

OFFICE OF PATIENTS' RIGHTS

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MEMORANDUM

TO: Interested Persons

FROM: Darla Rucker, Patients' Rights Specialist

RE: Right to Refuse Medical Treatment

DATE: July 30, 1999

We recognize the importance for a treating facility to provide patients with proper and appropriate medical care. However, all persons, including those receiving mental health treatment involuntarily, have the right to give or refuse consent to medical diagnostic or treatment procedures and to make medical decisions about what physician's advice they choose to follow. This would include continuing to smoke against medical advice. Cal. Probate Code § 4650

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. Cal. Code Regs. tit 22, §70707(b)(6) provides that a patients has a right to "participate actively in decisions regarding medical care. To the extent permitted by law, this includes the right to refuse treatment."

In addition, Welfare and Institutions Code §5325.1 states that "Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulation..." and the California Supreme Court recently reaffirmed the basic and "fundamental right" to refuse treatment even when a refusal of the proposed medical treatment may cause or hasten death. *Thor v. Superior Court*, 21 Cal. Rptr 2d 357 (1993) (quadriplegic prisoner could refuse gastrostomy tube for feeding and medication).

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 unforeseeable medical conditions are required, if such conditions would lead to serious disability or death if not immediately diagnosed and treated.

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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. The procedure for obtaining court authorization of non-emergency physical health care to which a patient will not consent is outlined in Cal. Probate Code §3200. It is also important to note that a person may bring an action for battery in absence of informed consent. *Cobbs v. Grant*, 8 Cal3d 229 (1972).

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

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