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Informed Consent and Psychiatric Medication

Patients' Right to Refuse Psychiatric Medication

Voluntary and involuntary mental health patients in California have the right to consent to or refuse antipsychotic medication except in an emergency.¹

Absent an emergency, a patient can be required to take medication after a legal determination that the patient does not have the capacity to make a knowing decision regarding psychiatric medications. During the Medication Capacity Hearing (or Riese Hearing), the patient has the right to have legal representation, present evidence, and cross-examine witnesses.²

Emergency Medication

An emergency is defined as a situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment.³ Less restrictive interventions must be attempted prior to emergency administration of psychiatric medication. Furthermore, the patient may be treated only with psychiatric medication that is required to treat the emergency condition. Once the emergency has passed, no further medication may be given without informed consent from the patient.⁴

Basic Principles of Informed Consent

Before a patient can be given any psychiatric medication, their consent must be obtained. Informed consent requirements are designed to encourage meaningful participation for the patient in the treatment process and increase the communication and trust between physician and patient. Informed consent means that a patient has knowingly and intelligently, without duress or coercion, clearly and explicitly given consent to the proposed medication. The physician must provide the following information to the patient:

- A description of the *nature and seriousness of the patients' mental condition*, disorder, or behavior.
- An explanation of the *reason for the medication*.
- The *name and type, frequency, amount, and method of dispensing the medications*, and the probable length of time that the medications will be taken.
- The description of the *likelihood of improvement* and the probable degree and duration of improvement (temporary or permanent) or remission expected with (and without) the medication.

¹ Cal. Welf. & Inst. Code § 5325.2, Cal. Health & Safety Code § 7185.5 (a)

² Cal. Welf. & Inst. Code §§ 5332, 5333, 5334, 5336

³ Cal. Welf. & Inst. Code § 5008 (m)

⁴ Cal. Welf. & Inst. Code § 5332 (e)

- An explanation of the *nature, degree, duration, and the probability of the side effects and interactions* (with other medications the patient is taking and medical conditions the patient has), the risks and how and to what extent they may be controlled, if at all.
- An explanation of the *reasonable alternative treatments* available (including other medications and nonmedication-oriented treatment) and why the physician is recommending this particular medication.

The patient must be told that they have the right to accept or refuse the proposed treatment, and that if she consents, she has the right to revoke consent for any reason, at any time.⁵ The physician may urge the proposed medication as the best treatment possible, but may not use any reward or threat (express or implied) nor any other form of inducement or coercion in an effort to gain consent. The physician may not place the patient in a more restrictive setting, transfer the patient to another facility or deny the patient's hospital privileges or other benefits because of his or her refusal to give informed consent.⁶

Consent shall be in writing wherever possible. Oral consent is acceptable where the patient has given informed consent but is unwilling or physically unable to sign the consent form. The completed consent form should be included in the patient's chart. The fact that the information specified above has or has not been given shall be indicated in the chart.⁷ Where patients are admitted by conservator or parent, informed consent of the conservator or parent must be obtained.⁸

Steps for Self-Advocacy

You have a right to discuss your medications with your doctor. If you have a problem with your medications, such as side effects, a wrong dosage, or if you disagree with your doctor's choice of medications, let your doctor know. Here are some steps you can take:

1. Express your concern to your doctor and tell them the reason you want a change in medication (for example, side effects or that it is not working).
2. Make a paper trail. You can write a note to your doctor ahead of time if your appointments are brief, or if you think your doctor won't listen to you. Be specific about why you want the medication changed.
3. If your doctor doesn't respond to your concerns, ask your case manager for help.
4. Write a letter to the director of the clinic.
5. If your self-advocacy efforts fail, contact MHAP at (800) 248-6427.

Remember, your right to refuse medications cannot be taken away unless there is an emergency or if you have had a Riese hearing.

DISCLAIMER: This fact sheet is intended to provide accurate, general information regarding legal rights. It does not constitute legal advice. Because laws and legal procedures are subject to frequent change and differing interpretations, the Mental Health Advocacy Project cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular case or situation.

⁵ Cal. Welf. & Inst. Code § 5326.2, 9 C.C.R. § 851 (a-f)

⁶ Cal. Welf. & Inst. Code § 5326.5 (b)

⁷ Cal. Welf. & Inst. Code § 5326.4, 9 C.C.R. § 852

⁸ 9 C.C.R. § 850(c)