

# Riese Proceedings for Minors in Inpatient Psychiatric Treatment

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*Patients' Rights Advocacy Training (PRAT)*

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### **WHAT WE WILL DISCUSS TODAY**

- The Riese Decision Generally
- The Different Types of Statuses Minors Have in Inpatient Psychiatric Facilities
- The Different Issues that Arise with Each Different Status
- The Gray Areas of the Law
- The Laws Addressing Rights of Parents, Juvenile Court Laws, and Minor Consent Laws

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### Riese V. St. Mary's Hospital

What is established?

- The process by which patients involuntarily committed pursuant to 5150 and 5250, 5260, 5270 may be forced to take antipsychotic medications in non-emergent circumstances.
- The facility must establish lack of capacity by clear and convincing evidence.

Determination of capacity to give informed consent should focus on three factors:

1. Whether the patient is aware of his or her situation (eg. If the court is satisfied of the existence of psychosis, does the individual acknowledge that condition.)
2. Whether the patient is able to understand the benefits and the risks of, as well as the alternatives to, the proposed intervention.
3. Whether the patient is able to understand and to knowingly and intelligently evaluate the information regarding the medication and otherwise participate in the treatment decision with a rational thought process.

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“In the absence of a clear link between an individual’s delusional or hallucinatory perceptions and the patient’s ultimate decision, it should be assumed that he or she is utilizing rational modes of thought”

*Riese v. St. Mary's Hospital*

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### The Scope of the Capacity Hearing

- The scope of the capacity hearing to decide capacity is based on the 3 prong test **ONLY**. The hearing officer is not to decide on medical questions except as they pertain to the person’s ability to consent.

- Determination of capacity is uniquely **judicial**, not a medical function.

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### Riese and Minors

- The *Riese* decision is about informed consent and the right to refuse
  - While minors do not have the ability to consent to medications, they do have the right to refuse medications.
- The *Riese* decision makes no distinction between adults and minors. However it specifically only addresses involuntary patients.
  - It is generally agreed that it applies to minors as well.
- Minors are able to consent for other medical treatment. Examples include:
  - Care related to prevention or treatment of pregnancy
  - Seeking abortion
  - Care for rape if 12 or older
  - Care for outpatient mental health treatment if 12 or older

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### Who is a “Minor”?

All person under 18 years of age.

Certain subgroups of minors may be treated differently under the law (e.g. 14-17 year-olds). *In re Roger S.*, 19 Cal. 3d 921 (1977)

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### What Are Antipsychotic Medications?

- It means any medication customarily prescribed for the treatment of symptoms of psychosis and other severe mental and emotional disorders” (Wel & Instit. Code Sec 5008(l))

- The Welfare and Institutions Code Section 369.5(d) regarding dependents and wards states, “psychotropic medications or psychotropic drugs are those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorder or illnesses. These medications include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

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### The Different Legal Statuses of Minors in Psychiatric Facilities

Minors who are in psychiatric hospitals are either:

- Minors in custody of parents-
  - Involuntary (either on a 5150 or 5250) but continue to be under the care of the minors’ parents.
  - “Voluntary per Parent” – a parent has checked in minor for admission. The minor may not agree to hospitalization.
- Minors Under Jurisdiction of Juvenile Court & Removed from Parents
  - Dependent Children: Parents have been accused of abuse, neglect, or abandonment (WIC § 300)
  - Wards of the Court: Minors who are habitually disobedient/truant or have violated the law (WIC §§ 601, 602).
  - **Dependents and wards will always be a 5150 or 5250.**

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### Minors in Custody of Parents

- Involuntary Minors
- Voluntary per Parent

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### **Minors in Custody of Parent**

Involuntary Admission:

- Only when consent of parent/guardian is unavailable. Minors who do not have parental consent after the expiration of the 72 hour hold are then put on a 5250.

Voluntary Per Parent:

- Minors are signed into a psychiatric hospital as voluntary per parent. They are not on an LPS hold. This does not necessarily mean that the minor agrees to the hospitalization (WIC §§ 6002.15- 6002.25)

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### **General Principle about Consent for Psychotropic Medication**

Can only be administered with parental consent. (California Hospital Association Consent Manual, 2017, 4.1,5.24; Welf. Instit. Code §5585.53).

What this means: if parents do not consent to medications, psychiatric medications cannot be administered to the minor.

Exception is during emergency situations- a physician may administer psychotropic medications without parental consent only when there is an emergency situation.

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### Involuntary Minors (5150/5250/5260) – Can you do a Riese Hearing When an Involuntary Minor is Refusing?

- Some counties, in their Rules of Court, set forth procedures for Rieves (i.e. San Diego). In San Diego County, the local rules state that the *Riese* procedures apply to both adults and minors.
- Practice point: In SCC, stakeholders seem to agree that all involuntary minors are entitled to a *Riese* proceeding. (And the court seems to agree at this point)

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### The Unknown: Other Considerations

- Age of Minor: Is the issue of capacity evaluated differently for a minor who is 8 years old than a minor who is 17 years old?
- Witnesses: Who can testify at the hearing? May a parent testify? Are parents limited as to what they can testify to?
  - Fact witnesses v. expert witnesses: parents can testify as to whether they consent but should not testify as to issues of rational thought process/consent because they're not expert witnesses
- Parental Refusal: Are there any circumstances, other than emergencies, that a hospital can involuntarily medicate a minor when a parent is refusing administration of psychotropic medication?
  - In SCC, our hearing officer is in agreement that she should not have jurisdiction over this issue
- Minor Consent, Parental Refusal: what do we do when a minor consents to medication but the parents refuse?
  - We do not want to disregard parents' wishes
  - Minors are extremely vulnerable to coercion

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**Discussion time: How does your county address this issue?**

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### **Minors who are Voluntary per Parent**

**What do we do when a minor who is voluntary per parent is refusing medication?**

- The law does not address this subcategory of minors. This is a grey area!
- CHA Manual advises that providers should proceed with caution when minor does not agree with parents/legal representatives if the treatment involves serious risks. (CHA Manual, 2017, 4.10)
- We would argue that all minors should be afforded a right to refuse (argue for an ICR, *Roger S.* or writ of habeas corpus. These rights are due process rights regarding the minor's detention. )

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### **Possible Ways to Address the Refusal of the Vol per Parent Minor:**

- Converting minor back to involuntary: Some counties will put the voluntary per parent minor on an involuntary hold so that the minor is able to get a Riese hearing.
- Requesting a writ of habeas corpus: the voluntary per parent minor would be able to have his case heard in Superior Court. In this situation, the parent is the detaining party with the assistance of the expert testimony of the psychiatrist. It is the parents' decision that is being reviewed.

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### More Unknowns

- How do you address situations where the minor's parent does NOT consent to medication but the minor wants to take medication?
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- Are parents able to testify at the hearing?
  - Are parents also considered to be parties to the matter since the hospital needs their consent?

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**Discussion time: How does your county address this issues?**

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### Minors Who are Under the Jurisdiction of the Court

- Dependents and Wards of the Court

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### Minors Under the Juvenile Court (Dependents/Wards)

Default admission status: 5150/5250/5260

If a dependent child has been removed from parental custody, only the court has the authority to consent to the administration of psychotropic medication and may only do so upon a physician's request. Cal. Welf. & Inst. Code §§ 369.5, 739.5

- **In SCC, Dependency court approves medication but does not authorize administration if minor refuses.**



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### **The JV – 220 Process**

- The Psychiatrist must complete the JV 220 form and file it with the court
- Proper notice must be given to the minor, the minor's caregiver, the minor's parent or legal guardian, minor's attorney
- If anyone does not agree to the medication they can file an opposition form
- The court has 7 days to approve or deny the request OR hold a hearing

**Please note: many counties have their own procedures that govern the JV-220 process. Check your local rules of court or contact legal agency/ organization responsible for representing dependents**

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### **The Unknown- Riseses for Dependents**

- May the minor's dependency attorney serve as a witness during the hearing?
  - Who else may serve as a witness? DFCS? The minor's social worker?
- How are out of county dependents treated?
  - Are the JV-220 requirements in some counties more loose than in other counties?

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**Discussion time: How does your county address this issue?**

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### The Mature Minor Doctrine

Minors may give consent to medical procedures if they can show that they are mature enough to make a decision on their own. The mature minor doctrine takes into account the age and situation of the minor to d

- This doctrine is **NOT** adopted in California
- This doctrine has been adopted in: Arkansas, Washington, Pennsylvania, Tennessee, Illinois, Main and Massachusetts

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### PRACTICE POINTS FOR REPRESENTING MINORS IN RIESE HEARINGS

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### Riese for Minors' Checklist

- Is there appropriate Consent?
  - As discussed, for minors under their parents' care, there has to be parental consent for the medication to be offered.
  - For dependents/wards, is there a JV-220 filed out for the medication listed on the Riese?
  - There is a non refusal argument if there is no parental consent/ JV-220 because that means the hospital would not be able to offer the medication. No offer, no refusal!
- For minors under the care of their parents:
  - Obtain your client's permission to talk to their parent.
  - Interview parents about informed consent- full explanation of the proposed course of treatment

- Ask parents about the medication, if it has been taken in the past, any side effects.
- Discussion with parents about minor's psychiatric history

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### **Riese for Minors Checklist, Cont.**

- Notice: Did the hospital give notice to all parties involved? For wards/dependents this includes the minor, DFCS, the minor's dependency attorney.
- For dependent minors with permission from the minor, you may reach out to the minor's dependency attorney to get more information about:
  - Consent for medication
  - Minor's history with medications

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**QUESTIONS?**