

# ADVANCED REPRESENTATION IN CERTIFICATION HEARINGS

*Presenters:*

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10:45 a.m. – 12:15 p.m.*

*Patients' Rights Advocacy Training –  
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## POINTERS

It is important to keep the Hearing Officer focused on the legal issue of your client's capacity to make decisions about treatment with psychiatric medication. There are ways to prevent the Hearing Officer from following the doctor's lead when the doctor's presentation focuses on the clinical needs of your client.

Here are some suggestions;

When it is your turn to present, begin by explaining to the patient that the hearing is not about whether he/she needs medication but is about whether he/she can understand the facts regarding medication. (This is an indirect way to remind the Hearing Officer of what his/her role is in the hearing, and that it is not his/her role to be a clinician.)

Knowing the facts of the actual Riese case is essential. Whenever possible make connections between facts (or lack of facts) that can be linked to important points in the Riese case. For example, if the doctor does not show a link between the symptoms of your client's mental illness and your client's decision not to take the suggested medication, point out that the Riese case states that absent such a link, it should be assumed that your client is utilizing a rational thought process.

Generally, do not allow your questioning or presentation fall into the realm of questioning the doctor's clinical judgment. Do not allow your presentation to focus on clinical or emotional issues. This opens the door for the doctor and Hearing Officer to focus their attention away from the legal issue of capacity and turn the hearing into a clinical plea regarding your client's NEED to have medication rather than looking at the client's legal capacity.

If it does not break rapport with your client, compliment or acknowledge the doctor's clinical concern and then go on to ask the doctor how he/she thinks this is related to the patient's ability to make rational decisions about treatment.

Again, if it does not interfere with your rapport with your client, see if you can find areas where your client and the doctor agree and then ask your client what he/she thinks would be helpful for treatment. This helps show insight, and an ability to use a rational thought process to explore treatment alternatives.

Use your questions to help your client to show he/she understands the doctor's assessment and treatment suggestions but that he/she simply has a different opinion than the doctor, and disagreeing with the doctor is not in itself proof of a lack of capacity.

Ask your client what he/she thinks mental illness is, or ask what his/her perception is of a person with a mental illness. This will give you information about what you need to do to prepare your client to show insight. Many Hearing Officers require a patient to state that they have a "mental illness" in order to prove that they have "an understanding of their situation". Your client may be able to show he/she understands that something is going on with him/her that has caused the doctor to conclude he/she has a mental illness without having to outright state that they are "mentally ill".

Formulate questions that refer directly to the petition in order to encourage the Hearing Officer to treat the petition as the legal document in which the facts must be proven. Examples:

-“Does \_\_\_\_\_ still exhibit the symptoms you listed on the petition?”

-“On the petition you stated that \_\_\_\_\_ is paranoid. What did you observe that drew you to that conclusion?”

-“On the petition you state that the need for medication is urgent. If it is urgent, why did you fail to show for the hearing when you petitioned earlier if you were so concerned about the patient's immediate need for medication?” (Only occasionally applicable, but a good question when the circumstances warrant)

In your summary of your presentation, use some kind of statement that reminds the Hearing Officer that the burden of proof lies on the doctor and that it must be “clear and convincing”. If the case is taking a long time, the Hearing Officer appears to be on the fence or states that this decision is a tough one, remind the Hearing Officer that 1) your client has held it together and been able to participate in a long and stressful process and/or 2) that the evidence is probably not clear and convincing if the decision lingers on the fence.

These are just a few suggestions that should give you the basic concepts that will help you gain control of the hearing. From these suggestions, you should be able to develop other similar ideas that you might tailor to a particular doctor or Hearing Officer.