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To: James Parker <james\_parker@admin.state.ak.us>

From: Jim Gottstein <jim@psychrights.org>

Subject: [akmhcweb] OPA's Illegal Forced Drugging of It's Wards

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Dear Mr. Parker:

I am writing to you in your capacity as Supervisor of the Office of Public Advocacy's (OPA) Public Guardian Section. If you are not the right person, please pass this along and advise me who is.

As I find out more about the changes to API's forced drugging procedures, I get increasingly troubled by what appears to be OPA's participation. This situation has great potential for escalating litigation, but I would like to avoid that if possible.

My assumption with Ron saying that last year "Of the 1,452 admissions we had last fiscal year, API utilized the Court Ordered Medication process on 57 occasions" is that API anticipated losing *Myers* and switched to the alternate method of having OPA appointed guardian and then OPA essentially "rubber stamping" API's desire to forcibly drug its inmates\* well before the *Myers* decision came out.

As I suspect you know, the issue of guardians being appointed as an alternative method to AS 47.30.839 was one of the subjects of the supplemental briefing in *Myers*. More specifically, the Supreme Court requested briefing on the following question:

Under current Alaska law, is a *de novo* judicial determination of best interests generally required before nonemergency medical treatment may be administered to a person who lacks capacity to give informed consent and has no other alternative form of consent available?

Thus, both of PsychRights' briefs and API's brief discuss the applicability of guardianships as a possible alternative approach to AS 47.30.839. PsychRights' opening brief in fact invites the Alaska Supreme Court to rule that the guardianship statute be used instead of AS 47.30.839. We did this more than a little reluctantly because we know how where this is done around the country, the public guardians are basically in the pocket of the hospital. See, <http://psychrights.org/States/Massachusetts/RogersOrders/RogersOrdersMemo.pdf> for how the Supreme Judicial Court of Massachusetts' *Rogers* decision designed to protect people from unwarranted forced psychiatric drugging has been turned on its head by the public guardians there into a Rogers Orders assembly line. I also know the same sort of thing is happening in California.

In spite of these problems with using the guardianship process, we felt that was the answer to the Supreme Court's question and felt obligated to suggest it. If the guardianship statutes were only utilized properly, it really wouldn't be a problem and in fact the length of time it takes to obtain a guardianship except in emergency situations was a major complaint of API about using it.

The Alaska Supreme Court rejected the approach of using guardianships, holding instead:

[T]he 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. . . . [W]e 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. (emphasis added).

At this point I have to assume API/.OPA is using the emergency provisions of the guardianship statutes, but the Supreme Court, at 138 P. 3d at 248, specifically held that when someone is involuntarily committed, no emergency exists that would justify avoiding the requirement of the independent judicial determination.

I do not yet know exactly what is happening, but it seems highly likely API is using emergency guardianships and your agency to subvert the Supreme Court's *Myers* Decision.

As you may know, PsychRights' mission is to mount a strategic litigation campaign around the country against forced psychiatric drugging and forced electroshock. Since Alaska had not been using the guardianship subterfuge, we had planned on attacking it in Massachusetts, which has reciprocity with Alaska. In fact, I have had an application to be admitted to the Massachusetts bar on my desk for quite awhile now in order to do so. While still planning on doing that, it will be much easier for me to do it here.

However, I always try to negotiate rather than litigate and I am therefore requesting that you instruct your guardians to cease consenting to

psychiatric drugging and to withdraw all current consents. I know this presents an issue with respect to abrupt cessation of the drugs and the withdrawal effects, but it does not change the fundamental legal fact that your guardians are, after *Myers*, without authority to grant such consent. In my view, a psychiatrist who knows what he or she is doing should be made available to your wards to help them taper or get off the drugs as they desire. Grace E. Jackson, MD., is a psychiatrist who certainly is able to do that, but I don't know if she would be available. I would also certainly be willing to help you find someone else. I am also very much available to help set up a program to make it go smoothly.

Instead of illegally force drugging your wards, OPA should be insisting that less intrusive alternatives be made available to them. Such alternatives are very well proven. See, <http://psychrights.org/Research/Digest/Effective/effective.htm> This lack of alternatives is the real problem. When all the system has is a hammer, everything looks like a nail. Well, hammering people's brains is not a good thing. Can we work together on this?

\*The American Heritage Dictionary, 4th Ed., defines inmate as "A resident of a dwelling that houses a number of occupants, especially a person confined to an institution, such as a prison or hospital." (emphasis added)

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### **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.

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