

PsychRights®

Law Project for
Psychiatric Rights, Inc.

September 18, 2007

Shanetta Y. Cutlar, Chief
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW, PHB
Washington, D.C. 20530

Re: Alaska Psychiatric Institute's Apparent Pattern or Practice of Violations of
CRIPA, 42 U.S.C. § 1997 *et seq.*

Dear Ms. Cutlar:

This letter is to advise you of what appears to be a pattern or practice of violations of residents' federal constitutional rights under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.* (CRIPA) at the Alaska Psychiatric Institute (API)¹ and to request an investigation thereunder.

More particularly, it appears that residents' federal constitutional right to decline or refuse psychiatric medications is being routinely, if not pervasively, violated. The United States Supreme Court has consistently held patients have a fundamental right under the Due Process Clause of the United States Constitution to decline or refuse psychiatric medication(s).² In *Mills v. Rogers*, the Court explained that patients' federal due process rights may depend in part on state law:

Because state-created liberty interests are entitled to the protection of the federal Due Process Clause, the full scope of a patient's due process rights may depend in part on the substantive liberty interests created by state as well as federal law.³

Last year, in *Myers v. Alaska Psychiatric Institute*,⁴ the Alaska Supreme Court held Alaska's due process clause requires the court to find that forced psychiatric drugging is in the best interests of the patient and there is no less intrusive alternative available before any such forced drugging could occur under the *parens patriae* doctrine. The court distinguished this from police power justification, which is statutorily authorized under AS 47.30.838:

¹ 2800 Providence Drive Anchorage, Alaska, 99508-4677, tel: (907) 269-7100, fax: (907) 269-7251, Ron Adler, CEO and Duane Hopson, MD, Medical Director.

² See, *Mills v. Rogers*, 457 US 291, 102 S.Ct. 2442 (1982); *Sell v. United States*, 539 U.S. 166, 123 S.Ct. 2174 (2003); *Riggins v. Nevada*, 504 U.S. 127, 112 S.Ct. 1810, (1992); *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028(1990).

³ 457 US at 300, 102 S. Ct. 2449, citations omitted

⁴ 138 P.3d 238 (Alaska 2006).

[T]he state's power of civil commitment sufficed to meet its police-power interest, so we fail to see how the issue of medication implicates the state's police power at all.⁵

AS 47.30.838(a)(1), cited in *Myers*, allows such forcible drugging under the police power justification only if:

(1) there is a crisis situation, or an impending crisis situation, that requires immediate use of the medication to *preserve the life of, or prevent significant physical harm to, the patient or another person*, as determined by a licensed physician or a registered nurse; the behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's response to the behavior or condition *must be documented in the patient's medical record*; the documentation *must include an explanation of alternative responses to the crisis that were considered or attempted by the staff and why those responses were not sufficient*;

(emphasis added).

In connection with my recent representation of a resident at API in an involuntary administration of psychotropic medication proceeding under AS 47.30.839 (Forced Drugging), it has become apparent that API:

- (1) fails to train its psychiatrists and other personnel properly with respect to residents' right to decline psychotropic medication, or
- (2) tolerates or encourages blatant violations of residents' rights thereto, or
- (3) both,

resulting in a pattern or practice of violations of CRIPA.

In this particular situation, my client, a resident at API, was repeatedly forcibly drugged upon one or more of API's psychiatrists' order(s) between the close of a court hearing on August 31, 2007, until early in the morning of September 10, 2007, without a court order authorizing it under AS 47.30.839, or with respect to AS 47.30.838, either (1) the justification required in AS 47.30.838 being present in fact, or (2) any of the required documentation being placed in my client's medical records. With respect to the police power justification, as indicated, *Myers* held once in the hospital, this provision is not implicated, in any event.

A review of the medical records for my client strongly suggests forced psychiatric drugging without proper authorization in contravention of patients' federal constitutional rights is a pattern or practice at API.⁶

⁵ 138 P.3d at 248-9.

⁶ Also, in December of 2006, Ron Adler, the CEO of API, indicated there had been a dramatic drop in Forced Drugging petitions under AS 47.30.839. Since, there appears to be little if any drop in the percentage of patients being administered psychotropic drugs, it is hard to see how this drop could have

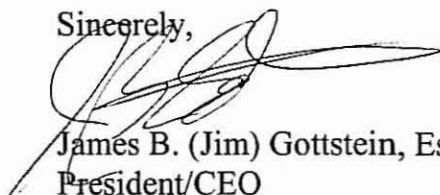
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In light of this, I am requesting the Special Litigation Section investigate what is transpiring at API and take whatever action might be appropriate under CRIPA.

I, of course, will be pleased to answer any questions and provide whatever other assistance I can.

Thank you for your attention to this matter.

Sincerely,



James B. (Jim) Gottstein, Esq.
President/CEO

cc: Governor Sarah Palin

Talis J. Colberg, Attorney General of the State of Alaska

Elizabeth Russo, Assistant Alaska Attorney General

Karleen Jackson, Commissioner, Alaska Dep't of Health & Social Services

Melissa Witzler Stone, Director, Alaska Division of Behavioral Health

Ron Adler, CEO, Alaska Psychiatric Institute