# EMERGENCY

Law Project for Psychiatric Rights
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IN THE SUPREME COURT FOR THE STATE OF ALASKA

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| WILLIAM BIGLEY,<br>Appellant,<br><br>vs.<br><br>ALASKA PSYCHIATRIC INSTITUTE<br>Appellee. | ) Supreme Court No. S-13116 |
| | ) Trial Court Case No. 3AN 08-493 P/R |

(EMERGENCY) MOTION FOR STAY PENDING APPEAL
(Updated)

Pursuant to Appellate Rules 504 and 205, Appellant hereby moves on an emergency basis for a stay of the Superior Court's Order Concerning Court-Ordered Administration of Medication (Forced Drugging Order)[1] pending appeal. In Part I, Appellant addresses the Emergency Motion provisions of Appellate Rule 504 and in Part II the Motion for Stay under Appellate Rule 205.

[1] A copy of the Forced Drugging Petition is attached hereto as Exhibit A and a copy of the Forced Drugging Order is attached hereto as Exhibit B. Attached hereto as Exhibit C is a copy of the Limited Entry of Appearance filed below in this case by the Law Project for Psychiatric Rights and a portion of the exhibits thereto, which provides background and context regarding Appellant and the proceedings.

## I. Appellate Rule 504 Emergency Motion Application

### A. Telephone Numbers and Addresses of Counsel.

Counsel for Appellant's telephone number is 274-7686 and his office address is 406 G Street, Suite 206, Anchorage, Alaska 99501. Timothy Twomey, counsel for Appellee Alaska Psychiatric Institute (API)'s phone number is 269-5168 and his office is 1031 West 4th Avenue, Suite 200, Anchorage, Alaska 99501.

### B. Nature of Emergency and the Date and Hour Before Which a Decision is Needed.

At the hearing in this matter there was unrebutted scientific testimony from Dr. Grace E. Jackson, who was qualified as an expert in psychiatry and psychopharmacology,[2] that the medication the Superior Court has ordered to be administered to Appellant against his will reduces people's prospects for recovery, causes a great deal of physical harm, including brain damage and dementia, and leads to early death. In addition, the unrebutted written testimony to the same effect by Loren R. Mosher, MD and Robert Whitaker was submitted.[3] During oral argument, counsel for Appellant prophylactically moved for a stay pending appeal, citing this testimony for the irreparable harm that will be inflicted on Appellant.[4] The Forced Drugging Order did not grant the motion for stay pending appeal, but did grant a 48 hour stay from 12:30 p.m., May 19, 2008, so as to permit Appellant to seek a stay from this Court.[5] Therefore, a decision on

[2] Exhibit D is a copy of Dr. Jackson's Curriculum Vitae.
[3] Exhibits F & G respectively.
[4] This motion has been updated from the version filed May 20, 2008, to include transcript references and add the penultimate paragraph.
[5] Exhibit B, p. 5.

the stay must be made and communicated to the Alaska Psychiatric Institute by 12:30 pm, Wednesday, May 21, 2008, in order for this Court to be able to afford effective relief.

### C. Grounds Submitted to Superior Court

All of the grounds for the motion were submitted to the Superior Court with the exception of the affidavit of Grace E. Jackson, MD (Dr. Jackson Affidavit) prepared after the Forced Drugging Order, which sets forth additional detail regarding the irreparable harm to be suffered by Appellant should the stay be denied, which is attached hereto as Exhibit H. Unless this Court grants interim relief, a remand to the Superior Court for reconsideration will, as a practical matter, eliminate the possibility of relief from irreparable harm identified herein.

### D. Notification of Opposing Counsel

Mr. Twomey, API's counsel, was notified of this motion by hand delivery, e-mail and phone. Moreover, at the hearing of May 15, 2008, at which Mr. Twomey was present, counsel for Appellant prophylactically moved for a stay pending appeal in the event a forced drugging order was issued against Appellant, so he essentially had notice at that time that such a motion would be forthcoming, if the Forced Drugging Petition was granted.

## II. Appellate Rule 205 Motion for Stay Pending Appeal

At the beginning of oral argument on API's forced drugging petition after the close of evidence, counsel for Appellant prophylactically moved for a stay pending appeal

should the forced drugging petition be granted.[6] This was done because the normal ten day stay provided in Civil Rule 62 is ignored in these cases and without a specific order granting a stay, API will immediately inject Appellant with medication this Court has equated with the intrusiveness of Electroshock and Lobotomy, the harm of which has been confirmed by Dr. Jackson.[7]

Attached hereto as Exhibit B is the Curriculuum Vitae of Dr. Jackson, which was admitted into evidence in the forced drugging hearing below. Dr. Jackson was qualified in this case as an expert in psychiatry and psychopharmacology.[8] API's witnesses were disallowed from testifying as to any scientific opinions regarding the proposed treatment, their testimony being limited to their experience and the standard of care.[9] In fact, API withdrew the testimony of Dr. Hopson, API's Medical Director, when faced with cross examination over a citation he provided and his testimony thereon was stricken.[10]

Dr. Jackson also testified in the *Myers* case in which Loren Mosher, the former Chief for the Center for Studies of Schizophrenia at the National Institute of Mental Health,[11] testified about Dr. Jackson's knowledge about psychiatric drugs as follows:

Q Dr you know Dr. Grace Jackson?

A I do.

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[6] Tr. 274.
[7] *Myers v. Alaska Psychiatric Institute* 138 P3d 238, 242 (Alaska 2006); *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371, 382 (Alaska 2007).
[8] Tr. 111.
[9] Tr. 26, 48-9 (but, *see* 50), 54-5, 189, 204, 211, 218-21.
[10] Tr. 218.
[11] Exhibit F, page (page 171 of transcript, lines 14-16).

Q Do you have an opinion on her knowledge of psychopharmacology?

A I think she knows more about the mechanisms of actions of the various psychotropic agents than anyone who is a clinician, that I'm aware of. Now, there may be, you know, basic psychopharmacologists, you know, who do lab work who know more, but as far as a clinician, a practitioner, I don't know anyone who is better-versed in the mechanisms, the actions, the effects and the adverse effects of the various psychotropic drugs.[12]

In Dr. Jackson's Report, she summarizes the brain damage caused by the drug authorized to be forcibly injected in Appellant here[13] as follows:

> Evidence from neuroimaging studies reveals that ***old and new*** neuroleptics contribute to the progressive shrinkage and/or loss of brain tissue. Atrophy is especially prominent in the frontal lobes which control decision making, intention, and judgment. These changes are consistent with *cortical* dementia, such as Niemann-Pick's or Alzheimer's disease.
>
> Evidence from postmortem analyses in lab animals reveals that ***old and new*** neuroleptics induce a significant reduction in total brain weight and volume, with prominent changes in the frontal and parietal lobes.
>
> Evidence from biological measurements suggests that ***old and new*** neuroleptics increase the concentrations of tTG (a marker of programmed cell death) in the central nervous system of living humans.
>
> Evidence from *in vitro* studies reveals that haloperidol reduces the viability of
>
> hippocampal neurons when cells are exposed to clinically relevant concentrations. (Other experiments have documented similar findings with the second-generation antipsychotics.)

[12] Exhibit F, page 7 (page 179 of transcript, lines 1-12).

[13] Risperdal, also known as risperidone, is one of the "new neuroleptics" and Dr. Jackson specifically testified at the hearing that her testimony pertaining to this class of drugs applied to Risperdal. Tr. 137, 138, 139, 140. There was also a tremendous amount of specific testimony regarding Risperdal throughout Dr. Jackson's testimony. Tr. 107-165.

> Shortly after their introduction, neuroleptic drugs were identified as chemical lobotomizers. Although this terminology was originally metaphorical, subsequent technologies have demonstrated the scientific reality behind this designation.
>
> Neuroleptics are associated with the destruction of brain tissue in humans, in animals, and in tissue cultures. Not surprisingly, this damage has been found to contribute to the induction or worsening of psychiatric symptoms, and to the acceleration of cognitive and neurobehavioral decline.

(boldfacing in original, underlining added)

Dr. Jackson amplified on this in her live testimony, making it clear that Risperdal, as with all the drugs in this class, causes dementia, and other serious health problems, and the types of worsening behavioral symptoms described of Appellant.[14] Dr. Jackson also testified that very few clinicians are aware of the lack of effectiveness and extreme harm caused by the drugs, including Risperdal, because of the ability of the pharmaceutical industry to control what clinicians are exposed to.[15] Dr. Jackson further testified that the "improvement" described by clinicians are the lobotomizing effects of the drug, making it impossible for the troublesome patient to be so troubling.[16] Dr. Jackson also testified that the analysis of the research presented in the Affidavit of Robert Whitaker[17] was accurate.[18]

Finally, in support of this motion, a further affidavit of Dr. Jackson is presented regarding the irreparable harm to Appellant should API be allowed to drug him against

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[14] Tr. 107-65.
[15] Tr. 115-133..
[16] Tr. 141.
[17] The Affidavit of Robert Whitaker is attached hereto as Exhibit G.
[18] Tr. 111-12.

his will pending this appeal as authorized by the Superior Court.[19] This expert scientific testimony includes the following from Dr. Jackson's Affidavit, attached hereto as Exhibit H:

> Mr. Bigley's initial dose of Haldol guaranteed the induction of Parkinsonian symptoms by day #3 of treatment (4/17/80). Furthermore, the continued administration of Haldol -- a chemical which replicates the mitochondrial effects of rat poison and insecticide -- guaranteed the rapid deterioration of his condition. (p.5) . . .
>
> [T]he materials which I have reviewed (see Section III, #3 above) demonstrate a persistent and continuing failure of API clinicians to consider the most likely diagnosis in the case at hand. In all probability, Mr. Bigley now suffers from a chemical brain injury (CBI). This development should preclude the attachment of any and all psychiatric labels at this time. It should also trigger the legal and medical systems to prioritize the delivery of interventions which promote neuro-rehabilitation, rather than neurodegeneration. (p.5) . . .
>
> 4) risperidone (Consta or oral forms) will potentially kill Mr. Bigley while offering no significant prospect of improvement, and zero probability of recovery . . .
>
> [Risperidone] possesses some features which make it particularly undesirable, even among drug enthusiasts.
>
> First, risperidone is unique among the newer "antipsychotic" drugs in terms of its potential to elevate prolactin. In some studies, hyperprolactinemia has occurred in as many as 90% of the risperidone patients. This is more than a trifling occurrence, due to the fact that hyperprolactinemia has been repeatedly linked to cardiac disease (e.g., via platelet aggregation, cardiomegaly, and heart failure).
>
> Second, even at typical or "ordinary" doses (D2 blockade of 60-80%), risperidone induces Parkinsonian side effects at a rate which equals

[19] Exhibit H, the original of which shall be filed upon its receipt. In this testimony Dr. Jackson discusses the failure of API to conduct needed tests, including for diabetes and other metabolic problems. While Dr. Hopson testified that tests for diabetes and other blood sugar problems were done, based on the records provided by API, this appears to be untrue.

> or surpasses the so-called traditional or conventional neuroleptics (e.g., in 30-50% of the patients).
>
> Third, the real-world risk of tardive dyskinesia due to risperidone is significant and far more prominent than API's spokesmen have presumably opined. In Jose de Leon's recent study of patients who began treatment with the newer therapies (65% receiving risperidone), more than 60% of the subjects with treatment histories similar to Mr. Bigley's developed tardive dyskinesia despite the use of these "safer" drugs.
>
> Fourth, given Mr. Bigley's advancing age (55 considered "elderly" in at least one published study); the early onset of Parkinsonian side effects (BPS at age 27); and a pre-existing organic brain syndrome (i.e., chemical brain injury), he is at high risk for tardive dyskinesia. In light of the fact that tardive dyskinesia (TD) reflects extensive damage to the brain - including impairments of judgment and insight, as much as impairment of movement - it is essential to avoid the use of any chemical intervention which might accelerate the emergence of this condition.
>
> Fifth, commensurate with the affidavits, exhibits, and testimony on behalf of the respondent, it is extremely improbable that risperidone will do anything but aggravate the effects of the dysmentia (chemical brain injury) from which Mr. Bigley continues to suffer. To the contrary, risperidone will compound that condition with real and substantial risks of sudden death from stroke, heart attack, pulmonary embolism, diabetes, falls, accidents, pneumonia, NMS, and - ultimately - dementia.
>
> For the aforementioned reasons, a Failure to Grant a Stay of the Superior Court's Order will result in irreparable harm. (pp. 7-8)

Dr. Jackson's testimony makes clear that allowing API to restart the psychiatric drugging of Appellant with Risperdal will result in irreparable harm.

It is apparent from the Forced Drugging Order and even more apparent from the testimony of Dr. Hopson that the justification for inflicting this continued brain and physical damage on Appellant is because it is "the standard of care" and because it makes Appellant easier to deal with, or even pleasant. However, as this Court said in *Myers*:

> Many cases describe the unavoidable tensions between institutional pressures and individual best interests that can arise in this setting: "The doctors who are attempting to treat as well as to maintain order in the hospital have interests in conflict with those of their patients who may wish to avoid medication.... Economic considerations may also create conflicts [.]"[20]

Dr. Hopson's testimony illustrates this perfectly in that API refuses to provide a less intrusive alternative for institutional considerations (e.g., not the hospital's mission) and economic considerations.[21]

Ultimately, with respect to the motion to stay pending appeal and irreparable harm, this Court provided very cogent guidance in *Wetherhorn*, as follows:

> The expedited process required for involuntary commitment proceedings is aimed at mitigating the infringement of the respondent's liberty rights that begins the moment the respondent is detained involuntarily. In contrast, so long as no drugs have been administered, the rights to liberty and privacy implicated by the right to refuse psychotropic medications remain intact. Therefore, in the absence of an emergency, there is no reason why the statutory protections should be neglected in the interests of speed.[22]

This holding applies with equal force to the current motion for stay. Appellant can not be undrugged after being administered the very long-acting Risperdal with the irreparable harm identified by Dr. Jackson.

[20] 138 P.3d at 250.
[21] Tr. 180-183.
[22] 156 P.3d at 381.

For the foregoing reasons, Appellant implores the Court to grant his motion for stay pending appeal.

Dated this 20th day of May, 2008, at Anchorage, Alaska as updated May 21, 2008.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

By: _____
James B. Gottstein, Esq.
Alaska Bar No. 7811100

Exhibits

A. Petition for Court Approval of Administration of Psychotropic Medication (Forced Drugging Petition).

B. Findings and Order Concerning Court-Ordered Administration of Medication, dated May 19, 2008 (Forced drugging Affidavit).

C. Limited Entry of Appearance with selected attachments thereto.

D. Grace E. Jackson Curriculum Vitae.

E. Report of Grace E. Jackson, MD (Jackson Report).

F. Evidence Rule 804(b)(1) testimony of Loren R. Mosher, MD, in 3AN 07-277 CI (Mosher Testimony).

G. Affidavit of Robert Whitaker (Whitaker Affidavit).

H. Affidavit of Grace E. Jackson, MD (Dr. Jackson Affidavit).