HB

173

ALASKA STATE LEGISLATURE

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REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

SPONSOR STATEMENT
House Bill 173
"An Act relating to court approval of involuntary administration of psychotropic medication; and providing for an effective date"

HB 173, Involuntary Psychotropic Drug Treatment, is a housekeeping bill. It will bring statute into compliance with the Alaska Supreme Court decision in *Faith J. Myers v. Alaska Psychiatric Institute*, related to the court-approved administration of psychotropic medication in non-crisis situations to certain involuntarily committed mentally ill patients.

Current Alaska statute allows an institution to administer a psychotropic drug to an involuntarily committed patient, if certain criteria are met. The criteria need to be updated to include some conditions that both protect the patient's rights and maintain the authority of the state to administer the drug in needed situations. The new conditions that this bill proposes are already being practiced in institutions across Alaska, and will complete the current statute conditions.

These are the four criteria for the courts to consider when granting permission for an institution to involuntarily administer psychotropic drugs, in non-emergencies, to an involuntarily committed patient.

1. Patient is unable to give or withhold informed consent regarding an appropriate course of treatment. Current statute.
2. Patient has not previously while competent expressed a desire to refuse psychotropic medication. Current statute.
3. Court must determine that the medication is in the best interests of the patient. New under this bill.
4. No less intrusive alternative treatment is available. New under this bill.

It is important to note that:

- The bill complies with the history of case law.
- The bill does not apply to patients who are competent to make their own decisions about medication. The wishes of competent patients are always honored.
- The bill applies only to mental patients who have been committed to the care of an evaluation facility or designated treatment facility.
- The bill does not apply to emergency administration of medication (*i.e.*, where the patient poses an imminent threat of harm to himself or to others).
- The bill does not apply to the administration of medication to prisoners confined in correctional institutions.

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HOUSE DISTRICT 2

Sectional Analysis

House Bill 173

"An Act relating to court approval of involuntary administration of psychotropic medication; and providing for an effective date"

Section 1. Amends AS 47.30.839(g) to include two new requirements before a court approves the administration of psychotropic medication in non-crisis situations to certain involuntarily committed mentally ill patients. Specifically, a court must find by clear and convincing evidence that (1) the proposed use of such medication is in the patient's best interest; and (2) that there is no less intrusive alternative treatment available.

Section 2. Restructures AS 47.30.839. Specifically, the second and third sentences of the current subsection (g) governing the effective time period for a court order for the administration of psychotropic medication would be moved to a new subsection, AS 47.30.839(j).

Section 3. Establishes immediate effective date.

Alaska Supreme Court Strikes Down Forced Psychiatric Drugging--it's Unconstitutional!

Saturday, 01 July 2006

In a historic and precedent-setting decision, the Alaska Supreme Court affirmed that the forced administration of psychotropic drugs to patients is unconstitutional!!! : http://psychrights.org/States/Alaska/CaseOne/MyersOpinion.pdf

The decision restores personal rights to patients in psychiatric facilities and opens the way for overturning fifty-two illegitimate state statutes sanctioning forced psychotropic drugging.

"In keeping with most state courts that have addressed the issue, we hold that, in the absence of emergency, a court may not authorize the state to administer psychotropic drugs to a non-consenting mental patient unless the court determines that the medication is in the best interests of the patient and that no less intrusive alternative treatment is available."

The court's thoughtful, clear and informed ruling took into account both the constitutional right to personal freedom and privacy: "To place these arguments in perspective, we must begin by considering Alaska’s statutory provisions governing treatment of mental patients."

However, the Court also took note of these drugs' profound adverse effects--effects that are not in patients' best interest.

Psychotropic drugs “affect the mind, behavior, intellectual functions, perception, moods, and emotions” and are known to cause a number of potentially devastating side effects.
[M]ost common . . . are the temporary, muscular side effects (extra-pyramidal symptoms) which disappear when the drug is terminated; dystonic reactions (muscle spasms, especially in the eyes, neck, face, and arms; irregular flexing, writhing or grimacing movements; protrusion of the tongue); [and] akathesia (inability to stay still, restlessness, agitation) . . .

Additionally, there are numerous other nonmuscular effects, including drowsiness, weakness, weight gain, dizziness, fainting, low blood pressure, dry mouth, blurred vision, loss of sexual desire, frigidity, apathy, depression, constipation, diarrhea, and changes in the blood.]

Courts have observed that “the likelihood [that psychotropic drugs will cause] at least some temporary side effects appears to be undisputed”9 and many have noted that the drugs may — most infamously — cause Parkinsonian syndrome and tardive dyskinesia.
Parkinsonian syndrome consists of “muscular rigidity, fine resting tremors, a masklike face, salivation, motor retardation, a shuffling gait, and pill-rolling hand movements.”
Tardive dyskinesia involves “slow, rhythmical, repetitive, involuntary movements of the mouth, lips, and tongue”;12 it is permanent, and its symptoms cannot currently be treated.

Side effects aside, the truly intrusive nature of psychotropic drugs may be best understood by appreciating that they are literally intended to alter the mind. Recognizing that purpose, many states have equated the intrusiveness of psychotropic medication with the intrusiveness of electroconvulsive therapy and psychosurgery."

The Court noted that Alaska law recognizes and addresses a distinct class of drugs called “psychotropic medications.” The Court tacitly recognized that these drugs' severe adverse effects legitimize patients' refusal to ingest them.

Thus, the Court decision requires mental health professionals not only to obtain informed consent but to justify the recommended treatment and fully disclose all aspects of the proposed treatment in relation to the patient's best interest based on personal history, condition, and choice:

"In order to make informed decisions possible, the law requires treatment facilities to give their patients certain information concerning their situation and need for treatment, including advice about their diagnosis; proposed medications, including possible side effects and interactions with other drugs; their medical history; alternative treatments; and a statement describing their right to give or withhold consent."

"Because psychotropic medication can have profound and lasting negative effects on a patient’s mind and body, we now similarly hold that Alaska’s statutory provisions permitting nonconsensual treatment with psychotropic medications implicate fundamental liberty and privacy interests."

IV. CONCLUSION

"We conclude that the 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. Because the superior court did not determine Myers’s best interest before authorizing psychotropic medications, we VACATE its involuntary treatment order. Although no further proceedings are needed here because Myers’s case is now technically moot, we 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."

See full 36 page referenced decision at: http://psychrights.org/States/Alaska/CaseOne/MyersOpinion.pdf

The plaintiff, Faith Myers, who had been threatened with involuntary treatment by the Alaska Psychiatric Institute, challenged the constitutionality of the practice so that others would not face similar maltreatment.

We congratulate her lawyer, our colleague, Jim Gottstein, for his magnificent advocacy for the civil and human rights and personal dignity of individuals who are confronted with institutionalized psychiatric abuse.

Faith Myers and Jim Gottstein have earned their place in the annals of civil rights history.

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FOR IMMEDIATE RELEASE
June 30, 2006
FREEDOMS FOR ALL, IN TIME FOR THE 4th…

Alaska Supreme Court Strikes Down Forced Psychiatric Drugging Procedures

In a resounding affirmation of personal liberty and freedom, the Alaska Supreme Court issued its long-awaited decision in Myers v. Alaska Psychiatric Institute today. The court found Alaska's forced psychiatric drugging regime to be unconstitutional when the state forces someone to take psychiatric medications without proving it to be in their best interests or when there are less restrictive alternatives.

Faith Myers, the appellant in the case, reacted to the decision saying, "It makes all of my suffering worthwhile."

Myers' attorney, Jim Gottstein, said "By requiring the least intrusive alternative to forced psychiatric drugging, this decision has the potential to change the face of current psychiatric practice, dramatically improving the lives of people who now find themselves at the wrong end of a hypodermic needle.“ While he acknowledged that some people find psychiatric drugs helpful, Gottstein said he pursued this case because, in addition to the drugs' serious physical health risks, he is concerned about the rights of those who find them both unhelpful and intolerable. He continued, “For people who want to try non-drug approaches, the research is very clear that many will have much better long-term outcomes, including complete recovery after being diagnosed with serious mental illness. This decision restores the rights of those people to pursue that potential."

The Alaska Supreme Court decision noted the trial court's concern that the statute did not allow the court to consider the problems with the drugs even though "a valid debate exists in the medically/psychiatric community as to the safety and effectiveness of the proposed treatment plan." With this decision, trial courts are now required to consider the safety and effectiveness of the drugs in deciding whether the proposed psychiatric drugging is in the patient's best interest.

The Court's Decision also makes specific mention that Alaska Statutes require the hospital to honor a patient's previously expressed desires regarding psychiatric medications.

The full decision can be found on the Internet at http://psychrights.org/States/Alaska/CaseOne/MyersOpinion.pdf.

Detailed background about The Law Project for Psychiatric Rights, a non-profit organization, is available on the PsychRights web site: http://psychrights.org/.

# # #

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Synopsis of *Myers v. Alaska Psychiatric Institute*

Rebecca Pollizzotto, Assistant Attorney General, Human Services Section, Dept. of Law.

In 2006, the Alaska Supreme Court released its decision in *Myers v. Alaska Psychiatric Institute*, which was an appeal challenging the constitutionality of the Alaska statutes governing the nonemergency administration of psychotropic (mind-altering) medication to involuntarily committed mental patients.

In its decision, the court holds that the current statutes are unconstitutional. Under the current statutes, a designated treatment facility may administer psychotropic drugs to an involuntarily committed patient if it provides clear and convincing evidence to a court that the patient is unable to give or withhold informed consent regarding an appropriate course of treatment and that the patient has not previously, while competent, expressed a desire to refuse psychotropic medication. Once these showings are made, the statute provides that the court "shall" authorize the facility to administer the medication.

The court analyzes the statute in light of the state constitution's guarantees of privacy and liberty. It concludes that a person's right to refuse mind-altering medication is fundamental, requiring both a compelling state interest and a showing that no less intrusive means is available to advance that interest before the right may be overridden. The court holds that "[t]he constitution itself requires courts, not physicians, to protect and enforce these guarantees."

In its conclusion, the court holds that before a facility may administer psychotropic medication to a patient who is incompetent to grant informed consent the trial court must "expressly find[] by clear and convincing evidence that the proposed treatment is in the patient's best interests and that no less intrusive alternative is available."

The court specifies the information that the trial court should consider in making its decision. This information includes, "at a minimum" the information that a facility is required to provide to a patient when seeking the patient's informed consent to psychotropic medication (this information, which is listed at AS 47.30.837(d)(2), includes: the patient's diagnosis and prognosis with and without medication; information about the proposed medication, including its benefits, risks, and interactions with other drugs and alcohol; a review of the patient's medical history; and information about alternative treatments, including the risks of nontreatment). The court also listed several factors that the Minnesota Supreme Court has prescribed in a similar case, including: the extent and duration of changes in behavior patterns and mental activity effected by the treatment; the risks of adverse side effects; the experimental nature of the treatment; its

acceptance by the medical community of the state; and the extent of intrusion into the patient's body and the pain connected with the treatment. The Alaska court stated that it "find[s] these approaches to be sensible."

From: Timothy Farrell [odesign1@earthlink.net]

Sent: Friday, March 30, 2007 9:50 PM

To: Rep. Peggy Wilson; Rep. Paul Seaton; Rep. Carl Gatto; Rep. Vic Kohring; Rep. Sharon Cissna; Rep. Berta Gardner

Subject: *****SPAM***** HB 173

RE: Proposed revisions to HB 173, regarding nonconsensual psychotropic (mind altering) drugging (forced or involuntary psychiatric drugging)

Dear Committee members:

The June 2006 Alaskan Supreme Court said that Faith Myers' (who was involuntarily committed at Alaska Psychiatric Institute) rights of privacy and liberty were violated by the current laws.

The Supreme Court goes on to say that:

> "... in the absence of emergency, a court may not authorize the state to administer psychotropic drugs to a non-consenting mental patient unless the court determines that the medication is in the best interests of the patient and that no less intrusive alternative treatment is available."

Another facet of the legal decision was that the current (past) laws allowed the psychiatrists to fully determine whether or not psychiatric drugging was in the patient's best interest and that the court had no say in this matter.

The legal decision was in favor of securing rights of privacy and liberty to Faith Myers and anyone who is told they are going to be forced to receive psychiatric treatment. So here we are with a new proposed law, HB 173.

This law as written, utterly fails to grasp the true meaning of preserving individual liberty and the spirit of the challenge and legal decision and it should be revised/amended.

Today, advocates of those labeled mentally ill and those concerned about the practice of psychiatry have long viewed the involuntary commitment language as archaic, and written by and for psychiatrists. It is time this changes and common sense prevails.

The state does have an interest in an orderly society. It should not have an interest in filling psychiatric beds and creating a ready market for psychiatric facilities.

If people have made health care choices these should be honored. This is the purpose of the mental health advance directive – to codify the choices of the individual when they are able to and these choices should be considered, and not brushed off. The absence of this formal document should not grant professionals the right to ignore the history of choices the individual has made regarding their healthcare. Many people live a life or want to live life in a holistic way. People can experience an emotional crisis, and this should not be viewed as an opportunity by psychiatry to force their exclusive treatments when we know today that psychiatric drugs/treatments represent a very narrow approach to the problems of man. We are not asking for funding for these alternatives, simply that the Government which gives power to, licenses and oversees the practice of psychiatry and is very much in the business of preserving liberty, does not needlessly abandon these principles when it comes to people in psychiatric facilities.

I have revised Section 1 of the bill with suggested language so that you can see what this would look like. I hope

that I have been able to get my ideas across, so feel free to contact me to elaborate on these changes.

* **Section 1.** AS 47.30.83(g) is repealed and reenacted to read:

(g) The court ~~shall~~ may approve the proposed use by a facility of a psychotropic medication if the court determines, by clear and convincing evidence, that

(1) it does not go against the person's health care choices previously determined and documented in a mental health advance directive, as described in AS 13.52;

(2) it does not run contrary to the patient's history of health care decisions so that a person being considered by a psychiatric facility for forced drugging is not prevented from actively seeking alternative and recognized (licensed or certified) health care practitioners to diagnose and treat medical/physical ailments;

~~(1)~~ (3) the patient does not have the capacity to give or withhold informed consent (not just disagreeing with recommended psychiatric treatment) regarding the patient's treatment as described under AS 47.30.837 and did not have the capacity at the time of previously expressed wishes under (g)(2) of this Section ;

~~(2)~~ (4) the facility must document their efforts to achieve informed consent as informed consent; and

~~the proposed use of the psychotropic medication is in the patient's best interest; and~~

~~(3)~~ (5) the facility/psychiatrists must actively allow alternative approaches to helping someone who is in an emotional crisis of lesser or greater degree and actively allow complementary treatment to occur on premises by state licensed/certified health care practitioners.

~~there is no less intrusive alternative treatment available.~~

End of revisions.

In summary, I feel HB 173 could be vastly improved to bring this rather troublesome issue out of the dark ages and into the modern era.

The legal decision by the Alaskan Supreme Court should be viewed as a great new beginning and an opportunity to write citizen friendly laws.

This law as written or as desired by me, would simply allow for individual choices to be recognized as valid. Psychiatry obviously has different views about the need for their drugs/treatment and uses language to the effect that a person disagreeing with a psychiatric diagnosis "lacks insight into their mental illness". If you look at it, this is simply a belief by psychiatry which does not hold water in traditional health care disciplines. A person does not have to believe in diabetes in order to treat diabetes and can readily seek alternatives or second opinions from other health care practitioners.

I think a whole lot of people that have been labeled as mentally ill are stigmatized by their label. They thereafter are subjected to psychiatric treatment whether they like it or not, and that is their fate – according to psychiatrists. But there are alternatives, and complementary medicine has a great deal to say about one's overall health. It is time that *HEALTH* becomes part of our *mental health* system.

Thank you,

Timothy Farrell

Dear Rep. Gardner,

I didn't know about either of these new bills so I appreciate your bringing them to my attention.

HB 173 is clearly written to conform to the Alaska Supreme Court's decision in the *Myers* case. I'm attaching a highlighted copy of that decision for your information. I testified to the House Judiciary Committee on February 8th and one of the things I reported on was the *Myers* case. I was asked what statutory changes should be made and I suggested the statute should at least be amended to reflect the *Myers* decision. HB 173 is designed to do that. I do think something along the lines of the following should be added:

> When making the best interest determination under (g) of this section, the court shall, at a minimum, consider the same factors as set forth in AS 47.30.837(d)(2)

The Alaska Supreme Court specifically required this:

> At a minimum, we think that courts should consider the information that our statutes direct the treatment facility to give to its patients in order to ensure the patient's ability to make an informed treatment choice.

138 P.3d at 252 (end of page 16, beginning of 17 in the document I have attached).