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

In the Matter of)
A Request for Information)
_____)

Case No. 3AN-16-00695DN

COMMENTS ON ORDER:

Dr. Peter Gøtzsche hereby submits his comments on this Court's November 4, 2019, order (Order), regarding his information request (Information Request).

Dr. Gøtzsche finds the proposal to have serious methodological and practical problems, but is in favor of giving it a try in order to finally get the study going. However, he has learned the Public Defender Agency will again be opposing the Information Request so he is respectfully suggesting this Court revisit requiring future respondents to affirmatively consent going forward.

A. Problems With the Proposal

Dr. Gøtzsche has identified the following problems with the Court's proposal.

First, asking respondents before the involuntary medication hearing whether they consent to be included in the study seems very problematic because it is likely to be a very stressful time for them and it doesn't seem right to distract them from solely focusing on defending against the petition.

Second, if respondents are asked for their consent after the hearing, it is likely to skew the results even further¹ because people against whom involuntary medication has been ordered are more likely to consent, especially those who feel it was not a fair process.

Third, administration of the proposal is likely to be difficult. Someone will have to be tasked with making sure the requests for consent are made, keep track of the results, and make sure copies are made and transmitted to counsel for Dr. Gøtzsche. The most logical person to be tasked with this in Dr. Gøtzsche's view is the person handling mental health proceedings in the Probate Clerk's office.² However, if the Court cannot order the Clerk's Office to redact copies, how can it order the Clerk's office to administer this program or even judges to participate?

As will be discussed below, it is respectfully suggested the Supreme Court has all but held in this case that this Court has the authority to have court personnel redact the copies, but the point here is someone will need to be in charge of making sure the consents are requested, keeping track, informing counsel of the results, and making sure copies are transmitted to counsel for Dr. Gøtzsche. This is far more difficult, even though perhaps less work, than simply redacting the files and transcripts of thirty consecutive cases where petitions for involuntary medication have been filed.

¹ The results will already be skewed because the random selection will have been destroyed by the Court's proposal.

² In light of the antipathy of both the Public Defender Agency and API, it doesn't seem viable for either of them to be put in charge of administering the program.

B. This Court Has Authority to Direct Court Personnel to Perform Redactions

The Order states this Court does not see that it has the authority to order the court system to perform the redactions. However, this question has already been answered to the contrary by the Alaska Supreme Court, in its October 16, 2017, remand in this case:

The Original Application is granted in part. The superior court is ordered to rule on the request for information. In doing so, a clear record of the court's analysis and the parties' arguments should be made. The court may order additional responses from the parties, if needed. In the event the request is granted, the court should apply Administrative Rule 9(e)(1) and (5) to determine the costs to be imposed for court time incurred researching, redacting, and copying. We do not retain jurisdiction.

(emphasis added).

It is respectfully suggested the Supreme Court's remand all but held that court personnel should do the redacting.

In light of the practical and methodological problems created by this Court's proposal, as outlined above, and in anticipation of the Public Defender Agency's expected opposition, it is respectfully suggested this Court revisit its proposal and simply order the case files and transcripts of the last thirty Petitions for Court Approval of Administration of Psychotropic Medication, under AS 47.30.839 be redacted by court personnel and transmitted to counsel for Dr. Gøtzsche, with the costs charged to Dr. Gøtzsche under Administrative Rules 9(e)(1) and (5).

There is no risk to respondents' privacy interests utilizing this approach.

In spite of the many problems inherent in this Court's proposal, in the interest of getting this done after over three years of delay, Dr. Gøtzsche is willing to try this Court's

proposed approach to see if it works, but in light of the Public Defender Agency's expected opposition, it just seems best to go back to Plan A and have court personnel perform or arrange for the redactions with Dr. Gøtzsche to pay the costs.

C. Recommended Process

In the event this Court decides to move forward with its proposal, Dr. Gøtzsche respectfully suggests the Magistrate, Probate Master, or Judge conducting each involuntary medication hearing ask the respondent at the beginning of the hearing if the respondent consents to be included in the study. Ideally, it would be the respondent's lawyer who should ask their client, but in light of the Public Defender Agency's antagonism towards the study that does not appear to be a viable approach.

Dr. Gøtzsche further respectfully suggests that on a weekly basis the person in the Probate Clerk's office who handles mental health cases:

1. Record and compile the respondents' responses in each involuntary medication case;
2. Forward a report to the parties regarding how many involuntary medication petitions were filed and hearings held that week, as well as how many consents were obtained; and
3. With respect to each case in which consent was obtained, forward copies of the case file and audio recordings of the hearings to counsel for Dr. Gøtzsche.

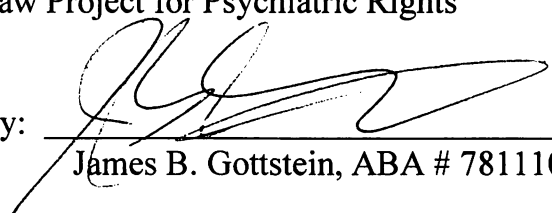
D. Conclusion

More than three years after Dr. Gøtzsche submitted his Information Request he believes it is time to move forward and get this done. In light of this Court's concern about respondents' privacy interests being compromised if counsel for Dr. Gøtzsche were to perform the redactions, Dr. Gøtzsche's preferred approach is to have court personnel perform the redactions and the costs charged to Dr. Gøtzsche under Administrative Rules 9(e)(1) and (5). If this Court instead decides to move forward under its proposal, Dr. Gøtzsche respectfully suggests the Magistrates/Probate Masters/Judges handling these cases be tasked with asking the respondents if they consent to being in the study and the person in the Probate Clerk's Office handling these cases be tasked with making sure the Magistrates, Probate Masters, and Judges, as applicable, ask the respondents for their consent and for those cases in which respondents have consented, forward copies of their case files and hearing recordings to counsel for Dr. Gøtzsche.

DATED November 8, 2019.

Law Project for Psychiatric Rights

By: _____


James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies the foregoing was mailed to Linda Beecher and Steven Bookman this date.

November 8, 2019


Jim Gottstein

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