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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING**

In re the Matter of:

NO. 15-2-12050-6 SEA

APPEARING FOR HEARINGS BY  
VIDEO in the INVOLUNTARY  
TREATMENT COURT IN SEATTLE,  
WASHINGTON

**AMENDED EMERGENCY ORDER  
ESTABLISHING TEMPORARY  
PROTOCOL FOR HEARINGS BY  
VIDEO**

EFFECTIVE April 17, 2015

Pursuant to its inherent power and responsibility as the judiciary, the Court on its own motion makes the following findings of fact and conclusions of law and enters the following emergency order:

The creation of ITA Court.

1. The Legislature passed the Involuntary Treatment Act, codified at RCW 71.05 *et seq.*, in 1974 and passed a similar law, codified at RCW 71.34 *et seq.*, in 1998 to provide a process for imposing involuntary mental health treatment on adults and minors with judicial oversight.
2. King County Superior Court established the Involuntary Treatment Act Court (ITA Court) to hear and resolve petitions for the involuntary commitment of adults and minors (collectively “respondents”) filed by certified psychiatric evaluation and treatment facilities (known as “petitioners”) throughout King County.

1 The transportation of respondents to ITA Court.

- 2 3. Petitioners have historically transported respondents to and from the ITA Court either by van  
3 or, if the respondent is in restraints on a gurney for medical or safety reasons, by ambulance.
- 4 4. Petitioners have made the determination as to whether a respondent needs to be transported  
5 in restraints on a gurney based either on that respondent's medical needs and/or on  
6 information regarding that respondent's behavior and the level of precautions the patient's  
7 treatment team has put in place during their current stay at the evaluation and treatment  
8 facility, and a meeting between the transport staff and the respondent to assess the  
9 respondent's ability to be safe.
- 10 5. Respondents transported by restraints on a gurney for safety reasons remain restrained on a  
11 gurney throughout their time at ITA Court until their return to the facility, if the court orders  
12 their commitment, or their release, if the court denies the commitment petition.

13 AMR's decision to terminate its services.

- 14 6. Since approximately 2012, Petitioners have used American Medical Response (AMR)  
15 exclusively to transport to and from ITA Court those respondents for which a petitioner  
16 determined that safety concerns require transportation in restraints on a gurney. AMR has  
17 billed the Washington State Department of Social and Health Services directly for these  
18 transport services.
- 19 7. King County Crisis and Commitment Services (CCS) contracted with AMR to have staff at  
20 ITA Court to monitor and ensure the safety of respondents in restraints on a gurney from the  
21 time an ambulance dropped them off at and picked them up from ITA Court ("patient  
22 monitoring services").
- 23 8. On or about March 2, 2015, AMR notified CCS that AMR was terminating the contract to  
24 provide patient monitoring services pursuant to the 30-day notification clause in that  
25 contract. In addition to terminating its patient monitoring services, AMR also informed CCS  
26 that AMR would no longer provide transportation of respondents by ambulance except those

1 hospitals for which it had an existing contract to provide such transportation, such as Seattle  
2 Children's Hospital. Although April 10, 2015 was the initial date of termination, AMR  
3 agreed to extend the termination date to April 17, 2015.

4 9. As of the date of this order, CCS has not been able to enter into a contract with another  
5 company to provide transportation or patient monitoring services to replace AMR.

6 10. Three certified evaluation and treatment facilities, Cascade Behavioral Health, Fairfax  
7 Hospital and Navos Inpatient Services, do not currently have the financial resources to front  
8 the cost of alternative ambulance transports to and from ITA Court. CCS does not yet have  
9 in place a mechanism for paying an ambulance company for transportation services and two  
10 alternative ambulance companies are currently unable or unwilling to provide such services.

11 11. As a result of AMR's decision to terminate its contract and to refuse to transport respondents  
12 to or from ITA Court, however, respondents who need to be placed in restraints on a gurney  
13 for medical or safety reasons to be transported by ambulance to or from Cascade, Fairfax and  
14 Navos will not be able to physically arrive at ITA Court to attend a hearing in-person.  
15 Because the law imposes time restrictions on when a respondent must be afforded an  
16 evidentiary hearing or trial, the Court deems the termination of the AMR contract and the  
17 loss of its transportation services to constitute an emergency requiring the Court to make  
18 alternative arrangements for ensuring due process to these respondents.

19 Conducting hearings by video.

20 12. The caseload at ITA Court has increased over the years, with significant increases each year  
21 starting in 2012. The caseload increase has caused court congestion, which has in turn  
22 impacted the parties' and the court's ability to conduct ITA hearings in a timely manner.

23 13. To address that congestion, the ITA Court explored conducting contested evidentiary  
24 hearings by video and implemented two pilot projects, the first at Northwest Hospital and the  
25 second at Fairfax Hospital.

1 14. Through consultation with the Department of Public Defense (DPD), whose attorneys  
2 represent respondents appearing in ITA Court, and the King County Prosecutor's Office,  
3 whose attorneys represent the petitioners, the ITA Court adopted video pilot protocols. The  
4 protocols included agreed upon ground rules and safeguards for use of the video.

5 15. In the course of the two pilot projects, the Court retained a consultant to conduct surveys of  
6 participants in video hearings and in-person hearings. The consultant questioned  
7 respondents, prosecutors, defense attorneys, and witnesses regarding their perceptions of the  
8 procedural fairness of both in-person and video hearings. Both pilot projects have now  
9 concluded.

10 16. The Court concluded that respondents at Northwest Hospital who otherwise would have  
11 been secured in a gurney during the transportation to and from ITA Court and the pendency  
12 of their hearing prefer to appear by video from the hospital: instead of waiting on a gurney  
13 for hours while the ambulance navigated traffic and while the parties waited for their  
14 hearing, the respondents could wait in the relative comfort of the hospital. The Court also  
15 concluded that there was no significant difference in participants' perceptions of procedural  
16 fairness between video hearings and in-person hearings.

17 17. Based on the results of the Northwest Hospital pilot project, the Court adopted a permanent  
18 video hearing protocol for Northwest Hospital. Video hearings at Northwest Hospital now  
19 occur four days a week, Monday through Thursday, from 9:00 to noon. No Northwest  
20 respondents are physically transported to ITA Court.

21 18. Although the results of the Fairfax Hospital pilot project are preliminary, the Court believes  
22 that respondents in that facility have also generally expressed a preference for video  
23 appearances in lieu of gurney transports. In addition, the Court has found no significant  
24 difference in participants' perceptions of procedural fairness between video and in-person  
25 hearings.

1 19. Navos Inpatient Services has conducted administrative hearings by video and currently has  
2 the capacity to conduct those and contested hearings with safeguards consistent with the  
3 ground rules applicable to the pilot projects at Northwest Hospital and Fairfax Hospital. The  
4 court has not initiated a pilot project at Navos Inpatient Services but sees no reason to  
5 conclude that the outcome of such a pilot would be substantially different than the results  
6 from the Fairfax Hospital pilot project.

7 20. Cascade has agreed to procure and install video equipment sufficient to conduct video  
8 hearings from that facility. The installation is to be completed by April 17, 2015.

9 21. Based on the foregoing, the Court concludes that using video hearings for respondents at  
10 Cascade, Fairfax Hospital, and Navos Inpatient Services who are unable to travel by van to  
11 ITA Court is a viable option for a temporary period until the Court, CCS, the hospitals and  
12 other stakeholders can determine if other options exist.

13 DPD's assignment of cases.

14 22. Generally, DPD assigns new cases to its attorneys between 11:00 am and noon the day  
15 before the hearing dates for those cases.

16 23. DPD has the ability to reallocate the caseload of its attorneys and to office attorneys at  
17 Cascade, Fairfax and Navos Inpatient Services to represent respondents at video hearings. In  
18 order to facilitate the efficient assignment of cases that are likely to be conducted by video to  
19 those attorneys, DPD will need to know by noon the day before the scheduled hearing day  
20 which respondents are likely to be transported to ITA Court by van and which are likely to  
21 qualify for gurney transportation due to medical or safety concerns. The stakeholders met on  
22 Monday, April 6, 2015 to discuss DPD's needs if the Court adopted an emergency video  
23 hearing process. The hospitals present at that meeting agreed to provide this information to  
24 DPD on the time schedule required.

25 Based on the foregoing findings, the KING COUNTY SUPERIOR COURT makes the  
26 following Conclusions of Law:

- 1 1. Civil Rule 43(a)(1) allows the Court to direct that the testimony of witnesses may be in open  
2 court by contemporaneous transmission from a different location for good cause in  
3 compelling circumstances and with appropriate safeguards.
- 4 2. There is no published Washington State appellate decision that has considered whether  
5 holding a contested commitment hearing by video violates the respondent's due process and  
6 statutory rights. The one federal appellate court that has considered that issue concluded that  
7 conducting a commitment hearing by video is permissible.<sup>1</sup>
- 8 3. Likewise, King County Local Mental Proceeding Rule (LMPR) 1.8(a) allows for the taking  
9 of testimony from any witness, including the respondent, via video, telephone, or other  
10 electronic means consistent with CR 43(a). Further, LMPR 1.8(b) sets forth standards for a  
11 hearing conducted via video: "the technology used must permit the presiding judicial officer,  
12 counsel, all parties, and the witness to be able to see, hear, and speak when authorized,  
13 during the proceedings and allow attorneys to use exhibits or other materials during trial. To  
14 the extent there are any statutes, case law, or constitutional standards relating to conducting  
15 video proceedings, such standards are incorporated herein by reference."
- 16 4. Finally, the ITA Court has adopted ground rules for use of video by Northwest Hospital and  
17 Fairfax Hospital that were found to be practical by the hearing participants. Those ground  
18 rules are set forth in Appendix A. The ground rules set forth in Appendix A and the  
19 standards contained in LMPR 1.8(b) provide appropriate procedural safeguards for  
20 conducting hearings by video.
- 21 5. Compelling circumstances exist that justify requiring respondents at Cascade, Fairfax  
22 Hospital and Navos Inpatient Services who need to be transported by ambulance to attend  
23 their ITA Court hearings by video.

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24 <sup>1</sup> See *United States v. Baker*, 45 F.3d 837, 848 (4th Cir.1995) ("Because the use of video conferencing at Baker's  
25 civil commitment hearing violated none of Baker's constitutional or statutory rights, we affirm the judgment of  
26 commitment below."); see also *Shellman v. Com.*, 284 Va. 711, 720, 733 S.E.2d 242, 248 (Va. 2012) (affirming use  
of video hearing for respondent's mandatory annual assessment to determine his continued need for secure inpatient  
treatment).

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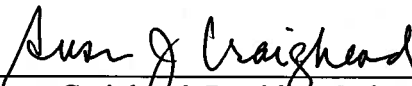
ORDER

Based on the foregoing findings of fact and conclusions of law, the Court orders as follows:

1. Petitioners Cascade, Fairfax Hospital and Navos Inpatient Services shall notify DPD, by noon the day before a scheduled hearing, which respondents will be transported to ITA Court by van. All other respondents residing in these facilities will have their hearings conducted by video. In the event a medical or safety reason arises for not transporting a respondent by van on the scheduled hearing date, that respondent's hearing will occur by video as soon as practicable. Cascade, Fairfax or Navos will notify the assigned attorney of the change in status as soon as possible.
2. The participants to any video hearing shall comply to the greatest extent possible with the ground rules attached as Appendix A.

This Order shall be effective for sixty days from April 17, 2015 unless otherwise superseded or extended.

IT IS SO ORDERED this 14<sup>th</sup> day of April 2015.

  
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Susan Craighead, Presiding Judge  
King County Superior Court

APPENDIX A

GROUND RULES FOR USE OF VIDEO

1. For any hearing conducted via video, the technology used must permit the presiding judicial officer, counsel, all parties, and the witness to be able to see, hear, and speak when authorized, during the proceeding.
  - a. The Court will be responsible for maintaining the working order of the video equipment installed in its courtrooms.
  - b. The Hospital will be responsible for maintaining the working order of the video equipment that each Hospital installs.
  - c. The Court will be responsible for maintaining the Internet connection from the ITA Court that it needs to establish clear video and audio output.
  - d. The Hospital will be responsible for maintaining the Internet connection it needs to establish clear video and audio output.
  - e. The Court will be responsible for operational technical assistance if there are any equipment issues that arise during a court proceeding. If KCSC IT needs on-site assistance at the Hospital, the Hospital will provide the personnel to provide such assistance.
  - f. If a technological problem arises in the course of a hearing and this problem cannot be resolved within two hours, the court will have the discretion to recess the hearing to the next judicial day if circumstances warrant.
2. The technology must also allow attorneys to use exhibits during the trial.
  - a. The Court will be responsible for setting up an exhibit display system that can be used by the attorneys in both locations for showing documents to witnesses and will train the attorneys on how to use the system.
  - b. The attorneys will be responsible for educating themselves on the use of an exhibit display system.
3. The Prosecuting Attorney's Office and the Department of Public Defense will provide adequate staff to conduct these video hearings.
5. If the assigned defense attorney believes there is good cause to conduct the hearing in person, rather than by video, i.e., the respondent should be able to be transported by van to ITA Court, the attorney is free to petition the court to reassign a hearing to the ITA Court. The court retains the discretion to grant such a request.
7. Location of Defense Attorney and Respondent: The defense attorney and respondent will be physically located in the video courtroom at the Hospital. DPD will assign the requisite number of defense attorneys to cover these hearings.
8. Location of Prosecuting Attorney and Court Evaluator: The prosecuting attorney and court evaluator will be physically located in the video courtroom at the Ninth & Jefferson Building. At the evaluator's election, he or she may instead remain at the Hospital and testify from that location in the presence of the defense attorney. The prosecuting attorney will endeavor to assign cases for the Hospital to the same attorney each day and the assigned prosecutor will give these cases priority over other assigned cases. This prosecutor will make himself or herself available each morning to negotiate with the assigned defense attorney or to conduct video hearings.
9. Location of Witnesses: Petitioners' witnesses will be instructed in their subpoenas to appear at the ITA Court facility at the Ninth & Jefferson Building (primarily because the



1 DMHP may not always know at the time of detention if the patient will have transferred  
2 to the Hospital by the time of his or her hearing). The Hospital ITA Coordinator may  
3 contact any subpoenaed family member to arrange for him or her to testify from the  
4 hospital. If this occurs, the ITA Coordinator must notify the prosecutor at  
5 PAOITA@kingcounty.gov, the CCS Court Manager, defense counsel, and the court at  
6 schubert.court@kingcounty.gov of the witness's testimony location as promptly as  
7 possible to avoid delays in hearings. In all cases, the prosecuting attorney must make  
8 arrangements with any witness for an interview with defense counsel in advance of the  
9 hearing, if defense counsel requests such an interview. The court shall provide a cell  
10 phone for the witness to use in any telephonic interview with defense counsel.

11 10. Location of Judicial Officer and Clerk: The clerk will be physically located in the video  
12 courtroom at Ninth & Jefferson Building. The judicial officer will participate via video  
13 camera from chambers or the courtroom depending on circumstances.

14 11. Displaying Documents: The Court will provide equipment that will permit the defense  
15 attorney located at the Hospital to display a document to a witness located in the ITA  
16 courtroom.

17 12. Marking of Exhibits: Any party may ask the Court to have a document marked as an  
18 exhibit. If the party offering the exhibit is in a remote location, he or she may request a  
19 recess to allow the attorney to scan and email the exhibit to the court clerk. The court  
20 clerk will print and mark the proposed exhibit and provide a copy to the judicial officer  
21 and the prosecuting attorney. The Hospital will provide the necessary facilities to allow  
22 the defense attorney to scan and email exhibits to the court. If the prosecutor seeks to  
23 offer an exhibit, he or she will request a short recess to scan and email the exhibit to the  
24 defense attorney. The prosecutor will provide a paper copy to the judicial officer and the  
25 clerk for marking. The defense attorney will be responsible for accessing an electronic  
26 version of the proposed prosecution exhibit via email.

13 13. Hearing Times: Unless advance permission to alter a hearing time is granted by the  
14 Court, the Court will conduct video hearings only between 9 a.m. and 12 noon and 1:30  
15 and 4:00, Monday through Friday. The participants must make the necessary staffing  
16 arrangements to ensure that the attorneys, witnesses and respondents are available during  
17 those windows of time. The defense attorney will notify the court via email by 8:45 am  
18 each day of any anticipated hearings. This notification should be sent to Charlotte  
19 Daugherty at [charlotte.daugherty@kingcounty.gov](mailto:charlotte.daugherty@kingcounty.gov) and to Judge Schubert at  
20 schubert.court@kingcounty.gov, with a copy sent to PAOita@kingcounty.gov.

21 14. Orders: the parties will prepare an electronic order at the conclusion of the hearing based  
22 on the judicial officer's oral ruling. The Court will e-file the order.

23 a. The Court will be responsible for maintaining the computer equipment needed for  
24 the defense attorney to review and sign electronic orders.

25 b. The Court will be responsible for e-filing electronic orders with the Clerk's  
26 Office and providing electronic copies to the parties.

1 a. The prosecuting attorneys and defense attorneys will be responsible for educating  
2 themselves on the use of the electronic order e-filing system.

3 15. Security: the Hospital will be responsible for transporting the patients to the hearing  
4 room within the hospital and for ensuring the security of the respondent, the defense  
5 attorney and any witnesses.

1 16. Work space for defense attorney: the Hospital will provide the defense attorney with  
2 sufficient work space to prepare and conduct video hearings, to conduct witness  
3 interviews, and to work on other cases during recesses in video proceedings.  
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