

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 08-1252PR

COPY
Original Received
Probate Division

OCT 28 2008

Clerk of the Trial Courts

ADDENDUM TO
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Respondent is submitting this addendum to his Memorandum in Support of Motion to Dismiss (Memorandum), which this Court has indicated will be considered extant with respect to the AS 47.30.839 petition filed October 27, 2008 (Forced Drugging Petition).

In §IV of his Memorandum, Respondent makes the point that API's offering medications to Respondent constitutes an admission that Respondent is competent to both accept or decline the offered medication under AS 47.30.839. The additional point Respondent makes here is that it is also an admission that Respondent had "previously expressed wishes" to decline the medication while competent under AS 47.30.839(g), which requires the Court to dismiss or deny the Forced Drugging Petition with prejudice.

AS 47.30.839(f) & (g) provide in pertinent part:

(f) If the court determines that the patient is competent to provide informed consent, the court shall order the facility to honor the patient's decision about the use of psychotropic medication.

(g) If the court determines that the patient is not competent to provide informed consent and, by clear and convincing evidence, was not competent to provide informed consent at the time of previously expressed wishes documented under (d)(2) of this section, the court shall approve the facility's proposed use of psychotropic medication.

It is first noted that the "shall approve" provision of AS 47.30.839(g) was precisely what was ruled unconstitutional in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006). However, the "shall honor the patient's decision," under AS 47.30.839(f) is still in effect. Respondents believes that if the patient was competent at the time of previously expressed wishes to decline the medication, AS 47.30.839 requires that the Court "shall order the facility to honor the patient's wishes."¹ Otherwise, the statutory language doesn't make sense.

The testimony of Dr. Maile at the October 20, 2008, hearing that Respondent was offered the medication and declined is necessarily an admission that he was competent at that time and documents that he previously expressed his wishes not to take the medication. Thus, the Forced Drugging Petition should be dismissed or denied with prejudice.

DATED: October 28, 2008.

Law Project for Psychiatric Rights

By: 

James B. Gottstein
ABA # 7811100

¹ This precise issue was left open in *Myers*, 138 P.3d at 253-254.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, true and correct copies of:

- (1) Addendum to Memorandum in Support of Motion to Dismiss; and
- (2) this Certificate of Service

were hand delivered to:

Elizabeth Brennan
Public Defender's Office
900 W. 5th Avenue, Suite 200
Anchorage, Alaska 99501

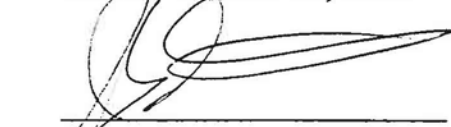
Laura Derry
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faxed to:

Marieann Vassar (338-0711)
3080 A Leighton Street
Anchorage, Alaska 99517

and a copy hand delivered to Judge Morse's chambers.

Dated: October 28, 2008



James B. Gottstein