without the requirement of physical restraints. These are self-limiting injections (as the medication undergoes metabolism and clearance from the body, the effects are decreased/extinguished) and are a rapid means of stabilization and considered standard of care in emergency psychiatric situations

Further your affiant saith naught.



SUBSCRIBED AND SWORN to before me on this 3<sup>rd</sup> day of  
December, 2008.



Rose M. Scogin  
Notary Public in and for Alaska  
My commission expires with office

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

In the Matter of the Necessity )  
for the Hospitalization of: )  
 )  
WILLIAM BIGLEY, )  
 )  
Respondent. )  
 ) Case No. 3AN-08-1252 PR

CERTIFICATE OF SERVICE

I hereby certify that on this day, correct copies of the **MOTION FOR EXPEDITED CONSIDERATION, AFFIDAVIT, ORDER GRANTING EXPEDITED CONSIDERATION, MOTION FOR CLARIFICATION OF ORDER, AFFIDAVIT** of Dr. Kahnaz Khari, **AFFIDAVIT** of Dr. Jenny Love, and the **ORDER GRANTING MOTION FOR CLARIFICATION OF ORDER** in this proceeding were faxed/hand-delivered to:

Public Defender Agency  
Fax No. 868-2588

and faxed/mailed to:

Law Project for Psychiatric Rights, Inc.  
James B. Gottstein, Esq.  
406 G Street, Suite 206  
Anchorage, AK 99501  
Fax No. 274-9493

Ron Adler  
Alaska Psychiatric Institute  
2900 Providence Drive  
Anchorage, AK 99508  
Fax No. 269-7128

Marieann Vassar  
3080A Leighton Street  
Anchorage, AK 99517  
Fax No. 338-0711

Page 2 of 10

Ima Osgood 12/3/08

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

In the Matter of the Necessity )  
for the Hospitalization of: )  
WILLIAM BIGLEY, )  
Respondent. )

DEC 11 2008

Case No. 3AN-08-1252 PR

ORDER GRANTING EXPEDITED CONSIDERATION

The Court, having received petitioner's Motion for Expedited Consideration, ~~any opposition~~, and being fully advised in the premises,

IT IS HEREBY ORDERED that petitioner's Motion for Expedited Consideration is GRANTED and the Court shall render a decision on petitioner's Motion for Clarification of Order on or before December 5, 2008.

DATED: 3 December 2008

SUPERIOR COURT JUDGE

*William F. Morse*

Recommended for approval:

*As the Court has ruled on this and the underlying substantive motion without further input from William Bigley and James Polstein because the issues were fully addressed at the recent hearing and should have been more clearly articulated by the Court in its decision. W. Morse*

Probate Master

Dated: \_\_\_\_\_

I certify that on 4 Dec - 2008 a copy of the above was ~~sent~~ mailed to each of the following at their address of record

*[Signatures]*  
Act - Portland PD - Becker R. Allen  
M. Vassar G. [unclear] [unclear]

Exhibit 3  
Page 1 of 1

Exhibit B

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100  
DEC 03 2008

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

In the Matter of the Necessity )  
for the Hospitalization of: )  
WILLIAM BIGLEY, )  
Respondent. )  
Case No. 3AN-08-1252 PR

ORDER GRANTING MOTION FOR CLARIFICATION OF ORDER

The Court, having considered petitioner's Motion for Clarification of Order, respondent's opposition, and being fully advised in the premises,

IT IS HEREBY ORDERED that petitioner's Motion for Clarification of Order is GRANTED as follows:

1. This Court's order of November 25, 2008, is amended to include the following: API may administer emergency medication to Mr. Bigley as necessary and medically appropriate under AS 47.30.838(a)(1) - (a)(2)(C) and AS 47.30.838(b).

DATED: 3 December 2008

SUPERIOR COURT JUDGE  
*William R. Moran*

Recommended for approval:

*API may administer psychotropic medication on more than three occasions if there are future crisis ~~probable~~ situations as defined by § 838(a)(1) pursuant to § 838(c) and § 839(c)(1). W Moran*

Probate Master

Dated: \_\_\_\_\_

I certify that on 4 Dec 2008 a copy of the above was electronically handed to each of the following at their address of record

*[Signatures]*  
Alec-Pomund AD-Beecher R. Miller  
m.vassar gootstein API

Exhibit 4  
Page 1 of 1

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

DEC 03 2008