

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

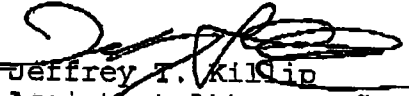
In the Matter of the)
Hospitalization of:)
FAITH J. MYERS,)
Respondent.) Case No. 3AN 03-00277 PR

MOTION FOR EXPEDITED CONSIDERATION

The Department of Health and Social Services, through the Attorney General's Office, moves for an order, pursuant to Civil Rule 77(g), granting expedited consideration of its Motion to Vacate Stay on Medication Orders. A decision is needed by Monday, April 28, 2003 given Ms. Myers' condition, which continues to decompensate. This motion for expedited consideration is supported by the attached affidavits of counsel and Drs. Hanowell and Kletti (original of Dr. Kletti's affidavit filed with the Alaska Supreme Court previously, copy filed here).

DATED: 4.28.03

GREGG D. RENKES
ATTORNEY GENERAL

By: 
Jeffrey T. Killip
Assistant Attorney General
Alaska Bar No. 9204005

ORDER

IT IS SO ORDERED.
DATED: _____

SUPERIOR COURT JUDGE

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1001 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 98501
PHONE: (907) 268-5100

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

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Hospitalization of:)
)
FAITH J. MYERS,)
)
Respondent.)

Case No. 3AN 03-00277 PR

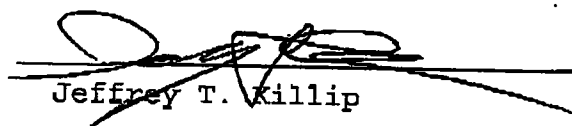
AFFIDAVIT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Jeffrey T. Killip, being first duly sworn upon oath,
deposes and says:

1. I am the Assistant Attorney General assigned to this case.
2. Everything stated in these pleadings is true to the best of counsel's knowledge and belief.
3. Counsel just left a voice-mail message for Jim Gottstein and Martin Engle informing them of these motions, as they were each apparently unavailable to take the call.

Further affiant saith naught.


Jeffrey T. Killip

SUBSCRIBED AND SWORN to before me this ___ day of
April 2003.

Notary Public in and for Alaska
My commission expires: _____

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

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

FRANK MURKOWSKI, GOVERNOR

ALASKA PSYCHIATRIC INSTITUTE
2800 PROVIDENCE DRIVE
ANCHORAGE, ALASKA 99508-4677
PHONE: (907) 269-7100
FAX: (907) 269-7128

AFFIDAVIT

Re: MYERS, Faith
API #: 01-51-62

At the request of Assistant Attorney General J. Killip, I am providing this affidavit in regards to Ms. Faith Myers, my patient on the Susitna Unit at the Alaska Psychiatric Institute. Since Ms. Myers attended her commitment hearing (Alaska Superior Court, Judge M. Christen) on 4/16/03, her psychiatric condition has deteriorated substantially. Ms. Myers continues to exhibit profound psychosis, including extreme agitation, as well as paranoid, grandiose and bizarre delusional beliefs, such as believing that she has psychic powers and believing that staff members are "devils." She has also been quite violent over the past twenty-four (24) hours. Early this morning, she assaulted a member of the nursing staff and continued to threaten to assault staff. Her level of agitation and aggression was such that the situation necessitated she be placed in the locked seclusion room. When the on-duty psychiatrist attempted to assess her in the seclusion room, she continued to state that she would assault staff, and she made reference to staff being "devils." She subsequently and repeatedly called the on-duty psychiatrist "penis-head."

We continue to be unable to provide the necessary medical treatment Ms. Myers requires, due to a Stay on the Order authorizing us to provide antipsychotic medication on an involuntary basis. We are currently unable to provide such medication except in emergency situations. Such intermittent use of antipsychotic medication is insufficient to treat her psychotic disorder.

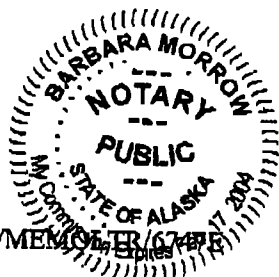
We feel that the need for the use antipsychotic medication is critical and immediate. It is unlikely that Ms. Myers can be discharged from API in the foreseeable future, unless antipsychotic medication is implemented immediately. Immediate implementation of such medication is certainly in her best interest, and further delays are clearly not in her best interest.


Thank you for your attention to this matter.

DATED this 24th day of April, 2003, at Anchorage, Alaska.


Robert G. Hanowell, M.D.

SUBSCRIBED AND SWORN before me this 24th day of April, 2003.




Notary Public in and for Alaska
My Commission expires: 2-17-2004

RGH/ojb/MEMORANDUM 6/7/03

IN THE SUPREME COURT OF THE STATE OF ALASKA

FAITH J. MYERS,
Appellant,

vs.

ALASKA PSYCHIATRIC INSTITUTE,
Appellee,

Supreme Court No. S-11021

Trial Court Case No. JAN 03-00277 PR

AFFIDAVIT OF NICHOLAS B. KLETTI, M.D.

I, Nicholas B. Kletti, M.D., hereby swear and affirm that:

I am the Medical Director of Alaska Psychiatric Institute, and have been so since August 2000. I graduated from medical school at the University of Chicago's Pritzker School of Medicine in 1986, and graduated from Massachusetts General Hospital's Psychiatry Residency Training Program in 1990. I passed my written and oral American Board of Psychiatry and Neurology exams in 1991 on my first try after becoming eligible to sit for those exams, and I remain Board Certified in psychiatry at the present time. I was on the faculty of Harvard Medical School from 1987 until my moving from Boston, Massachusetts in 1996. I am currently on the faculty at the University of Washington School of Medicine, and am the clerkship coordinator for the teaching of University of Washington medical students here at API.

I am very familiar with Ms. Faith Myers, having been her psychiatrist during previous hospitalizations here, and having supervised her care during her current hospitalization. I have reviewed her record extensively, I have interviewed her, and I have extensively discussed her case with her current direct care providers.

Ms. Myers was hospitalized most recently at Alaska Psychiatric Institute on February 21, 2003, on an involuntary basis, initiated by her family, who were increasingly concerned about Ms. Myers' psychotic thinking and behaviors in the context of her stopping prescribed antipsychotic medications.

The family has been on record as wanting Ms. Myers to return to taking antipsychotic medications, and that they feel Ms. Myers was in the best mental health they had seen her following her February 2001 discharge from Alaska Psychiatric Institute, when she was regularly taking the prescribed antipsychotic medication, Zyprexa (also known as olanzapine).

Ms. Myers' direct care providers here at API, her outpatient providers in the community, and myself as supervisor of all clinical services at Alaska Psychiatric Institute, all strongly feel that

Myers v. Alaska Psychiatric Institute
Klenti affidavit

01/04/2003

p.2

Ms. Myers should take prescribed antipsychotic medication. API has continued to petition for Forced Medication Order, as Ms. Myers continues to refuse treatment with medications. A Forced Medication Order was entered by Judge Christen, but this Order has been stayed pending appeals by Ms. Myers' lawyer, Mr. James Gottstein.

The use of antipsychotic medications is the prevailing and overwhelming current standard-of-care for the treatment of schizophrenia. This is supported in every standard textbook in the field of psychiatry. The fact that use of antipsychotic medications for schizophrenia is the current standard-of-care in psychiatry was not contested by the defense.

Mr. Gottstein produced two psychiatrists who gave telephonic testimony in Mr. Myers' commitment and forced medication hearing: Drs. Grace Jackson and Leonard Mosher. Both of these witnesses expressed their belief that antipsychotic medications are dangerous and should not be prescribed.

Both Drs. Jackson and Mosher acknowledged that their viewpoints are not the standard-of-care in modern psychiatry and that they are in the minority in the scientific psychiatric community.

Neither Dr. Jackson nor Dr. Mosher has examined Ms. Myers nor have they discussed any element of her case with her current direct care providers.

Neither of these witnesses expressed any modifying or qualifying statements about their strongly-held opinions, despite not having examined Ms. Myers or knowing her case in detail, and despite their views being in the vast minority amongst psychiatrists. A standard-of-care in medical practice is to understand that there are no absolutes in the clinical care of one individual, and to properly balance competing viewpoints, especially when there is controversy. Drs. Jackson and Mosher did not do this.

Medical ethics demand that physicians follow the standards-of-care within their professional field. If these standards-of-care are not followed, then there must be important extenuating circumstances unique to the individual patient as to why these standards were not followed, lest a treating physician be subject to malpractice torts. No physician who has examined Ms. Myers or has reviewed her case in detail feels that there are these extenuating individual circumstances which would weigh against Ms. Myers being treated using psychiatric standard-of-care practice, including antipsychotic medication.

The contrast between Ms. Myers current hospitalization, having been admitted February 21, 2003, and her next-most recent API hospitalization, from December 27, 2000 to February 8, 2001, is an important one, and is described below.

In Ms. Myers' December 27, 2000 to February 8, 2001 API hospitalization, treatment with medications began in early January only after a Forced Medication Order was granted. Ms. Myers was successfully discharged to the community one month later, in the best state of mental health she has ever been in, as reported by her family.

Myers v. Alaska Psychiatric Institute
Kletti affidavit

01/04/2003

p.3

Ms. Myers continued to be stable and functioning in the community in 2001 and 2002 until stopping her prescribed medications sometime in late 2002, subsequently suffering progressive psychotic deterioration, directly leading to this current API hospitalization. As described in earlier testimony, Ms. Myers' worsening psychosis then led to: impending eviction; threatening notes written to neighbors; a confrontation with airport police; and other problems associated with her mental illness.

Ms. Myers was successfully treated in a four week span of time in 2001 using antipsychotic medications. She went from a homeless, psychotic person to the best mental health her family states they had seen her in that span, and was able to remain functional in the community for almost 18 months before stopping her medications and suffering from a worsening of psychosis again.

An individual's history of treatment often predicts their future response to treatment. It is reasonable to assume clinically that had Ms. Myers been treated with antipsychotic medication from the beginning of her most recent admission here on February 21, 2003, that she would likely already be discharged and functioning in the community again.

Everything stated in this affidavit is true to the best of my knowledge and belief.

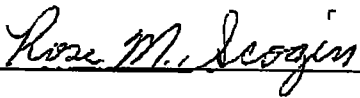
Further affiant saith naught.



Nicholas B. Kletti, M.D.

SUBSCRIBED AND SWORN to before me this 1st day of April, 2003





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)
Hospitalization of:)
FAITH J. MYERS,)
Respondent.) Case No. 3AN 03-00277 PR

MOTION TO VACATE STAY ON MEDICATION ORDERS

The Alaska Psychiatric Institute (API or "the hospital"), through the Alaska Attorney General's Office, moves to lift the court's stay of the orders granting the medication petition for both the 30 and 90-Day commitment periods based on Ms. Myers' continued decompensation that includes an assault on a staff worker two days ago, her immediate need for medication to improve her condition, and the substantial likelihood that she will not improve without medication making her continued hospitalization - although completely avoidable through the careful administration of the medication previously authorized - an unfortunate and continuing reality.

The motion is supported by the affidavits of Drs. Hanowell and Kletti dated April 24, 2003 and April 1, 2003, respectively. In further support of its motion, the Hospital states as follows:

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1001 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 98501
PHONE: (907) 289-5100

1
2 **FACTUAL BACKGROUND & IMMEDIATE NEED FOR MEDICATIONS**

3 Ms. Myers was admitted to API on February 21, 2003,
4 in connection with involuntary commitment proceedings initiated
5 by her family given her decompensation from her 20-year battle
6 with paranoid schizophrenia. Although she has benefited
7 substantially in the past from the psychotropic medications to
8 manage her illness, the hospital has been unable to carefully
9 administer these medications due to the legal challenges
10 mounted to date by her counsel. Consequently, Ms. Myers
11 remains at the hospital with no release opportunity within
12 sight. She has continued to decompensate as evidenced by a
13 recent assault on a hospital staff member two days ago,¹ and
14 three separate episodes of escalated behavior that each
15 required emergency medication. Without the ability to
16 administer psychotropic medication as previously authorized by
17 this court and consistent with the hospital's treatment plan,
18 the hospital's ability to effectively treat her condition in
19 order to gain her release is substantially compromised.
20

21 In the hospital's view, the continued hospitalization
22 of Ms. Myers without being able to improve her condition
23 through the careful administration of psychotropic medication
24 is more than unfortunate. Had the hospital been able to
25 administer these medications early on in her admission, in all
26

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

MOTION FOR HEARING ON ADN
ITMO: F.M.
JK/MJ/API/MYERS.MOTION FOR HEARING

CASE NO. 03-00277 PR
PAGE 2 OF 2

1
2 likelihood her condition would have improved sufficiently so
3 that she would already have been released. Instead and as a
4 result of the delay in being able to administer the medication,
5 Ms. Myers' condition continues to deteriorate and the degree of
6 her suffering is magnified and will be prolonged indefinitely.
7 In the hospital's view, the situation has reached a crisis
8 level, as Ms. Myers needs the benefit of the medication
9 immediately. Because the appeal can take months to resolve,
10 continuation of the stay under these circumstances is clearly
11 not in Ms. Myers' best interests.

12 PROCEEDURAL BACKGROUND

13 On March 14, 2003, the superior court issued its
14 order that granted both the Petition for 30-Day Commitment and
15 Petition for Court Authorization for Administration of
16 Psychotropic Medication. See Order dated March 14, 2003. On
17 March 19, 2003, the superior court issued an order that stayed
18 the effectiveness of the medication petition filed in
19 connection with the Petition for 30-Day Commitment provided
20 Respondent sought stay of the first medication order before the
21 Alaska Supreme Court, which she has done. The Hospital opposed
22 Respondent's motion for stay given her insufficient showing
23 that the legal standard for stay had been met. See Opposition
24 to Motion for Stay Pending Appeal, attached at Exhibit 2. The
25

26
The court found at the second trial on April 16, 2003 Ms. Myers tried to assault a staff assistant See Order dated

MOTION FOR HEARING ON ADN
ITMO: F.M.
JK/MJ/API/MYERS.MOTION FOR HEARING

CASE NO. 03-00277 PR
PAGE 3 OF 2

1
2 Alaska Supreme Court has not issued any decision on that
3 request as of this date.

4 On April 19, 2003, the superior court issued its
5 order that granted the Petition for 90-Day Commitment and the
6 Petition for Authorization of Psychotropic Medication. See
7 Order dated April 19, 2003, page 18. In its ruling, the
8 superior court stated: "No medication may be administered until
9 a ruling is available on Ms. Myers' appeal from the decision
10 reached March 15, 2003." Id.

11 The hospital requests that the above stay concerning
12 the each of the medication petitions be lifted due to the fact
13 that Respondent cannot meet the legal standard for the stay,
14 and because of the hospital's immediate need to administer
15 medication on Respondent's behalf.

16
17 **RESPONDENT CANNOT MEET LEGAL STANDARD TO MAINTAIN STAY**

18 Appellate Rule 205 requires the superior court to
19 address the issue of stay, and states in applicable part that
20 "[a] motion for stay will not normally be considered by the the
21 supreme court unless application has been made to the trial
22 court and has been denied, or has been granted on conditions
23 other than those requested." Appellate Rule 205.

24 Powell v. City of Anchorage, 536 P.2d 1228 (Alaska
25 1975) provides the four elements be demonstrated by the movant

26 April 19, 2003 at page 6 of 18.

MOTION FOR HEARING ON ADN
ITMO: F.M.
JK/MJ/API/MYERS.MOTION FOR HEARING

CASE NO. 03-00277 PR
PAGE 4 OF 2

1
2 before a stay is appropriate: 1) the likelihood that the movant
3 will prevail on the merits; 2) irreparable harm to movant if
4 stay not granted; 3) that no harm will befall to third parties
5 should the stay be granted; and, 4) the stay would not be
6 contrary to the public interest. The Hospital contests any
7 assertion by Respondent that she can satisfy each and every one
8 of the four criteria necessary to be demonstrated for obtaining
9 a stay under Powell v. City of Anchorage, 536 P.2d 1228 (Alaska
10 1975). In fact, the hospital contests that she cannot
11 demonstrate that she can meet any - let alone all - of the four
12 criteria.

13 Specifically, Respondent cannot demonstrate a
14 likelihood of success on the merits. Second, although
15 Respondent may have presented evidence in support of a finding
16 that the medications may cause her harm in response to the
17 hospital's evidence that the medications can only help Ms.
18 Myers condition at this point, such testimony offered by
19 Respondent's experts is to be afforded little weight given its
20 inconsistency with what is overwhelmingly accepted as the
21 standard of psychiatric care in the U.S. today - as
22 acknowledged by Respondent's experts themselves.² Third,
23 Appellant cannot negate the substantial harm to other
24 interested parties, such as members of Ms. Myers' family who
love and care for her, and who will continue to suffer

² Respondent presented a total of three experts during the course of both trials. Two of Respondent's experts never examined Respondent and agreed that their anti-medication views to treat schizophrenia were not mainstream. The third expert, Dr. Smith, met with Respondent for 75 minutes, did not speak with Respondent's family or treating physicians, and appears not to have departed much from his prior "activist" view that medications are never advisable to treat mental illness.

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

emotionally if her condition is not improved. Finally, Appellant cannot refute the harm to the public interest if facilities like the Alaska Psychiatric Institute are not allowed to help patients like Ms. Myers because they are prohibited from using medications - previously proven to be effective - to treat schizophrenia.

SUFFICIENT EVIDENCE TO RULE ON THE ISSUE OF STAY


The Hospital submits that the court has sufficient evidence before it - after two trials - to rule on the issue of stay. If the court feels that more evidence is necessary in order to render a decision, then the Hospital respectfully requests that an evidentiary hearing be held on an expedited basis.

CONCLUSION

In light of the foregoing, the Hospital respectfully requests that the court vacate the stay concerning its prior orders authorizing the Hospital to administer psychotropic medication.

DATED: 4-25-03

GREGG D. RENKES
ATTORNEY GENERAL

By: 
Jeffrey T. Killip
Assistant Attorney General
Alaska Bar No. 9204005

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

