**IN THE CIRCUIT COURT OF THE STATE OF OREGON**

**FOR THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

STATE OF OREGON ) CASE NO: \_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff, ) DA NO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

v. ) *SELL[[1]](#footnote-1)* ORDER AUTHORIZING OSH

) TO ADMINISTER INVOLUNTARY

Name, ) TREAMENT TO THE DEFENDANT

Defendant. ) FOR THE PURPOSE OF RESTORING ) THE CAPACITY TO STAND TRIAL

This matter came before Judge [Name] on [Date] for a determination of whether the State may involuntarily treat the defendant with Electroconvulsive Therapy (ECT) for the purpose of restoring the defendant’s capacity to stand trial for the criminal charges indicated below. The defendant appeared with counsel [Name]. The State was represented by Deputy District Attorney (DDA) [Name].

On [Date], the court found that the defendant lacked the capacity to stand trial under ORS 161.370(2). The court committed the defendant to the custody and care of the superintendent of the Oregon State Hospital (OSH) for treatment designed for the purpose of enabling the defendant to gain or regain the capacity to stand trial.

On [Date], OSH notified the court that the defendant presently lacks the capacity to stand trial; and there is no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial without the treatment recommended below, the defendant is refusing to take the recommended treatment and the defendant cannot be involuntarily treated without a court order.

On [Date], the DDA motioned for an order that would authorize OSH to administer the recommended treatment for the purpose of restoring the defendant’s capacity to stand trial. The defendant objected to the state’s motion.

THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE:

* 1. Defendant is charged with the following offenses:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Offense | Felony or misdemeanor | Class | Incident date |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |

* 1. Dr. [Name], the defendant’s treating physician, has diagnosed the defendant with a mental disease or defect, specifically [diagnosis]. As a result of this mental disease or defect, the defendant lacks the capacity to stand trial.
  2. Dr. [Name] has recommended and prescribed ECT in order to restore the defendant’s capacity to stand trial as follows:

[Unilateral/Bilateral]

Administered \_\_\_\_ times per week

Course of Treatment: \_\_\_\_\_\_ weeks.

* 1. [Name, position] from OSH determined that, without administering the recommended treatment to the defendant, that there is no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial. It is substantially likely that, with the recommended treatment, the defendant will gain or regain capacity within [timeframe].
  2. [Name, position] from OSH testified/provided information that OSH is unable to involuntarily administer the recommended treatment to the defendant under its administrative process (OAR 309, chapter 114) because: (1) the defendant refused to, or lacked the capacity to, provide informed consent for the recommended treatment; and (2) an administrative law judge issued a final order that reversed OSH’s determination that there was good cause to involuntarily treat the defendant under its administrative process; or OSH determined that the defendant did not meet the criteria in its rules to allow it to involuntarily treat the defendant through its administrative process.
  3. If convicted of the charged crimes, the defendant faces a potential maximum sentence of imprisonment of \_\_\_\_\_\_\_\_\_ or a likely sentence of imprisonment of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  4. As of the date of this order, the defendant has been confined prior to trial in relation to the aforementioned charges for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  5. If convicted of these charges and with credit for pre-trial confinement, defendant faces a possible additional period of confinement of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  6. If convicted of the charged crimes, the defendant faces the following possible collateral consequences (e.g. firearm restrictions, sex offender registration, extended supervision and treatment in the community):

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* 1. The defendant is charged with offenses that are “serious” in nature because: (*e.g.*, possible sanctions, violent or predatory acts) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  2. The state’s interests in this case are important because: (*e.g.*, public safety, rehabilitation, retribution, deterrence, timely prosecution) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  3. The importance of the state’s interests is not significantly lessened by the following “special circumstances” (*i.e.,* length of pretrial confinement, length of possible sentence with credit for pretrial confinement, likelihood of civil commitment, timeliness of prosecution) because: *(At minimum, address each of the listed circumstances).* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  4. The recommended treatment is substantially likely to enable the defendant to gain or regain his capacity to stand trial because: *(Consider and address the medical testimony and evidence).* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  5. The recommended treatment is substantially unlikely to have side effects that will interfere significantly with the defendant’s ability to assist counsel in conducting a trial defense, thereby rendering the trial unfair because: *(Consider and address the medical testimony and evidence).* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
  6. Administration of the treatment is medically appropriate: *(Consider and address the medical testimony and evidence).*

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* 1. Any alternative, less intrusive treatments are unlikely to achieve the same results.

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* 1. There are no less intrusive means for administering the medication(s).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Based on the aforementioned findings of fact, the court finds by clear and convincing evidence that:

* 1. The involuntary administration of the recommended treatment by OSH to the defendant is not otherwise authorized on another ground, such as OSH’s administrative process.
  2. There are important state interests at stake in prosecuting the defendant in this case.
  3. The recommended treatment will significantly further those important state interests because:
     1. It is substantially likely that the ECT treatment will render the defendant fit to proceed; and,
     2. It is substantially unlikely that the ECT treatment will cause side effects that will impair the fairness of the criminal proceeding.
  4. Involuntary administration of ECT is necessary to further the important state interests because there are no alternative, less intrusive treatments that would produce the same result as ECT.

* 1. Administration of ECT is medically appropriate because it is in the defendant’s best medical interest in light of the defendant’s medical condition.

It is therefore ORDERED:

1. OSH is authorized to involuntarily administer ECT as provided below for the purpose of enabling the defendant to gain or regain capacity to stand trial:

[Unilateral/Bilateral]

Administered \_\_\_\_ times per week

Course of Treatment: \_\_\_\_\_\_ weeks.

1. OSH shall report the defendant’s mental condition and progress toward gaining or regaining fitness to proceed to the court within 180 calendar days from the date of this order or before the maximum period of the defendant’s commitment to OSH, whichever is shorter, for this order to remain effective. This obligation shall continue during the period this order is in effect.
2. The superintendent of OSH shall notify the Court if this order should be altered as the result of changes in the defendant’s mental status or circumstances.
3. This order shall expire when the defendant is discharged from OSH.
4. *OPTIONAL:* The County Sheriff shall TRANSPORT defendant from the County Jail to OSH in Salem, Oregon and shall return the defendant to the county jail upon notification from OSH.

A further proceedings date is set in courtroom \_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_.

DATED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Circuit Court Judge

Defense attorney name, address & phone number:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(\_\_\_\_\_\_) \_\_\_\_\_\_\_-\_\_\_\_\_\_\_\_

Case No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. *Sell v. United States*, 539 U.S. 166 (2003) (allowing the state to involuntarily medicate a defendant for purposes of restoring trial competence); *Washington v. Harper*, 494 US 210 (1990) (allowing the state to involuntarily medicate a defendant for purposes of treating dangerousness or grave disability); *see also State v. Lopes*, 355 Or 72 (2014) (*en banc*) (seminal decision in Oregon related to *Sell* orders). [↑](#footnote-ref-1)