

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

IN THE MATTER OF
RALPH ARNOLD SMITH, JR.

CAUSE NO. M-2015-0086-0/3

**PETITION FOR OUTPATIENT TREATMENT SUBSEQUENT TO AN INPATIENT
COURSE OF TREATMENT, AND FOR RELEASE WITH CONDITIONS**

COMES NOW Ralph Arnold Smith, Jr., through counsel, and files this, his *Petition For Outpatient Treatment Subsequent to an Inpatient Course of Treatment, and for Release with Conditions*, pursuant to Mississippi Code Sections 41-21-61 through 41-21-107, including Section 41-21-99 and Section 41-21-74(4), and in support of the Petition, would respectfully show the following:

1. Pursuant to §41-21-99 and §41-21-83, the court must hold a hearing within 14 days of the August 23, 2016 filing of this Petition. The hearing must be held on or before September 6, 2016.
2. Notice of the hearing will be provided under §41-21-99 and §41-21-83 to the Director of the Mississippi State Hospital, and to the appropriate witness or witnesses from the Tulane University School of Medicine (Clayton Kelly, M.D. and/or Gina M. Mire, Ph.D., ABPP).
3. This court entered its *Opinion and Judgment* on July 11, 2016, in which the court made certain findings and entered its order regarding issues and evidence presented to the court on or before April 20, 2016.
4. In the prior order of July 11, 2016, the court ordered and held that “Dr. Smith has the right to request another hearing regarding his continued commitment pursuant to Miss. Code Ann. §41-21-99, as amended.”

5. Since the close of the evidence on or before April 20, 2016, and since the court's July 11, 2016 Order, the Tulane University School of Medicine, through its Department of Psychiatry and Behavioral Sciences ("Tulane"), has now issued its "Forensic Risk Evaluation" dated 31 July 2016. The Mississippi State Hospital contracted with Tulane for Tulane to conduct the "Forensic Risk Evaluation."¹

6. The Tulane "Forensic Risk Evaluation" contains the following findings and recommendations for Dr. Smith's release for outpatient treatment:

RECOMMENDATIONS:

Based on our evaluation, we recommend that Dr. Smith be conditionally released. Ideally, this would be a renewable outpatient commitment with a specified set of conditions. Dr. Smith would be expected to comply with these conditions. If he did not comply with these conditions, he could be involuntarily rehospitalized.

Based on an individualized risk evaluation of Dr. Smith, we recommend the following conditions to reduce his overall risk level:

1. Dr. Smith would live in Jackson, Mississippi with his wife with close support from his children, primarily Ms. Welch and Dr. Arnold Smith.
2. Dr. Smith would participate and comply with a court-sanctioned electronic monitoring program.
3. Dr. Smith's activities would be supervised by his wife and other close relatives in addition to regular home visits conducted by an independent court-appointed monitor.
4. Dr. Smith would have no access to firearms or weapons.

¹ The 31 July 2016 Tulane "Forensic Risk Evaluation" was not disclosed to or provided to counsel for Dr. Smith until the afternoon of August 22, 2016. Counsel was not informed that the Mississippi State Hospital had already received the 31 July 2016 risk assessment, and counsel was told by an attorney for the Mississippi State Hospital on August 22, 2016 to contact the medical records office to obtain a copy.

5. Dr. Smith would have no immediate access to bank accounts, instant cash or the use of personal checks. Any withdrawal of funds would be subject to oversight by the independent court-appointed monitor.
6. An independent community monitor would be appointed by the court. This individual would ensure that Dr. Smith is complying with antipsychotic treatment, is attending mental health center appointments, has no access to weapons and is reasonably complying with all other conditions outlined in these recommendations. The independent monitor should file regular reports with the court.
7. Dr. Smith would have no access to the internet, and no access to print media not approved by the independent community monitor.
8. Dr. Smith would comply with outpatient psychiatric treatment with a long-acting, injectable antipsychotic (currently Abilify Maintena). Dr. Smith would be expected to comply both with this treatment and with all relevant, indicated laboratory studies.
9. Dr. Smith shall not take any medications or supplements that have not been approved by his treating physician or psychiatrist.
10. A no-contact order with the following individuals and/or organizations is recommended: Lee Abraham, Jim Hood and the Mississippi Attorney General's office, Sayed Rafique, Cordarious Robinson, Derrick Lacy, Hiram Eastland Jr., Chris Lott, Ed Brunini, Dick Cowart, and John Horty.
11. Dr. Smith should be restricted from traveling to Greenwood, Mississippi.

/s/ D. Clay Kelly, Jr., M.D.

/s/ Gina M. Mire, Ph.D., ABPP

7. With the Tulane risk assessment prepared by the Tulane experts on behalf of the Mississippi State Hospital, both the Mississippi State Hospital expert and Dr. Smith's expert agree that, with conditions, Dr. Smith can be treated as an outpatient.

8. Dr. Smith's rights under the civil commitment statutes, including the Tulane recommendation for conditional release, are protected by the due process and equal protection clauses in the 5th and 14th Amendments to the Constitution of the United States. These due process rights are also guaranteed by Article 3, §14 of the Mississippi Constitution. All due process rights include substantive due process and procedural due process.

9. Pursuant to a hearing under §41-21-99, §41-21-83, and §41-21-74(4), the court can only continue involuntary inpatient commitment if all three (3) of the following conditions are present by clear and convincing evidence:

...the court shall not make a determination of the need for continued commitment unless a hearing is held and the court finds by clear and convincing evidence that

(a) the person continues to have mental illness or have an intellectual disability; and

(b) involuntary commitment is necessary for the protection of the patient or others; and

(c) there is no alternative to involuntary commitment.

See: §41-21-83.

10. Tulane does not recommend any sort of step-down from the forensic unit prior to release. Tulane's risk assessment confirms that community-based outpatient treatment with conditions is the least restrictive alternative for treatment of Dr. Smith's mental illness.

11. Dr. Smith should be released with conditions for community-based outpatient treatment of his mental illness.

12. Based on the Tulane “Forensic Risk Evaluation,” the second and third conditions for involuntary inpatient treatment are absent under any standard, and are certainly absent under the clear and convincing standard:

- there is no evidence that involuntary inpatient commitment is necessary for the protection of Dr. Smith or others;
- there is an alternative to involuntary inpatient commitment.

13. Tulane’s recommendation that Dr. Smith be released to reside with his wife Mary K. Smith under the conditions listed by Dr. Kelly and by Dr. Mire shows that involuntary inpatient commitment is not necessary for the protection of Dr. Smith or others.

14. Tulane’s recommendation that Dr. Smith be treated as an outpatient under the conditions listed by Dr. Kelly and by Dr. Mire shows that there is a less restrictive alternative to involuntary inpatient commitment.

15. Dr. Smith has been subjected to a course of inpatient treatment at the Mississippi State Hospital Forensic Unit since January 27, 2015—a period of almost 19 months as of this August 23, 2016 filing.

16. The Tulane risk assessment confirms that Dr. Smith should be released with conditions, and that Dr. Smith can be appropriately treated as an outpatient.

WHEREFORE, PREMISES CONSIDERED, Dr. Smith, through counsel, respectfully requests that the court hold a hearing within 14 days of the filing of this Petition, and that the court will order the following:

- a. Order the immediate release of Dr. Smith on the conditions recommended by the Tulane School of Medicine; and

b. Place Dr. Smith on a renewable outpatient treatment order, with the conditions recommended by the Tulane School of Medicine.

Dr. Smith requests any other relief to which he may be entitled in the premises.

Respectfully submitted, this 23rd day of August, 2016.

Ralph Arnold Smith, Jr.

By: /s/ William C. Bell
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CERTIFICATE OF SERVICE

I, William C. Bell, attorney for Ralph Arnold Smith, Jr., do hereby certify that I have this day served the foregoing *Petition For Outpatient Treatment Subsequent to an Inpatient Course of Treatment, and for Release with Conditions* by filing the Petition through the court's MEC filing system, subject to any standing related arguments and claims.

This, the 23rd day of August, 2016.

/s/ William C. Bell
William C. Bell