

# NON-EMERGENT INVOLUNTARY MEDICATION STATE BY STATE REPORT

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# Every State Does It

- Permitted upon admission
- Allowed upon judicial commitment
- Separate judicial hearing required
  - Heard at time of commitment
  - Filed after commitment
- Separate judicial hearing to appoint guardian
- Administrative hearing required



# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL

- Georgia
- Maryland
- Michigan
- Missouri
- New Jersey
- North Carolina
- Pennsylvania
- South Carolina
- Tennessee
- West Virginia



# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL

- **Georgia:** Once a patient has been involuntarily hospitalized, the patient can also be involuntarily medicated without further process for up to 72 hours. However, the state's statute requires an administrative review to continue non-emergency medication for longer than the initial 72 hours. This process calls for the concurring opinion of a second. A clinical review panel is employed for longer term involuntary psychotropic medication.
- **Maryland:** Upon application, a clinical review panel meets and determines whether to approve administration of involuntary medication. The patient can appeal to Office of Administrative Hearings and, then to the Circuit Court. The order is stayed during the pendency of the appeal.



# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL, (Con't)

- **Michigan:** However, patient may not be medicated day of or day before full court hearing.
- **Missouri:** Individuals may not be medicated without being seen by a doctor in the first 96 hours. An individual may be involuntarily medicated if there is a possibility of them being a danger to self or others, or after two physicians have opined regarding the propriety and necessity of the medication. If the doctors disagree, the medical director makes the final decision.



# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL, (Con't)

- **New Jersey:** The state's policy on involuntary medication is included in a Division of Mental Health Services Administrative Bulletin that was adopted as a consent order in the settlement of a protracted federal suit, *Rennie v. Klein*. Refusal to take medication triggers a "3 step review" in which the individual's psychiatrist speaks to the individual to explain the risks and benefits of the medication. If the individual still refuses, the full treatment team meets with the patient to discuss the risks and benefits of the medication. If the patient still refuses, the patient meets with the medical director who again counsels as to risks and benefits and if the patient still refuses, an involuntary medication order may be entered. A hospital employee who has the title of Rennie Advocate is available to the patient. There is no court review.



# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL, (Con't)

- **North Carolina:** North Carolina statute, NC Gen Stat § 122C-57, allows a patient to be involuntarily medicated if two doctors agree that either there is no other treatment that will realistically allow the patient to improve, or that without the medication there is a significant possibility of harm to self or others. Involuntary medication is considered a last resort option.
- **Pennsylvania:** If a patient refuses medication, the Pennsylvania Office of Mental Health procedures for involuntary medication govern. They essentially require a second opinion, which can be done by an in-house psychiatrist, so long as he/she does an independent assessment. If the patient continues to refuse voluntary meds, the second opinion must be conducted every 30 days. The order for involuntary meds can be issued from the day a person is admitted.



# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL, (Con't)

- **South Carolina:** South Carolina does not have a statutory procedure related to provision of involuntary medication. Rather, by law and policy, the agency seeks informed consent from the patient or the patient's substitute decision maker prior to administering prescribed psychiatric medications. The law governing health care decision making for impaired adults is known as the Adult Health Care Consent Act. It provides for the provision of medication, in the absence of informed consent, in certain defined circumstances which are sometimes present with an impaired involuntarily admitted/committed patient.  
  
In the event an involuntarily admitted/committed patient competently refuses prescribed psychiatric medication or in the event the substitute decision maker of an impaired involuntarily admitted/committed patient refuses prescribed psychiatric medication, the agency has a policy which outlines the limited circumstances in which, and the procedure by which, such refusal may be overridden and the medication nonetheless administered. It's entirely a clinical decision making process, not judicial.

# MEDICATION PERMITTED UPON ADMISSION TO STATE HOSPITAL, (Con't)

- **Tennessee:** Treatment review committee interviews patient, reviews patient's chart and makes recommendation to medical director who makes final decision.
- **West Virginia:** In West Virginia, a patient who has been involuntarily committed to a mental health hospital may be involuntarily medicated if two doctors agree that either there is no other treatment that will realistically allow the patient to improve, or that without the medication there is a significant possibility of harm to self or others. No hearing is required. See CSR § 64-59-8.



# MEDICATION ALLOWED UPON JUDICIAL COMMITMENT

- Alabama
- Arkansas
- Delaware
- District of Columbia
- Kansas
- Idaho
- Indiana
- Louisiana
- Mississippi
- Wisconsin
- Wyoming
- Utah



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL

- **Alabama:** The commitment process is set forth at Alabama Code § 22-52-1 et seq. The commitment process, takes place prior to admission, can take up to 37 days, during which the patient can be housed at a secure community facility. Once at the hospital, if the person refuses psychiatric medication, Department policy requires that attending physician request administrative review by the clinical director. The review must occur within 7 days of request, and decision must be made within 3 days of the review. Patient may be represented by a hospital advocate.
- **District of Columbia:** An individual may be involuntarily committed following a hearing before a mental health commission, whose determination of need for commitment and treatment is reviewable in a hearing in the superior court. If requested, the patient is entitled to a jury trial.



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL (Con't.)

- **Arkansas:** Commitment includes the authority to administer involuntary medication.
- **Delaware:** In Delaware, once a patient is civilly committed, he may also be involuntarily medicated. There is no separate proceeding for involuntary medication. The authority to medicate upon commitment is construed from the statutory language that civilly committed patients are “observed and treated at a mental hospital.” The commitment process takes approximately 10 days to complete.



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

- **Kansas:** The authority to medicate continues as long as the patient is on involuntary status. A commitment order is a judicial determination that the patient lacks the capacity to decide that they do not want to be medicated. It takes a maximum of 14 days to get a commitment order from the date of admission. Kansas law allows "treatment" from the point of admission. Its assumed that includes necessary medications, but the state generally does not push non-emergency medications in that first week. It usually takes that long to get a good history and observations, plus more than a "rough draft" of a treatment plan upon which involuntary medications could be justified.
- **Idaho:** Commitment includes the authority to administer involuntary medication.
- **Indiana:** Commitment includes the authority to administer involuntary medication



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

- **Louisiana:** A patient confined to a treatment facility by judicial commitment may receive medication without his/her consent. However, if the patient objects to being medicated, prior to administering the medication, the treating physician shall make a reasonable effort to consult with the primary care provider outside of the facility that has previously treated the patient.
- **Mississippi:** The state statute does not provide for separate process for involuntary medication. Rather, it provides that a person is committed for “treatment” and the state’s position is that treatment includes medication.



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

- **Wisconsin:** Under Wisconsin law, the process for administration of involuntary treatment or medication is essentially integrated into the commitment process and can occur either during the probable cause hearing or final commitment hearing. A specific order for treatment is issued (this is an order separate from the actual commitment order) but it does not require a separate hearing.
- **Wyoming:** Generally there is a commitment hearing before the district court judge. If there is evidence with regard to the necessity of medication, the judge can include an order authorizing its administration, if in the opinion of the state hospital or its internal review board, the patient should be medicated;. If an involuntary commitment order DOES NOT already contain the authority to medicate once approved through the state hospital's internal review board, the hospital may seek such order from the court.

# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

- Utah: The refusal to take medications (or provide informed consent) is handled through an administrative process following an order of commitment being issued. This process was affirmed by the 10th circuit in *Jurasek v. Utah State Hospital*, 158 f.3d 506 (10th cir. 1998).



# MEDICATION ALLOWED UPON COMMITMENT: EVIDENCE REGARDING NEED REQUIRED

- Minnesota
- Florida
- Iowa
- Oklahoma
- Rhode Island
- Washington



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

a. Evidence regarding need for medication must be specifically presented and ordered

- **Minnesota:** The state may involuntarily medicate a patient who has been committed if the commitment (“early intervention order”) specifically authorized involuntary medication. Otherwise, a separate proceeding for involuntary medication is necessary.
- **Florida:** The issue of involuntary medication is dealt with at the hearing for involuntary hospitalization. If the respondent is incompetent to make a knowing decision about whether or not to accept or deny medication, a guardian advocate will be appointed who will represent respondent at the hearing in connection with the state’s request for involuntary treatment.



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

- **Iowa:** Current practice in Iowa is for the state to seek a court order in the context of the commitment proceeding explicitly authorizing the state to forcibly administer non-emergency medication. However, some courts have adopted the position that ability to involuntarily medicate is implied in the commitment order and therefore that a second or specific order is not necessary. A separate order for involuntary medication can be sought after the commitment order.
- **Oklahoma:** the issue of involuntary medication is addressed and ruled on at the commitment hearing.



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

- Rhode Island(?)
- Washington: If the patient is on a commitment order for 14 or 90 days, the psychiatrist can administer involuntary antipsychotic Medications pursuant to a concurring second opinion. *However, a court order is required for a person on a 180 day order .*



# MEDICATION ALLOWED WHEN PATIENT JUDICIALLY COMMITTED TO HOSPITAL, (Con't)

## b. Commitment occurs prior to hospital admission

- **Arizona:** Commitment includes the authority to administer involuntary medication. Arizona State Hospital has a policy to not accept a patient unless he is under a court order for treatment. Consequently, the Hospital can administer medication immediately upon admission.
  - **Montana:** Involuntary commitment and medication are addressed in one proceeding. Montana has both a statute and a hospital policy. The statute requires a court order for involuntary medication at the initial commitment hearing. There is also a state policy that governs the implementation of the court order through an Involuntary Medication Review Committee. (In the event a patient is admitted on a pre-commitment emergency detention, emergency meds may be used until the commitment/involuntary med order comes in.)
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# SEPARATE JUDICIAL HEARING

a. often heard with commitment

- Alaska
- Illinois
- Texas



# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER

a. Commitment and Medication hearings often heard at the time

**Alaska:**

Civil commitment and involuntary medication are technically handled in two separate proceedings under statute. However, in a number of the state's jurisdictions it is common practice to take up both matters in the course of the same hearing. A hearing on a petition for a 30-day commitment must take place within 72 business hours from the time the patient is placed on a hold and the court almost always rules from the bench. The hospital may file a contemporaneous petition for court-approved administration of medication, in which case both petitions are heard at once. The hospital may also file a petition for court-approved administration of medication at any time during the patient's commitment. The medication hearing must also take place within 72 business hours from the time the petition is filed. Again, the court almost always rules from the bench.

If the court finds that the patient has the capacity to give informed consent, the court must direct the hospital to honor the patient's wishes about medication. If the court finds by clear and convincing evidence that the patient lacks that capacity, the court must approve the hospital's proposed use of involuntary psychotropic medication.



# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER, (Con't)

- Illinois: If state is familiar enough with the patient to know what type of medication to request, the medication hearing may happen on the same day as the commitment hearing.
- Texas: The full commitment hearing takes place within a week of the patient first being presented on Emergency Detention order and the medication hearing (assuming the patient is refusing medications) immediately following on the same day.



# SEPARATE JUDICIAL HEARING

## b. heard after commitment ordered

- California
- Colorado
- Hawaii
- Kentucky
- Massachusetts
- New York
- North Dakota
- Ohio
- Oregon
- South Dakota
- Vermont
- Virginia



# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER

b. Medication hearing occurs after commitment is ordered

- California:
- Colorado: If an involuntarily committed patient refused to voluntarily take medications, an order must be sought through a separate proceeding seeking authority to involuntarily medicate. The state has burden of proof to establish justification for such treatment by clear and convincing evidence of four propositions: patient is incompetent to participate effectively in treatment decision; treatment by medication is necessary to prevent significant and likely long-term deterioration in patient's mental condition or to prevent likelihood of patient causing serious harm to himself, herself, or others in institution; less intrusive treatment alternative is not available; and patient's need for treatment by medication is sufficiently compelling to override any bona fide and legitimate interest of patient in refusing treatment.

# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER, (Con't)

- **Hawaii:** There is no statutory authority for involuntary medication. The Director of Health must seek judicial authorization for involuntary administration of psychiatric medication in a non-emergency situation. The state can request a court order for involuntary treatment when the patient is refusing and appears to have capacity. If the patient lacks capacity to make a decision about the proposed treatment, the state petitions for a guardian who can then consent.
- **Kentucky:** Refusals are reviewed by a Treatment Review Committee which, if need be, can petition state district court for an order of involuntary medication.



# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER, (Con't)

**Massachusetts:** If a patient, who is under an order of commitment in Massachusetts (*MGL c. 123*), is determined to be incompetent by his or her physician, a petition can be presented to the District Court for a substituted judgment treatment order (Commonly known as a District Court Rogers Order). (*MGL c. 123 §8B*) The District Court judge applies the *Rogers* standard of substituted judgment for administration of antipsychotic medication, and may also approve “other psychiatric treatment.” If the *Rogers* standard is met, the court may approve the antipsychotic treatment order, thereby authorizing (and requiring) the treatment team to implement it. The Court monitors the treatment plan by scheduling review dates. The order expires when the underlying commitment order expires. These orders are commonly called “*Rogers*” orders after a 1983 court case, in which the Massachusetts Supreme Court affirmed the right of hospitalized psychiatric patients to refuse antipsychotic medications in non-emergency situations. In the *Rogers* case, the court stated that a “... mental patient is competent and has the right to make treatment decisions until the patient is adjudicated incompetent by a judge.” The court held that the trial courts must use a substituted judgment standard to decide what the respondent would want if he or she were competent to make decisions.

# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER, (Con't)

- **New York:** New York statutes are silent on medicating involuntarily committed patients who refuse to consent to treatment. But a 1986 Court of Appeals ruling affirms patients' rights to refuse treatment and establishes the process that must be followed before a psychotropic drug may be administered to a patient who refuses. It requires a court to determine (1) by clear and convincing evidence whether such a patient is able to make a reasoned decision and then (2) that the proposed treatment is tailored to his condition (*Rivers v. Katz*, 67 N.Y.2d 483, 504 N.Y.S.2d 74, 495 N.E.2d 337 (1986)).
- **North Dakota:** Involuntary medication appears to be dealt with in a separate “involuntary treatment hearing” under § 25-03.1-18.1.



# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER, (Con't)

- **Ohio:** While there is nothing to preclude both commitment and involuntary medication hearings taking place simultaneously, in practice the commitment proceedings most often happen separately. When a person is civilly committed, there is usually at least some time frame in which the person is encouraged to take medication voluntarily. It is only if the person refuses medication and the person is assessed as lacking the capacity to give informed consent for medication, that the court is approached about the issue of involuntary medication (permitted by statute under Ohio Revised Code § 2101.24(A)(1)(u), but more clearly spelled out in *Steele v. Hamilton County Mental Health Board*. Sometimes, the issues coincide as when a known patient is readmitted on an emergency certificate, is observed on this status, is pending a probate court hearing, and refuses meds and lacks informed consent capacity, so that the involuntary medication hearing can be combined with the full hearing that should occur within 10-30 days. Also, if the medication refusal should occur for a patient in the hospital near the time that a re-commitment hearing is in order (90 days or 2 years), the two issues may be combined.
- **Oregon:** If a patient refuses to voluntarily take medications, the state may seek involuntary medication through a separate court proceeding.



# SEPARATE JUDICIAL HEARING FOR MEDICATION ORDER, (Con't)

- **South Dakota:** Involuntary medication must be ordered through a separate court proceeding.
- **Vermont:** If a patient refuses to voluntarily take medications, the state may seek involuntary medication through a separate court proceeding.
- **Virginia:** Involuntary civil commitment does not authorize treatment with medications over a person's objections. Judicial authorization of treatment, including treatment with anti-psychotic medications over a person's objections, is a different process, found at § 37.2-1100 et seq in the Virginia Code. Anti-psychotic medications cannot be administered over a person's objection under this statute unless the person is also subject to an involuntary civil commitment order under the 37.2-808 et seq procedure above.



# SEPARATE JUDICIAL ORDER FOR A GUARDIAN

- Connecticut
- New Mexico



# Separate Judicial Hearing Appoints Guardian For Treatment Decisions

- **Connecticut:** Connecticut can seek authority from probate court to involuntarily medicate by means of the appointment of a conservator with specific authority to give consent to the use of psychiatric medications. The order lasts up to 120 days, which period can be extended for an additional 120 days. Any such medication authorization requires a determination that a patient is either (1) incapable of giving informed consent to medication and such medication is deemed necessary for treatment, or (2) capable of giving informed consent but refuses to consent, there is no less intrusive beneficial treatment and without medication, the patient's psychiatric disabilities will continue unabated and place the patient or others in direct threat of harm. *Connecticut also has the option of an administrative hearing, which takes place in the hospital, with a hearing officer who is not an employee of the hospital [usually a psychiatrist from another facility.] The hearing officer can authorize involuntary medication for up to 30 days.*

# Separate Judicial Hearing Appoints Guardian For Treatment Decisions, (Con't)

- **New Mexico:** A patient may not be involuntarily medicated unless he is incapable of making an informed decision. If so determined by the district court, upon petition of an interested party, the court shall appoint a treatment guardian who will make treatment decisions for the patient. Decisions of the treatment guardian may be appealed to and overruled by the district court.



# ADMINISTRATIVE HEARING

- Maine
- Nebraska
- New Hampshire (?)
- Nevada



# ADMINISTRATIVE HEARING AUTHORIZES THE ADMINISTRATION OF MEDICATION

- **Maine:** Involuntary hospitalization must be court ordered. Once a person is hospitalized, he or she may be involuntarily medicated following an administrative hearing by an impartial hearing officer. The hospital can request an administrative medication hearing at any time during the patient's hospitalization, including before the patient's commitment is ordered. If the request precedes the commitment, the hearing must be held within 4 days of the court-ordered commitment.
- **Nebraska:** A hearing is held in front of a three-member panel, known as the Mental Health Board. The rules of evidence apply and it is considered administrative. The involuntary commitment and medication hearings can be held jointly or separately, usually depending on the mental health professional's recommendation.
- **New Hampshire: (?)**



# ADMINISTRATIVE HEARING AUTHORIZES THE ADMINISTRATION OF MEDICATION, (Con't)

- Nevada: Involuntary medication can be initiated through an administrative “denial of rights process” for those who have been involuntarily committed. This includes review by a committee of clinicians that are not part of the treatment team and the Medical Director and the Director of the Hospital. After that process, if the patient is still refusing, he can request court review. If court review is requested, the state files a motion to medicate. The courts handle the motions differently in Las Vegas than they do in Reno. The court in Reno has adopted the standards set forth in *Colorado v. Medina*, 705 P.2d 961 (Colo. 1985). This requires an evidentiary hearing with testimony supporting all of the factors required. In Las Vegas, *Medina* is not used and the judge asks all the questions and it is more like an administrative review.