



OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

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SUBJECT:

Administration of Psychotropic Medication to Individuals
Over Objection in State Mental Hospitals

BY:

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Office of Mental Health and Substance Abuse Services

SCOPE:

- State Mental Hospital Chief Executive Officers
- State Mental Hospital Physicians
- The Office of Mental Health and Substance Abuse Services (OMHSAS) Medical Director

PURPOSE:

To update the standards and procedures for determining when to administer psychotropic medications over objection in State Mental Hospitals. To identify and document the process for individuals' appeal of medication orders for non-emergency administration of medications.

BACKGROUND:

On April 11, 1985, the Department of Human Services (DHS) OMHSAS published Mental Health Bulletin 99-85-10 *Administration of Psychotropic Medication to Protesting Patients*, which discussed the history of Third Circuit Court of Appeals and Pennsylvania Supreme Court decisions involving the administration of antipsychotic medications over objection of a civilly committed individual. The bulletin referred to the Third Circuit's decision in Rennie v. Klein, 653 F.2d 836 (3d Cir. 1981), as well as the Third Circuit's reconsideration (Rennie v. Klein, 720 F.2d 266 (3d Cir. 1983)) of the original decision upon remand by the United States Supreme Court following Youngberg v. Romeo, 457 U.S. 307 (1982). A review of the first Rennie v. Klein decision demonstrates that the court's decision is limited in its applicability to patients who have not been adjudicated incompetent, Rennie v. Klein, 653 F.2d at 846, n. 12. The Third Circuit's opinion on remand demonstrates that the overall conclusion remains the same, but the analysis leading to that judgment required revision.

Separately, in 1983 the Pennsylvania Supreme Court issued a decision in In re: Hutchinson, 454 A.2d 1009 (Pa. 1982) that suggests involuntary commitments are at least a limited adjudication of incompetency regarding treatment decisions under the Mental Health Procedures Act ("MHPA") (50 P.S. § 7101 et seq.). Against that backdrop, OMHSAS issued its

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning and Program Development, P.O. Box 2675, Harrisburg, PA 17105. General Office Number 717-772-7900

bulletin addressing procedures for voluntary treatment (pursuant to 50 P.S. § 7201) and involuntary treatment (pursuant to 50 P.S. §§ 7302, 7303, 7304, or 7305) under the MHPA. The bulletin instituted procedures involving administration of any psychotropic medication.

Since the bulletin was issued in 1985, two Federal cases have elaborated upon a patient's right to object to administration of antipsychotic medications. First, in 1990 the United States Supreme Court analyzed a prisoner's right to avoid unwanted administration of antipsychotic medication and determined that the medication may be administered for no purpose other than treatment when the person is a threat to himself or others. Washington v. Harper, 494 U.S. 210 (1990). The Court in *Harper* recognized that individuals have "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." Id. at 222. However, the Court also determined that due process protections in this context do not require judicial oversight. Id. at 233. Instead, the Court found that medical professionals are best suited to assess the risks associated with antipsychotic medication, stating that "[a] State may conclude with good reason that a judicial hearing will not be as effective, as continuous, or as probing as administrative review using medical decisionmakers. We hold that due process requires no more." Id. Further, forced medication treatment over a prison inmate's objection only occurs under the supervision of a medical professional when there is medical consensus that doing so is in the inmate's medical interest. Id.

The principles established in *Harper* were reaffirmed by the Third Circuit in Disability Rights New Jersey, Inc. v. Commissioner, New Jersey Department of Human Services, 796 F.3d 293 (3d Cir. 2015). These decisions collectively emphasize that due process in the involuntary administration of antipsychotic medication requires: (1) a meaningful and impartial review process, (2) a hearing before a three-person panel of medical professionals with procedural safeguards—including notice, the right to be present at an adversarial hearing, and the right to present and cross-examine witnesses, and (3) a secondary review or appeal process.

DISCUSSION:

Given the Klein, Harper, and most recent Third Circuit holding in Disability Rights New Jersey and due to potential side effects of antipsychotic and other psychotropic medications, the following procedures apply to individuals that are involuntarily committed to a DHS operated state mental hospital under an appropriate section of the MHPA.

Although the cited court rulings address only antipsychotic medications, this guidance will apply to any psychotropic medication.

Involuntary Individual – Emergency Administration

During an emergency involving any involuntary committed individual under MHPA, those staff in charge of treatment are authorized to provide the necessary treatment, including medication administration, to protect the health and safety of the individual and others.

The following section outlines procedures for the non-emergency prescription and administration of psychotropic medication over objection for involuntarily committed individuals that should be carried out within their treatment plan.

Procedures for Administration of Non-Emergency Medication Over Objection

Whenever an individual committed for involuntary treatment pursuant to an appropriate section of the MHPA protests a treating psychiatrist's order prescribing psychotropic medication, the following procedures are to be followed by the treatment team lead or designee.

1. Determine and document whether the medication is necessary to provide appropriate treatment or to prevent physical injury despite the objection. This review should also include identification of any reasonably viable alternatives.
2. Discuss with the individual the reasons why a specific medication is indicated and any available alternatives. Discuss with the individual their concerns and reasons for the objection/protest. Seek informed consent. Document the reason for the protest, whether the individual provided consent, and the entirety of the interaction in the individual's medical record.
3. If the individual continues to refuse the prescribed medication(s), obtain a second opinion from a psychiatrist concerning the degree of medical necessity for the medication. The psychiatrist providing the second opinion may be a colleague of the treating psychiatrist. However, the second opinion should be based on an independent examination of the individual and an independent review of all medical records for the individual.
4. If the consulting psychiatrist, referenced in #3 above, concurs that the prescribed medication(s) being protested are necessary, the medication may be administered over objection. Appropriate respect shall be shown for the individual's feelings and dignity.
5. If the consulting psychiatrist, referenced in #3 above, does not concur that the medication is necessary, a third psychiatrist's opinion should be obtained before proceeding. The third psychiatrist may be a colleague of the treating psychiatrist or the second psychiatrist consulted, but the third opinion should be based on an independent examination of the individual and a review of all medical records for the individual. Each of the involved psychiatrists should consider the risk/benefit value of the medication if administered over objection, author documentation (entry in the individual's medical records) summarizing the individual's articulated basis for their protest, and if applicable, alternative available treatment approaches.
6. If the third psychiatrist concurs with the treating psychiatrist, medication may be administered over objection. If both the second and third psychiatrists disagree with the treating psychiatrist, medication will not be administered over objection.

Appeals

At any point in the above process, an individual may appeal medication administration over objection. Appeal requests will be addressed by a medication review process as outlined in Attachment A *Medication Over Objection Appeal Process*. All individuals committed for involuntary treatment pursuant to the MHPA will be provided a copy of Attachment B *Medication Over Objection Appeal Form* in the patient handbook.

SUPERSEDED BULLETIN:

This bulletin supersedes Mental Health Bulletin 99-85-10 *Administration of Psychotropic Medication to Protesting Patients*.

ATTACHMENT:

Attachment A: *Medication Over Objection Appeal Process*

Attachment B: *Medication Over Objection Appeal Form*