

**OFFICE OF PATIENTS' RIGHTS
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Informational letter # 22

TO: Interested Parties

FROM: The Office of Patients' Rights

RE: Medical Treatment While Receiving Inpatient Mental Health Treatment

DATE: June 20, 2005

The Office of Patients' Rights has been addressing a variety of questions regarding the extent and type of medical treatment that may be provided to persons while residing in an inpatient mental health facility. This informational letter is meant to provide a summary of the issues being raised and to offer reference points to the authority that addresses the issues in question.

General Rule

Commitment for involuntary psychiatric treatment does not confer authority to give medical treatment or make medical decisions without consent unless an emergency exists or a judicial decision specifically confers authority. California Code of Regulations, title 22, section 70707 (b) (6) provides that patients have a right to "participate actively in decisions regarding medical care. To the extent permitted by law, this includes the right to refuse treatment."

Court Order Authorizing Medical Treatment

Probate Code Section 3200, *et seq.* provides a procedure for petitioning a court to determine whether a patient lacks the capacity to make a health care decision and, if determined to lack capacity, to designate a person to make a health care decision on behalf of the patient. (Probate Code Section 3201).

For purposes of this law, a "health care decision" means a decision regarding the patient's healthcare, including **selection and discharge of healthcare providers** and institutions; **approval or disapproval of diagnostic tests**, surgical procedures, and

programs of medication; directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of healthcare, including cardiopulmonary resuscitation (Probate Code Section 3200 (b)) (emphasis added).

Detention in a Medical Hospital

A licensed general acute care hospital (as defined by section 1250(a) of the Health and Safety Code) shall not be criminally or civilly liable for detaining an individual who, as a result of a mental disorder, presents a danger to themselves or others, or is gravely disabled for up to eight hours. The time spent at the hospital must be credited to them if they are subsequently placed on a 72 hour hold and persons detained shall retain their legal rights regarding consent for medical treatment. Health and Safety Code Section 1799.111.

If a person on a 72 hour hold (WIC § 5151) is sent to a non-designated facility for medical treatment and admitted for medical treatment, the 72 hour hold is no longer valid. A person may only be involuntarily detained for evaluation and treatment under the provisions of the LPS Act if they are placed in a facility approved by the county board of supervisors and State Department of Mental Health. Welfare and Institutions Code section 7100.

Spiritual Healing

Probate Code section 3212 specifies "nothing in this part shall be construed to supersede or impair the right to any individual to choose treatment by spiritual means in lieu of medical treatment, nor shall any individual choosing treatment by spiritual means, in accordance with the tenants and practices of that individual's established religious tradition, be required to submit to medical testing of any kind pursuant to a determination of capacity."

Likewise, Welfare and Institutions Code Sections 5006 and 7104 clarify the circumstances under which prayer or faith healing must be permitted for persons detained for mental health treatment.

Emergency

Emergency medical treatment is defined by California law as a situation where immediate services are required for the alleviation of severe pain, or immediate diagnosis and treatment of severe medical conditions are required, if such conditions would lead to serious disability or death if not immediately diagnosed and treated. In such situations only the emergency condition may be treated, and if evidence exists to indicate that the patient would refuse the treatment it may not be provided without a court order to do so. Only such medication which is required to treat the emergency condition can be administered (i.e., short acting) and must be provided in ways that are

least restrictive of the personal liberty of the individual. California Code of Regulations, title 9 section 853.

Note that a person may bring an action for battery in absence of informed consent. *Cobbs v. Grant*, Cal.3d 229 (1972). The immunity for liability under Welfare and Institutions Code section 5278 only extends to facts inherent in the involuntary detention and not to intentional torts, criminal wrongs or negligent acts during the course of the detention, evaluation and treatment. *Jacobs v. Grossmont Hosp.*, 108 Cal. App.4th 69 (2003).

Other Medications Rights

Individuals have a right to be free from unnecessary or excessive medication. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program. Welfare and Institutions Code section 5325.1 (c).

Antipsychotic Medications

Involuntary patients may be treated with antipsychotic medication only after being given the information specified in Welfare and Institutions Code section 5152 (c) and being advised that they have the right to refuse such medication. Welfare and Institutions Code section 5332 (a).

If an involuntary patient orally refuses or gives other indication of refusal of treatment with medication in a non-emergency situation, medication should only be administered after the treatment staff that determines the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of the persons in capacity to refuse the treatment in a hearing held for that purpose Reise or capacity hearing. Welfare and Institutions Code section 5332 (b).

Note that this hearing only covers situations where antipsychotic medications are proposed to be administered to an involuntarily held patient. They do not give the facility the authority to administer other medications or perform medical tests without the person's consent unless a Probate Court order has been granted for that purpose (see below).

Voluntary patients may only be given antipsychotic medications without their informed consent if there is an emergency situation.

County Advocates should consult with legal counsel designated by the county to represent and/or advise the advocates (often referred to as the County Counsel