

# HEINONLINE

Citation: 7 Mental Disability L. Rep. 436 1983



Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Thu Oct 2 15:44:22 2014

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/cc/basicSearch.do?  
&operation=go&searchType=0  
&lastSearch=simple&all=on&titleOrStdNo=0883-7902](https://www.copyright.com/cc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0883-7902)

# California Consent Decree Gives Right to Refuse Antipsychotic Medication

*In April of this year, a major class action lawsuit involving the right of involuntary mental patients in California to refuse antipsychotic medication was settled with the signing of a consent decree and its subsequent approval by federal district court judge William H. Orrick. Jamison v. Farabee, No. C 780445 WHO (N.D. Cal. April 26, 1983). The original legal action, commenced in 1978, was filed by voluntary and involuntary mental patients in California institutions. Subsequently, the voluntary patients negotiated a separate settlement in 1981 and a new complaint was filed by involuntary patients at Napa State Hospital. The result was an agreement that provides the patients with a substantial right to refuse medication, but allows the staff to forcibly medicate in the event of an emergency or where the patient is "substantially deteriorating." In addition, there are precise procedures that must be followed. Portions of the consent decree and all of Exhibit A which sets out the procedures for administering antipsychotic medication are reprinted below. Exhibit B which sets out the "Protocol for the Selection of Independent Reviewers" where there is disagreement, and Exhibit C which provides a statement of "general prescribing policies" by the medical staff at Napa State Hospital outlining the staff's "scientific rational and ethical philosophy in the use of psychotropic medications" are not included, but may be ordered from our Legal Resource Center.*

## CONSENT DECREE

The plaintiff class, certified by the Court on May 12, 1981, and amended hereby, consists of adult patients at Napa State Hospital who have been or in the future will be administered antipsychotic medications (as defined in Exhibit A to this Consent Decree) and who belong to one of the following subclasses:

- (1) all patients detained for 72 hours of evaluation and treatment at Napa pursuant to California Welfare and Institutions Code Section 5150 *et seq.*;
- (2) all patients certified for 14 days of intensive treatment at Napa pursuant to California Welfare and Institutions Code, Section 5250 *et seq.*;
- (3) all persons committed to Napa by a temporary conservator under a temporary conservatorship established pursuant to California Welfare and Institutions Code, Section 5352.1 *et seq.*; and
- (4) all persons committed to Napa by a conservator established pursuant to California Welfare and Institutions Code, Section 5350 *et seq.*

The parties agree that administration of antipsychotic medications to a patient within any of the four plaintiff subclasses without the patient's informed consent implicates a liberty interest protected by the Due Process clause of the Fourteenth Amendment to the United States Constitution. Recognizing this constitutional interest, and for

the purpose of avoiding the continuation of difficult, expensive, and protracted litigation, the parties hereby waive a trial of this action, waive findings of fact and conclusions of law, and consent to entry of the order set forth in this Decree.

## Modification

The Court retains jurisdiction to modify this Consent Decree upon motion of any party showing good cause for such a modification.

## Costs and Fees

Plaintiffs' reasonable recoverable costs and reasonable attorneys' fees and other expenses pursuant to 42 U.S.C. Section 1988 shall be awarded in such amount as may be agreed to by the parties or determined by the Court.

## Exhibit A PROCEDURES FOR THE ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION

These procedures are applicable to the administration of antipsychotic medications to adult patients being treated pursuant to the Lanterman-Petris-Short (LPS) Act. None of these procedures shall apply to minor patients.

## Definitions

"Antipsychotic medication" means any drug customarily used for treatment of symptoms of psychosis and other severe mental and emotional disorders.

"Independent reviewer" means a physician employed and selected by the Department of Mental Health

and not otherwise employed at a state hospital.

"Three working days" means three consecutive normal business days. Any act required by this procedure which falls on a weekend or holiday shall be concluded on the next regular business day.

"Necessary Medication." Medication is considered a necessary part of a patient's treatment plan when the patient is incapable, without medication, of participating in any treatment plan available at the hospital that will give the patient a realistic opportunity of improving his/her condition, and administration of medication could be expected to render the patient capable of such participation; and the benefits of the medication outweigh the risks of adverse effects, and the patient's objections, if any, to the medication; and medication is the least restrictive form of treatment reasonably available.

All steps required by these procedures shall be fully documented in the patient's chart.

#### **Administration of Antipsychotic Medications**

The treating physician shall discuss any proposed medication treatment with the patient as follows:

1. The nature of the patient's mental condition;
2. The reasons for taking such medication, including the likelihood of improving or not improving without such medication;
3. Consent, once given, may be withdrawn at any time by stating such intention to any member of the treating staff;
4. The reasonable alternative treatments available, if any;
5. The type, range of frequency and amount (including use of PRN orders), method (oral or injection), and duration of taking the medication;
6. The probable side effects of these drugs known to commonly occur, and any particular side effects likely to occur with the particular patient;
7. The possible additional side effects which may occur to pa-

tients taking such medication beyond three months. The patient shall be advised that such side effects may include persistent involuntary movement of the face or mouth and might at times include similar movement of the hands and feet, and that these symptoms of tardive dyskinesia are potentially irreversible and may appear after medication has been discontinued; and

8. The patient has been informed of his/her rights under these procedures.

#### **Requirement of Consent**

Antipsychotic medication may be administered to an adult patient treated pursuant to the LPS Act only after the patient has given informed, voluntary consent in writing, except as otherwise provided in these procedures.

1. Consent shall be considered to be *informed* only after the patient has been provided with the above information by the physician prescribing the medication (in the patient's native language, if possible).
2. The patient shall be asked to sign the consent form utilized in obtaining informed consent from voluntary patients, and this signed consent form shall be included in the legal section of his/her chart. In the event that the patient has been shown the form and communicates consent but does not wish to sign the written consent form, it shall be sufficient for the physician to place the unsigned form in the patient's record together with the notation that while the patient understands the nature and effect of antipsychotic medication and consents to the administration of such medication, the patient does not desire to sign a written consent form.
3. Consent shall be effective for the duration of the patient's stay in the hospital, unless it is revoked by the patient.

#### **Revocation of Consent**

1. A patient who has consented to medication may refuse a specific medication at any time, by stating or writing that

he/she does not wish to take the medication. Medication may not then be given to such a patient, orally or by injection, except as authorized in the section below on independent review of treatment.

2. A revocation of consent shall be documented on the consent form by the treating physician and shall then render the consent void.

#### **Independent Review of Treatment With Antipsychotic Medication**

Antipsychotic medications may be administered to an adult patient treated pursuant to the LPS Act who has not provided informed consent, or who revokes consent, pursuant to the procedures below.

#### **Patients Admitted Pursuant to Sections 5150 and/or 5250 of the LPS Act as Gravely Disabled**

1. If a patient admitted pursuant to a 72-hour detention and/or a 14-day certification pursuant to the LPS Act as gravely disabled refuses or revokes consent to the administration of antipsychotic medication, the treating physician shall speak to the patient to discuss and attempt to respond to the patient's concern about the medication. The physician shall suggest the patient discuss the matter with a person of his/her own choosing, such as a relative, friend, or the patients' rights advocate.
2. If, after the discussion with the patient, the physician believes medication is a necessary part of the patient's treatment plan and (1) the patient still refuses the medication and (2) the physician determines that the patient has the capacity to give informed consent in that the refusal is not a product of the patient's mental illness, then medication shall not be administered, except as provided in the section on emergency administration of medication.
  - a. If, however, the physician determines (1) the patient has the capacity to give informed consent, and (2) i. for a patient on medication, withholding medication would result in substantial deterioration; ii.

for a patient not on medication, the patient is substantially deteriorating, then the physician may request an independent review. Medication shall not be administered pending the independent review.

- b. The independent reviewer shall then conduct a personal examination of the patient and a review of the patient's chart within three working days.

If the independent reviewer determines the patient has the capacity to give informed consent in that the patient's refusal is not a product of the patient's mental illness, medication shall not be administered.

If the independent reviewer determines (1) the patient lacks the capacity to give informed consent in that the refusal is a product of the patient's mental illness, and (2) medication is a necessary part of the patient's treatment plan, and (3) i. for a patient on medication, withholding medication would result in substantial deterioration; ii. for a patient not on medication, the patient is substantially deteriorating, then medication may be administered as part of the patient's treatment plan.

- c. Medication may be administered under this section only so long as it is necessary and required to preclude substantial deterioration.
3. If, after a discussion with the patient, the physician believes medication is a necessary part of the patient's treatment plan and the physician determines (1) the patient lacks the capacity to give informed consent in that the refusal is a product of the patient's mental illness and (2) i. for a patient on medication, withholding medication would result in substantial deterioration; ii. for a patient not on medication, the patient is substantially deteriorating, then medication may be administered as part of the patient's treatment plan. How-

ever, the physician shall concurrently request an independent review.

- a. The independent reviewer shall then conduct a personal examination of the patient and a review of the patient's chart within three working days.

*Patients Admitted Pursuant to Sections 5150 and/or 5250 of the LPS Act as a Danger to Others or a Danger to Self*

1. A patient admitted pursuant to a 72-hour detention and/or a 14-day certification pursuant to the LPS Act as Danger to Others or Danger to Self and for whom the treating physician determines medication is necessary for treatment, may receive medication as part of the patient's treatment plan.
2. A patient may be treated with medications pursuant to this section only so long as the physician determines medication continues to be necessary for the preservation of life or the prevention of serious bodily harm to the patient or others. Otherwise the provisions of the sections on admission under sections 5150, 5250 and/or 5350 of the LPS Act apply as appropriate.

*Patients Admitted Pursuant to Section 5350 et seq. of the LPS Act*

The procedures of this section apply to a patient (1) admitted pursuant to conservatorship established pursuant to the LPS Act, (2) whose conservator has been granted the power to consent to treatment, and (3) who refuses or revokes consent or does not otherwise provide informed consent to the administration of antipsychotic medication.

1. The treating physician shall speak to the patient to discuss and attempt to respond to the patient's concerns, if any, about the medication. The physician shall suggest the patient discuss the matter with a person of his/her own choosing, such as a relative, friend, or the patients' rights advocate.
2. If, after the discussion with the patient, the physician believes medication is a necessary part of the patient's treatment plan

and the patient still refuses or has not otherwise provided informed consent to the medication, the physician shall request an independent review. Medication shall not be administered pending the independent review unless the physician determines for a patient on medication, withholding medication would result in substantial deterioration; or for a patient not on medication, the patient is substantially deteriorating.

3. The independent reviewer shall then conduct a personal examination of the patient and a review of the patient's chart within three working days.

a. If the independent reviewer determines medication is a necessary form of treatment, medication may be administered as part of the patient's treatment plan.

b. If the independent reviewer determines medication is not a necessary form of treatment, medication shall not be administered except as provided in the section on the emergency administration of medication.

c. The independent reviewer shall review every 90 days the treatment program of each patient, who has refused medication or who has not provided informed consent but is receiving medication, to determine:

Whether the patient is still refusing the medication, or has not provided informed consent; *and*

Whether medication is still a necessary part of the patient's treatment plan; *and*

Whether the other components of the patient's treatment plan are being implemented.

4. Nothing herein, however, affects any rights of conservators pursuant to the LPS Act to give or withhold consent to treatment.

**The Emergency Administration of Medication**

Nothing in these procedures is intended to prohibit a physician from taking appropriate action in an

emergency. An emergency exists when there is a sudden marked change in the patient's condition so that action 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 obtain consent. If antipsychotic medication is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient.

In the event a patient described herein and admitted pursuant to sections 5150, 5250 and/or 5350 of the LPS Act is administered antipsychotic medications in an emergency, and such emergency condition is likely to last beyond 24

hours, the treating physician shall within that 24 hours request an independent review.

The independent reviewer shall then conduct a personal examination and review of the patient's chart within three working days. In addition to the determinations required above, the independent reviewer shall determine if the emergency condition continues.

#### **Patients' Rights Advocate**

The patients' rights advocate shall be given notice of each refusal or failure to provide informed consent occurring under the sections on independent review of treatment and the emergency administration of medication herein, and written notice of and the opportunity to appear at the examination by the independent reviewer. The patients'

rights advocate shall discuss with the patient the patient's objections, if any, to the medication and shall, whether or not present at the review, provide the independent reviewer a written statement of the patient's reason for refusing medication. The patients' rights advocate may request an independent review whenever he/she determines a patient is refusing, has not provided informed consent to medication and an independent review is lacking.

#### **Information as to Patients' Rights**

Patients shall be informed in writing of their rights under these procedures prior to the administration of medications, except in an emergency, including for conservatees, their rights of judicial review pursuant to sections 5358.3 and 5364 of the LPS Act.

---

### **Rights of the Chronically Mentally III**

*(continued from p. 429)*

5. *Id.* at 46.

6. Greenberg, P., Freddolino, P., & Lecklitner, G., *National Directory of Mental Health Advocacy Programs*. Los Angeles: Human Interaction Research Institute, 1982.

7. Wald, P., & Friedman, P., The politics of mental health advocacy in the United States. 1 *International Journal of Law and Psychiatry* 137-152, 1978.

8. Chamberlin, J., The limits of advocacy. 1 *Advocacy Now* 21-24, 1979.

9. Zinman, S., Dangers arising from mental health legal advocacy. 2 *Advocacy Now* 62-64, 1980.

10. Chamberlin, J., The future of mental health advocacy. 2 *Advocacy Now* 52-53, 1980.

11. *Id.* at 53.

12. Brown, P., Public policy and the rights of mental patients. 6 *Mental Disability Law Reporter* 55-58, 1982.

13. Paschall, N., & Eichler, A., Rights promotion in the 1980s. 6 *Mental Disability Law Reporter* 116-121, 1982.

14. *Id.* at 120.

15. Brown, P., The mental patients' rights movement and mental health institutional change. 11 *International Journal of Health Services* 523-540, 1981.

16. Szasz, T., The psychiatric will: II. Whose will is it anyway? 38 *American Psychologist* 344-346, 1983.

17. *Id.* at 346.

### ***Are You Missing Essential Information?***

The following materials are also available from the *Mental Disability Law Reporter*:

#### **Reporter Back Issues**

Now is the time to purchase back issues of the *Reporter* that you do not have in your library. The complete set of volumes 1 through 6 costs only \$190, which is less than \$32 per volume. (Separate volumes are \$50, and separate issues are \$10 each.) A complete set of back issues, together with the

*Reporter Four-Year Research Index* and *Two-Year Index* will give you a comprehensive, easy-to-use research library for your office.

#### **Reporter Volume Binders**

Save and protect your copies of the *Reporter* with the custom volume binder. The *Reporter* magazine binders use rods to clamp issues into place. All of the issues in the binder lie flat, so turning the pages is much easier. Binders are \$5.95 each.