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	

RESPONDENT'S RESPONSE TO OBJECTIONS TO PROPOSED TESTIMONY

Respondent hereby responds to API's Objections to Proposed Testimony (Objections) in the same order under the same numbering as contained in the Objections.[1]

I. Testimony of Loren R. Mosher, MD

The title of Section I, of API's Objections states that Dr. Mosher's prior testimony is hearsay, but makes no argument regarding any hearsay content. It also refers to Dr. Mosher's prior "deposition" testimony, but the testimony was at a forced drugging court hearing, at which API had the opportunity to and did cross examine Dr. Mosher.[2] API asserts it did not have the same motive because the "sole issue" at stake in this matter is Respondent's capacity to give or withhold informed consent to medication. This objection exemplifies API's failure to come to grips with *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 254 (Alaska 2006), in which the Alaska Supreme Court held that limiting the inquiry to capacity was unconstitutional and that in addition to the capacity determination the Court must expressly find by clear and convincing evidence that, "the proposed

[1] It may be the Court orally overruled API's objections, but this Response is being submitted in the event this is not the case.
[2] Tr. (March 5, 2003).

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treatment is in the patient's best interests and that no less intrusive alternative is available." Dr. Mosher's testimony goes directly to these required elements, testifying as to the scientific evidence and his expert opinion based on experience regarding API's proposed treatment modality.

API raised the same objections to the trial court in *Myers*, was overruled there,[3] and had the opportunity and did cross examine Dr. Mosher as to the exact same matters at issue here.[4]

II. Testimony of Sarah Porter

The title of Section II also states that Sarah Porter's testimony is hearsay, but makes no argument thereto. What API does raise is whether Ms. Porter is unavailable under Evidence Rule 804(b)(1). After considerable effort, Respondent was able to locate Ms. Porter and she has agreed to be available by telephone at [redacted] (landline) or [redacted] (mobile).[5]

III. Robert Whitaker, Ronald Bassman, PhD, Loren Mosher, MD and Grace Jackson is Relevant.

In Section III, API argues the scientific and expert experience evidence regarding the drugs and less intrusive alternatives is not relevant, saying "This is not a forum to debate the general appropriateness of using psychotropic medication to treat mental illness." The question is not the general appropriateness, *per se*, of using the drugs, but

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[3] Tr. 175:11-15; 177:3; 178:2-5; (March 5, 2003).
[4] Tr. (March 5, 2003).
[5] 8:30 am in Anchorage is 6:30 am in New Zealand, but Ms. Porter indicated that would be okay.

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whether their use is in Respondent's best interests. This is informed by the written testimony complained of by API. The written testimony also addresses the less intrusive alternative requirement of *Myers*. Mr. Whitaker's, and Drs. Bassman, Mosher and Jackson's testimony goes to the desirability and effectiveness of such alternatives based on the science and their experience. It is directly relevant.

API also complains these witnesses have not treated Respondent nor can provide information about his capacity to consent. Their testimony is not directed to this issue. API reiterates in this section that "the sole purpose of the hearing is to determine [Respondent's] ability to consent to medication." Respondent again responds that *Myers* ruled so limiting the inquiry is unconstitutional.

IV. The Affidavits of Robert Whitaker, Ronald Bassman, PhD, Grace Jackson, MD, and Loren Mosher, MD, are in Proper Form.

In Section IV of its Objections, API asserts the affidavits are not in proper form. This is simply incorrect. They are jurats (as opposed to acknowledgements).

V. Paul Cornils Testimony is Relevant.

In Section V, API complains that Mr. Cornils' testimony is irrelevant because he previously testified CHOICES would not provide such service if Respondent was not compliant with medication. This is not to what Mr. Cornils testified. He testified that CHOICES would work with patients "with or without medication," with those who "have a plan to manage their issues without the medication," but also that the medical director of CHOICES would not work with a client who was "refusing to take medication against their physician's recommendation," clarifying that CHOICES was willing to work with

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Respondent if he had a psychiatrist who was willing to work with him without medication.[6] First, Respondent believes Mr. Cornils was somewhat confused about the conditions under which CHOICES' medical director might refuse to serve Respondent. If this confusion remains after Mr. Cornils cross-examination, Ms. Susan Musante, CHOICES' Executive Director, has been subpoenaed to testify and clear things up.

Secondly, only one paragraph of Mr. Cornils' affidavit relates to whether or not CHOICES would provide the less intrusive alternative. The rest of Mr. Cornils May 15, 2008, testimony relates to working with Respondent in the community and the effectiveness of non-drug approaches with Respondent.[7] API asserts paragraphs L through V relate to CHOICES' availability, but only paragraph V would be applicable and, as previously mentioned, Ms. Musante can be called to clear up any confusion over the availability of CHOICES to provide services to Respondent, if necessary.

VI. Conclusion

For the foregoing reasons, API's Objections to Proposed Testimony is without merit and should be overruled.

DATED this 14th day of November, 2008.

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[6] Page 1 of Exhibit 5 to Objections.
[7] Appendix to Respondent's History, pp, 188-194.