

Riese Hearing Basics
Codes and Regulations related to Capacity Hearings

Welfare and Institutions Codes

5325.2. Persons subject to detention pursuant to §§ 5150, 5250, 5260, 5270.15; right to refuse antipsychotic medication

Any person who is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth in this chapter.

(Added by Stats.1991, c. 681 (S.B.665), § 2.)

5332. Administration of antipsychotic medication to persons subject to detention; consideration of treatment alternatives; internal procedures at hospitals; acquisition of person's medication history; emergency procedures

(a) Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When any person is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner

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least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention. (Added by Stats.1991, c. 681 (S.B.665), § 3. Amended by Stats.2001, c. 506 (A.B.1424), § 9.)

§ 5333. Capacity hearings; representation by advocate or counsel; petition; notice

(a) Persons subject to capacity hearings pursuant to Section 5332 shall have a right to representation by an advocate or legal counsel.

“Advocate,” as used in this section, means a person who is providing mandated patients’ rights advocacy services pursuant to Chapter 6.2 (commencing with Section 5500), and this chapter. If the Department of Mental Health provides training to patients’ rights advocates, that training shall include issues specific to capacity hearings.

(b) Petitions for capacity hearings pursuant to Section 5332 shall be filed with the superior court. The director of the treatment facility or his or her designee shall personally deliver a copy of the notice of the filing of the petition for a capacity hearing to the person who is the subject of the petition.

(c) The mental health professional delivering the copy of the notice of the filing of the petition to the court for a capacity hearing shall, at the time of delivery, inform the person of his or her legal right to a capacity hearing, including the right to the assistance of the patients’ rights advocate or an attorney to prepare for the hearing and to answer any questions or concerns.

(d) As soon after the filing of the petition for a capacity hearing is practicable, an attorney or a patients’ rights advocate shall meet with the person to discuss the capacity hearing process and to assist the person in preparing for the capacity hearing and to answer questions or to otherwise assist the person, as is appropriate. (Added by Stats.1991, c. 681 (S.B.665), § 4.)

§ 5334. Capacity hearings; time for hearing; location; hearing officer; determination; notification; appeal; habeas corpus

(a) Capacity hearings required by Section 5332 shall be heard within 24 hours of the filing of the petition whenever possible.

However, if any party needs additional time to prepare for the hearing, the hearing shall be postponed for 24 hours. In case of hardship, hearings may also be postponed for an additional 24 hours, pursuant to local policy

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developed by the county mental health director and the presiding judge of the superior court regarding the scheduling of hearings. The policy developed pursuant to this subdivision shall specify procedures for the prompt filing and processing of petitions to ensure that the deadlines set forth in this section are met, and shall take into consideration the availability of advocates and the treatment needs of the patient. In no event shall hearings be held beyond 72 hours of the filing of the petition. The person who is the subject of the petition and his or her advocate or counsel shall receive a copy of the petition at the time it is filed.

(b) Capacity hearings shall be held in an appropriate location at the facility where the person is receiving treatment, and shall be held in a manner compatible with, and the least disruptive of, the treatment being provided to the person.

(c) Capacity hearings shall be conducted by a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer. All commissioners, referees, and hearing officers shall be appointed by the superior court from a list of attorneys unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the department as a facility for 72-hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.

(d) The person who is the subject of the capacity hearing shall be given oral notification of the determination at the conclusion of the capacity hearing. As soon thereafter as is practicable, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the capacity determination, which shall include a statement of the evidence relied upon and the reasons for the determination. A copy of the determination shall be submitted to the superior court.

(e)(1) The person who is the subject of the capacity hearing may appeal the determination to the superior court or the court of appeal.

(2) The person who has filed the original petition for a capacity hearing may request the district attorney or county counsel in the county in which the person is receiving treatment to appeal the determination to the superior court or the court of appeal, on behalf of the state.

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(3) Nothing shall prohibit treatment from being initiated pending appeal of a determination of incapacity pursuant to this section.

(4) Nothing in this section shall be construed to preclude the right of a person to bring a writ of habeas corpus pursuant to Section 5275, subject to the provisions of this chapter.

(f) All appeals to the superior court pursuant to this section shall be subject to de novo review.

(Added by Stats.1991, c. 681 (S.B.665), § 5.)

§ 5336. Capacity hearings; effect of determination

Any determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 shall remain in effect only for the duration of the detention period described in Section 5150 or 5250, or both, or until capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332, or by court determination, whichever is sooner. (Added by Stats.1991, c. 681 (S.B.665), § 6.)

Informed Consent

5152 (c) A person designated by the mental health facility shall give to any person who has been detained at that facility for evaluation and treatment and who is receiving medication as a result of his or her mental illness, as soon as possible after detention, written and oral information about the probable effects and possible side effects of the medication. The State Department of Mental Health shall develop and promulgate written materials on the effects of medications, for use by county mental health programs as disseminated or as modified by the county mental health program, addressing the probable effects and the possible side effects of the medication. The following information shall be given orally to the patient:

(1) The nature of the mental illness, or behavior that is the reason the medication is being given or recommended.

(2) The likelihood of improving or not improving without the medication.

(3) Reasonable alternative treatments available.

(4) The name and type, frequency, amount, and method of dispensing the medication, and the probable length of time the medication will be taken.

The fact that the information has or has not been given shall be indicated in the patient's chart. If the information has not been given, the designated person shall document in the patient's chart the justification for not

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providing the information. A failure to give information about the probable effects and possible side effects of the medication shall not constitute new grounds for release

Regulations

Title 9, Section

851. Informed Consent to Antipsychotic Medications.

A voluntary patient shall be treated with antipsychotic medications only after such person has been informed of his or her right to accept or refuse such medications and has consented to the administration of such medications. In order to make an informed decision, the patient must be provided with sufficient information by the physician prescribing such medications (in the patient's native language, if possible) which shall include the following:

- (a) The nature of the patient's mental condition,
- (b) The reasons for taking such medication, including the likelihood of improving or not improving without such medication, and that consent, once given, may be withdrawn at any time by stating such intention to any member of the treating staff,
- (c) The reasonable alternative treatments available, if any,
- (d) The type, range of frequency and amount (including use of PRN orders), method (oral or injection), and duration of taking the medications,
- (e) The probable side effects of these drugs known to commonly occur, and any particular side effects likely to occur with the particular patient,
- (f) The possible additional side effects which may occur to patients 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 medications have been discontinued.

NOTE: Authority cited: Sections 5325 and 5326.95, Welfare and Institutions Code. Reference: Sections 5325 and 5325.1, Welfare and Institutions Code; *Cobbs v. Grant* (1972) 8 Cal. 3d 229.

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Title 9, Section

§ 852. Maintenance of Records.

For each patient receiving antipsychotic medications, the facility shall maintain a written record of the patient's decision to consent to such medications. That written record shall be a written consent form signed by the patient indicating that items (a) through (f) of Section 851 have been discussed with the patient by the prescribing physician.

In the event that the patient has been shown 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 records maintained by the facility together with the notation that while the patient understands the nature and effect of antipsychotic medications and consents to the administration of such medications, the patient does not desire to sign a written consent form.

NOTE: Authority cited: Sections 5325 and 5326.95, Welfare and Institutions Code. Reference: Sections 5325 and 5325.1, Welfare and Institutions Code.

Title 9, Section

853. Emergency.

Nothing in this article is intended to prohibit the 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 the 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.

NOTE: Authority cited: Sections 5325, 5326 and 5326.95, Welfare and Institutions Code. Reference: Sections 5325 and 5325.1, Welfare and Institutions Code; *Cobbs v. Grant* (1972) 8 Cal. 3d 229.

Title 9, Section

854. Withdrawal of Consent.

A voluntary patient may withdraw consent to the administration of antipsychotic medications at any time by stating such intention to any member of the treatment staff.

NOTE: Authority cited: Sections 5325 and 5326.95, Welfare and Institutions Code. Reference: Sections 5325, 5325.1, 6000, 6002 and 6004, Welfare and Institutions Code

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Title 9, Sections

855. Consequence of Refusal.

The refusal to consent to the administration of antipsychotic medications shall not in itself constitute grounds for initiating an involuntary commitment.

NOTE: Authority cited: Sections 5325 and 5326.95, Welfare and Institutions Code. Reference: Sections 5150, 5250, 5325 and 5325.1, Welfare and Institutions Code.

§ 856. Definition of Antipsychotic Medication.

For purposes of this article, “antipsychotic medication” means any drug customarily used for the treatment of symptoms of psychoses and other severe mental and emotional disorders.

NOTE: Authority cited: Sections 5325 and 5326.95, Welfare and Institutions Code. Reference: Title 9, California Administrative Code, Sections 850–855.