

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA**

[NOTE: ALL NAMES ARE COMPLETELY FICTITIOUS]

DAWN SMITH,

Petitioner,

CASE NO.:

v.

Div. No.:

**ORANGE COUNTY HOSPITAL,
a/k/a ORANGE MEDICAL CENTER,
a Florida corporation;
FLORIDA MENTAL HEALTH MEDICAL
GROUP, INC., a Florida corporation;
JOHNATHON SMITH FOX, M.D.;
SEMINOLE DOCTORS' HOSPITAL,
a Florida corporation; and
BLUE SKY BEHAVIORAL CENTER,
a/k/a FUTURE GROUP, INC.,
a Florida corporation,**

Respondents.

_____ /

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

WITH SUPPORTING MEMORANDUM OF LAW

Petitioner, DAWN SMITH, sues Respondents, ORANGE COUNTY HOSPITAL, a/k/a ORANGE MEDICAL CENTER, a Florida corporation; FLORIDA MENTAL HEALTH MEDICAL GROUP, INC., a Florida corporation; JOHNATHON SMITH FOX, M.D.; SEMINOLE DOCTORS' HOSPITAL, a Florida corporation; and BLUE SKY BEHAVIORAL CENTER, a/k/a GRAND FORTUNE GROUP, INC., a Florida corporation (collectively referred to as "Respondents"), and states:

1. This is an action for a writ of habeas corpus pursuant to Section 394.459(8), Florida

Statutes. Also applicable are Article I, Section 13 of the Constitution of the State of Florida; Chapter 79, Florida Statutes; Section 916.107, Florida Statutes; and Rule 1.630, Florida Rules of Civil Procedure.

2. The Circuit Court has jurisdiction of this matter pursuant to Article V, Section 5(b) of the Constitution; Section 79.01, Florida Statutes; Section 394.459(8)(b), Florida Statutes; Section 916.107, Florida Statutes; and Rule 1.630, Florida Rules of Civil Procedure.

3. It is believed that Respondents had Petitioner, DAWN SMITH seized at her home in Osceola County and transported to Respondents' facility in Orange County, where she is currently being illegally detained against her will.

4. It is believed that Respondents have also used or intend to use the authority and power of the Sheriff of Seminole County or the Sheriff of Orange County in carrying out their intentional wrongful confinement and detention of Petitioner, DAWN SMITH against her will.

5. The use of a Petition for Writ of Habeas Corpus to secure the release of a mental health patient such as Petitioner DAWN SMITH is specifically authorized by Florida law, Section 916.107(a), Florida Statutes.

6. Petitioner's detention is unlawful and contrary to the Constitution of the State of Florida and the Constitution of the United States, as further set forth below.

7. Petitioner DAWN SMITH is a competent adult, 74 years old, who has never been adjudicated incompetent or mentally deficient. She is presumed by law to be competent. Petitioner DAWN SMITH has the inalienable right to freedom and liberty. Amendments IV, V and XIV, Constitution of the United States; Article I, Sections 2, 9 and 12, Constitution of the State of Florida.

8. The facts on which Petitioner relies are as follows:
9. Petitioner DAWN SMITH has suffered from physical medical ailments which include a history of colon cancer, fibromyalgia, migraine headaches, and a recently diagnosed allergy to milk and milk products.
10. Petitioner, DAWN SMITH has excellent health care insurance and is also covered by the Medicare Program.
11. Petitioner, DAWN SMITH has in the past appropriately arranged for all of her own medical care and routinely receives treatments from her own physicians in Longwood, Florida. In fact, Petitioner's daughter is a physician in Longwood, Florida.
12. On or about April 1, 2007, Petitioner was brought to the Emergency Room at SEMINOLE DOCTOR'S HOSPITAL having sustained an overdose of prescription medications.
13. SEMINOLE DOCTOR'S HOSPITAL transferred Petitioner DAWN SMITH to ORANGE COUNTY HOSPITAL, 6000 North Orange Avenue, Orlando, Orange County, Florida, where she was then confined against her will pursuant to the Baker Act.
14. Respondent, XYZ, INC., owns and operates ORANGE COUNTY HOSPITAL.
15. While involuntarily confined at ORANGE COUNTY HOSPITAL, Petitioner, DAWN SMITH, came under the treatment of Respondent JOHNATHON SMITH FOX, M.D., an employee of Respondent FLORIDA MENTAL HEALTH MEDICAL GROUP, INC. ("FMHMG").
16. FMHMG is affiliated with Respondent XYZ, INC. It is the physician group which contracts with ORANGE COUNTY HOSPITAL and XYZ, INC.
17. FMHMG and Respondent XYZ, INC., own and operate a psychiatric facility

known as FMHMG/Center for Behavioral Health. It is co-located on the same property as ORANGE COUNTY HOSPITAL in Orlando, Florida.

18. Respondent JOHNATHON SMITH FOX, M.D., then, through coercion, intimidation and undue influence, obtained Petitioner DAWN SMITH's signature on an agreement to "voluntarily" confine herself for treatment at ORANGE COUNTY HOSPITAL and at FMHMG/Center for Behavioral Health.

19. This was done for the purpose of avoiding a hearing before a judge, a right Petitioner had pursuant to the Baker Act, and for the purpose of providing unnecessary and undesired treatment to a patient whose insurance would pay for it.

20. Petitioner DAWN SMITH was not a threat to herself or to others and no authority or basis for confining her involuntarily existed at that point in time.

21. Respondents JOHNATHON SMITH FOX, M.D., FMHMG and XYZ, INC., then proceeded to keep Petitioner DAWN SMITH confined against her will and treated her illegally and involuntarily from approximately April 1, 2007, through May 12, 2007.

22. On Thursday, May 11, 2007, Petitioner DAWN SMITH consulted with undersigned counsel via telephone. Based upon this, Petitioner then made it clear to Respondents that she desired immediate release from Respondent's facility and that she would obtain an attorney to secure her release, if necessary.

23. On Friday, May 12, 2007, Respondent JOHNATHON SMITH FOX, M.D., ordered the discharge of Petitioner DAWN SMITH from FMHMG/Center for Behavioral Health.

24. However, Respondent JOHNATHON SMITH FOX, M.D., also ordered Petitioner DAWN SMITH to report for treatment to Respondent BLUE SKY BEHAVIORAL CENTER,

located in Altamonte Springs, Seminole, Florida (also referred to as "BLUE SKY BEHAVIORAL CENTER" herein), another facility believed to be owned, managed, controlled or operated by Respondent XYZ, INC.

25. Respondent JOHNATHON SMITH FOX, M.D., has ordered Petitioner DAWN SMITH to spend every night at BLUE SKY BEHAVIORAL CENTER under the threat that if she did not do this he would have her involuntarily confined, once again, at ORANGE COUNTY HOSPITAL and FMHMG Behavioral Center, pursuant to the Baker Act.

26. BLUE SKY BEHAVIORAL CENTER is not a psychiatric treatment facility, a hospital, or a mental health facility. It has no physicians and no psychiatrist at its facility.

27. Pursuant to DR. SMITH FOX'S orders, Petitioner DAWN SMITH is free to leave BLUE SKY BEHAVIORAL CENTER every morning, to travel about and do as she desires, but must report back in to BLUE SKY BEHAVIORAL CENTER by 11:00 p.m. each night to remain, involuntarily over night.

28. Petitioner DAWN SMITH poses no threat of harm to herself or others as shown by her discharge from FMHMG Behavioral Center and ORANGE COUNTY HOSPITAL.

29. There is no authority under Baker Act or any other Florida law for a physician to confine a patient against her will at night, but to release her on her own during the day.

30. There is no provision under the Baker Act or any other law that would allow "night time only" involuntary confinement and treatment.

31. If MRS. SMITH intended to do herself harm, she could easily do this during the day when she was away from BLUE SKY BEHAVIORAL CENTER or at home.

32. A writ of habeas corpus is sought discharging Petitioner from the custody of

Respondents and prohibiting Respondents from taking custody of Petitioner DAWN SMITH for this matter again.

33. To the extent Respondents, ORANGE COUNTY HOSPITAL, XYZ, INC., FMHMG, SEMINOLE DOCTOR'S HOSPITAL, and JOHNATHON SMITH FOX, M.D., seek the aid and assistance of the Sheriff of Orange County or the Sheriff of Osceola County to illegally detain Petitioner DAWN SMITH, these Sheriffs should likewise be prohibited from assisting Respondents.

34. The undersigned attorneys have been retained by Petitioner DAWN SMITH to protect her interest and her constitutional rights in this matter.

35. Sworn affidavits in support of this Petition are attached in Exhibits "1" and "2" as required by Section 79.01, Florida Statutes. Additional information is contained in Exhibits "3" and "4."

36. Counsel for Petitioner DAWN SMITH wrote a letter to Respondents which they received on Monday morning, May 19, 2007, placing each on notice of representation of Petitioner by counsel, of Petitioner's revocation of her consent for treatment by them, requesting that they refrain from attempting to involuntarily confine Petitioner, requesting notice in advance if they intended to attempt to confine Petitioner and advising Respondents that undersigned would file this Petition if they persisted in their attempts to confine or detain Petitioner. Regardless, Respondents went ahead and did it anyway.

37. Petitioner is not a criminal defendant and is not being held pending any criminal proceeding. Petitioner is an adult, homeowner with a residence in Altamonte Springs, Florida. The Court is respectfully requested to waive the posting of any bond in this matter.

MEMORANDUM OF LAW

The right to a writ of habeas corpus is guaranteed by Article I, Section 13, of the Constitution of the State of Florida. It can be issued by any circuit court pursuant to Article V, Section 5 (b) of the Constitution of the State of Florida.

Issuance of the writ of habeas corpus is mandatory. Section 79.01, Florida Statutes, states:

79.01 Application and writ.--When any person detained in custody, whether charged with a criminal offense or not, applies to . . . any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the . . . judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the . . . judges as the writ directs. (Emphasis added.)

The use of a petition for writ of habeas corpus to secure the release of a mental health patient confined against her will pursuant to the Baker Act, such as Petitioner, is specifically authorized by Florida law, Sections 394.459(a) & 916.107(a), Florida Statutes. See also, State ex rel. Deeb v. Fabisinski, 111 Fla. 454, 152 So. 207 reh. den. 156 So. 261 (1933); Porter v. Porter, 60 Fla. 407, 53 So. 546 (1910).

Section 394.459(8), Florida Statutes, part of the Baker Act, states:

(8) HABEAS CORPUS.--

(a) At any time, and without notice, a person held in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may petition for a writ of habeas corpus to

question the cause and legality of such detention and request that the court order a return to the writ in accordance with chapter 79. Each patient held in a facility shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) At any time, and without notice, a person who is a patient in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may file a petition in the circuit court in the county where the patient is being held alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue any order needed to correct an abuse of the provisions of this part.

(c) The administrator of any receiving or treatment facility receiving a petition under this subsection shall file the petition with the clerk of the court on the next court working day.

(d) No fee shall be charged for the filing of a petition under this subsection.

The writ of habeas corpus is so important in connection with constitutional liberty that a motion to dismiss it or quash it is not permitted. See Crooms v. Schad, 51 Fla. 168, 40 So. 497 (1906). As Trawick states:

. . . The respondent cannot move to quash the order or to dismiss the petition. . . . This is the only civil proceeding in which the legal sufficiency of a pleading cannot be directly attacked or in which the parties are not limited to the issues raised in the pleadings.

Trawick, Fla. Prac. & Proc., Sect. 36-6 (2003).

Writs of habeas corpus do not require a petition that states a cause of action. Trawick, Fla. Prac. & Proc. Forms, Sect. 4-208.6 (2004). See also, Langston v. Lundsford, 122 Fla. 813, 165 So. 898 (1936); Brown v. State, 358 So.2d 16 (Fla. 1978). Trawick, Fla. Prac. & Proc. Chap 36 (2003).

Any interpretation that supports an abolition of the writ of habeas corpus by Rule 9.100, Florida Rules of Appellate Procedure, or Rule 1.630, Florida Rules of Civil Procedure, and the substitution of an order to show cause or a requirement for a complaint, violates Article I, Section 13, Constitution of the State of Florida, and cannot be used to prevent the issuance of the writ. See Trawick, Fla. Prac. & Proc., Sect. 36-6, n.12 (2003); Trawick, Fla. Prac. & Proc. Forms, Sect. 4-208.6 (2004).

WHEREFORE, Petitioner demands a Writ of Habeas Corpus be issued requiring Respondents to deliver up and bring Petitioner before this Court so that the legality of her detention can be determined and that Petitioner can be discharged from custody. Other parties or organizations who may be involved in or may have been involved in the detention of Petitioner or who may be called upon to assist Respondents, should also be noticed with the Writ.

DONE: This _____ day of _____, 200____.

GEORGE F. INDEST III, ESQUIRE

Board Certified in Health Law

Florida Bar No.: 999999999

1101 Douglas Avenue

Altamonte Springs, Florida 32714

Telephone: (407) 331-6620

Facsimile: (407) 331-3030

ATTORNEYS FOR PETITIONER

DAWN SMITH

Attachments:

- (1) Affidavit of Dawn Smith
- (2) Affidavit of John Smith
- (3) Revocation of Consent for Treatment by Dawn Smith
- (4) Authorization to Represent (Note: Sample not included here)
- (5) Notice to Clerk of Court of No Filing Fee In Baker Act Case
- (6) Proposed Writ for Court to Issue

GFI/slc

A:\Emergency Petition for Writ of Habeas Corpus.doc

STATE OF FLORIDA)
)
COUNTY OF SEMINOLE)

AFFIDAVIT OF DAWN SMITH

I, the undersigned, having been duly sworn, do hereby depose and state:

1. I am a person over 18 years of age, competent to make this statement. I have first-hand knowledge of the facts stated herein.
2. My name is Dawn Smith and I reside at 123 Smith Street, Orlando, Florida.
3. I am married and I live with my husband John. We own our own home.
4. I was transferred to Blue Sky Facility by Dr. Smith Fox on May 17, 2007. I was free to go and come from the facility during the day. I was told by the Administrator of Blue Sky that the facility was not for psychiatric patients and that I could not be required to stay there if I did not want to. I was told by the administrator of the facility that I could leave at any time.
5. I am not a danger to myself or to others.
6. On either Tuesday or Wednesday of this week, I decided that I did not want to sleep at Blue Sky Facility any longer. I left and went home to stay with my husband. I have been living at home ever since.

AND FURTHER AFFIANT SAYS NAUGHT.

Signature
Name (Print): _____

NOTARIZATION

The foregoing was sworn to and subscribed before me, an officer duly authorized in the State of Florida, to take oaths and acknowledgments, by the person whose name appears above,

the same either personally known to me or who produced satisfactory identification as follows :

_____, and who did take an oath. Done this

_____ day of _____, 200_____.

Notary Public

Print Name: _____

(Stamp/Seal)

My Commission Expires:_____

STATE OF FLORIDA)
)
COUNTY OF SEMINOLE)

AFFIDAVIT OF JOHN SMITH

I, the undersigned, having been duly sworn, do hereby depose and state:

1. I am a person over 18 years of age, competent to make this statement. I have first-hand knowledge of the facts stated herein.

2. My name is John Smith and I reside at 123 Smith Street, Longwood, Florida.

3. I am married and I live with my wife Dawn. We own our own home.

4. On May 17, 2007, my wife Dawn was discharged from Orange Hospital and transferred to Blue Sky Facility. I visited her there a number of times.

5. Amber Blue Sky is not a psychiatric facility or hospital. The doors are not locked. The people who stay there are free to come and go as they desire.

6. On Tuesday or Wednesday of this week, my wife decided that she did not want to stay there any longer. She decided to come home. I agreed with her. She left and came home and has been well at home with me ever since then.

7. My wife's mental health is fine. She is not a danger to herself or to anyone else.

AND FURTHER AFFIANT SAYS NAUGHT.

Signature

Name (Print): _____

NOTARIZATION

The foregoing was sworn to and subscribed before me, an officer duly authorized in the State of Florida, to take oaths and acknowledgments, by the person whose name appears above,

the same either personally known to me or who produced satisfactory identification as follows :

_____, and who did take an oath. Done this

_____ day of _____, 200_____.

Notary Public

Print Name: _____

(Stamp/Seal)

My Commission Expires:_____

REVOCATION OF CONSENT TO TREATMENT

I, dawn Smith, hereby revoke any voluntary consent to treatment I may have provided to Orange County Hospital, Dr. Smith Fox, FMHMG, Blue Sky Facility, or any other health care provider or facility.

DAWN SMITH

NOTARIZATION

The foregoing was sworn to and subscribed before me, an officer duly authorized in the State of Florida, to take oaths and acknowledgments, by the person whose name appears above, the same either personally known to me or who produced satisfactory identification as follows :

_____, and who did take an oath. Done this
_____ day of _____, 200_____.

Notary Public

Print Name: _____

(Stamp/Seal)

My Commission Expires:_____

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IN AND FOR ORANGE COUNTY, STATE OF FLORIDA**

[NOTE: ALL NAMES ARE COMPLETELY FICTITIOUS]

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a Florida corporation; and
BLUE SKY BEHAVIORAL CENTER,
a/k/a FUTURE GROUP, INC.,
a Florida corporation,**

Respondents.

_____ /

**NOTICE TO THE CLERK OF COURT:
NO FEE FOR FILING**

Notice is hereby given to the Clerk of Court that Section 394.459(8)(d), Florida Statutes (copy attached), prohibits you from charging a fee for the filing of this Petition for Writ of Habeas Corpus. Section 394.459(8)(d), Florida Statutes, states:

(8) HABEAS CORPUS.--

(a) At any time, and without notice, a person . . . may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the court order a return to the writ in accordance with chapter 79.

* * *

(d) No fee shall be charged for the filing of
a petition under this subsection.

DONE: This _____ day of _____, 200____.

GEORGE F. INDEST III, ESQUIRE

Board Certified in Health Law

Florida Bar No.: 99999999

1101 Douglas Avenue

Altamonte Springs, Florida 32714

Telephone: (407) 331-6620

Facsimile: (407) 331-3030

ATTORNEYS FOR PETITIONER

DAWN SMITH

Attachment: Section 394.459, Florida Statutes

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Respondents.

_____ /

WRIT OF HABEAS CORPUS

THE STATE OF FLORIDA

**TO: ORANGE COUNTY HOSPITAL,
a/k/a ORANGE MEDICAL CENTER;**

FLORIDA MENTAL HEALTH MEDICAL GROUP, INC.;

FMHMG HEALTH CENTER;

JOHNATHON SMITH FOX, M.D.;

**BLUE SKY BEHAVIORAL
a/k/a FUTURE GROUP, INC.; and**

LONGWOOD HOSPITAL, INC.

YOU ARE COMMANDED to have the body of **DAWN SMITH**, currently being detained

by one or more of you, together with the time and cause of the detention, by whatever name **DAWN SMITH** shall be called, delivered before me at the Orange County Courthouse in Orlando, Florida, Room _____, 425 North Orange Avenue, Orlando, Florida 32801, **immediately after being served with this writ or at _____ A.M./P.M. on the _____ day of _____, 200____**, to do what shall then and there be considered concerning the detention, and that you have with you a copy of this writ.

IT IS FURTHER ORDERED that the Sheriff of Orange County and the Sheriff of Seminole County, as applicable, are hereby commanded to assist counsel for Plaintiff **DAWN SMITH** by all lawful means necessary to obtain the body of **DAWN SMITH** from Defendants and to deliver it before me with all urgency, as well as to serve this Writ.

ORDERED at Orlando, Orange County, Florida, on _____, 200____.

JUDGE, CIRCUIT COURT

SERVICE OF WRIT

I hereby attest that conformed copies of this Writ have been served on those on the attached service list by telefax and by courier, hand delivery, or process server, this _____ day of _____, 200____.

JUDICIAL ASSISTANT/ATTORNEY

Attachment: Service List (Complete list of all names, addresses, telephone and telefax numbers)