

Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 2. Treatment

Amend Section 4210 as follows:

§4210. Interim Involuntary Medication Hearing Procedures Regarding Mentally Disordered Offenders and Sexually Violent Predators at State Hospitals.

(a) The Department of State Hospitals may conduct administrative hearings on hospital grounds to determine the necessity, based on legal criteria, to administer non-emergency interim involuntary antipsychotic medication to a patient committed under: Mentally Disordered Offenders (MDOs) as currently described in Penal Code Section 2962; and Sexually Violent Predators as currently described in Welfare and Institutions Code Section 6600, pursuant to the applicable legal standard for each category of individual patient. The appropriate court hearing as required by applicable law shall be requested as soon as possible by the state hospitals concurrent with, or subsequent to, the administrative hearing.

(1) Penal Code section 1026 et al. (Not Guilty by Reason of Insanity);

(2) Penal Code sections 2962 and 2972 et al. (Mentally Disordered Offender);

(3) Welfare and Institutions Code section 6316 et al. (Mentally Disordered Sex Offender); and/or

(4) Welfare and Institutions Code section 6600 et al. (Sexually Violent Predator).

~~(b) Before initiating the administrative hearing process, the individual patient's treating physician must first determine that involuntary medication is appropriate, inform the individual patient of such diagnosis, explain why medication is necessary along with the anticipated benefits and possible side effects, and ascertain that the individual patient either refuses to give informed consent to accept or is incompetent to give informed consent to receive the medication.~~

(b) A state hospital psychiatrist shall determine that involuntary antipsychotic medication is medically and psychiatrically appropriate for a patient before initiating an administrative hearing.

(c) Prior to an administrative hearing for interim involuntary medication, the treating psychiatrist shall inform the patient of his/her diagnosis, explain why antipsychotic medication is necessary, and explain the anticipated benefits and possible side effects.

(d) After informing the patient pursuant to subsection (c) above, the treating psychiatrist shall ascertain either that the patient refuses to give informed consent; or is incompetent

or lacks capacity to give informed consent to the medication; and/or poses a danger to others.

~~(c) The administrative hearing shall be held according to the following criteria:~~

~~(1) The individual patient must be given at least 24 hours' written notice of the state hospital's intention to convene an involuntary medication hearing.~~

~~(2) The hearing shall be conducted by a panel of two psychiatrists and one psychologist, or three psychiatrists, none of whom have been directly involved in the individual patient's treatment.~~

~~(3) The state hospital shall present evidence of the individual patient's treatment history, current medical condition, and of the information enumerated in subsection (b) above.~~

~~(4) The individual patient shall be given the choice to be present at the hearing, present evidence, and cross-examine witnesses.~~

~~(5) The individual patient shall be given the choice to be represented by a disinterested lay adviser versed in the applicable psychological issues, and who will explain the hearing procedures and the applicable legal standard for the involuntary administration of anti-psychotic medication to, and serve the written hearing notice on, the individual patient.~~

~~(6) The decision of the hearing panel shall be by majority vote, and be in writing and include information as to the participants at the hearing, and whether the legal standard for involuntary medication applicable to the individual patient is met.~~

~~(7) The written decision shall be given to the individual patient wherein the individual patient has 24 hours from the time of receipt of the written decision to appeal to the medical director of the state hospital or his or her designee. The state hospital medical director or his or her designee shall decide any appeal within 24 hours after its receipt.~~

~~(8) The hearing panel's decision to allow involuntary medication may direct such treatment for up to 14 days, unless superseded by a court decision pursuant to the court hearing that follow the interim administrative hearing process set forth in these regulations. After the 14 day treatment period, further treatment could be authorized only after the same panel conducts a second hearing pursuant to these same elements wherein the hearing panel may then direct that treatment may continue for the sooner of up to an additional 180 days or when a decision is made by a court pursuant to the court hearing that follow the interim administrative hearing process set forth in these regulations.~~

(e) The state hospital shall hold the administrative hearing pursuant to the applicable legal standard for each commitment category.

(f) The state hospital shall provide a patient with a written Notice of Involuntary Psychotropic Medication Hearing, form DSH 9164 (12-14), at least 24 hours prior to the hearing and notify the Office of Patients' Rights of the service of the Notice.

(g) A patient shall be given the opportunity to be represented by a disinterested lay adviser, Patients' Rights Advocate, or designee versed in the applicable psychological issues who shall explain the hearing procedures, the applicable legal standard for the involuntary administration of antipsychotic medication, and the hearing panel's decision.

(h) Each administrative hearing shall be conducted by a panel of two psychiatrists and one psychologist, or three psychiatrists, none of whom are providing treatment to the patient.

(i) A state hospital psychiatrist shall present evidence at the administrative hearing of the patient's treatment history, current medical and/or mental health condition, and of the information enumerated in subsections (b), (c) and (d) above.

(j) The patient shall be given the opportunity to present evidence and question witnesses at the administrative hearing. This may be done in person and/or via the patient's adviser, advocate, or designee.

(k) The administrative hearing panel's decision shall be by majority vote, in writing, include information about the participants at the hearing, and describe whether the legal standard has been met to administer non-emergency involuntary antipsychotic medication applicable to the patient.

(l) The administrative hearing panel shall give the patient their decision verbally immediately following the hearing. In addition, a completed Involuntary Psychotropic Medication Review Hearing form DSH 9165 (12-2014) shall be given to the patient within 24 hours.

(m) The patient shall have three business days after receipt of the written decision to appeal to the state hospital's medical director or designee.

(n) The state hospital's medical director or designee shall have three business days after receipt of a patient's appeal to review and respond to the patient in writing of the decision.

(o) The hearing panel's decision to allow involuntary non-emergency antipsychotic medication may direct such treatment for up to 14 days, unless superseded by a court decision.

(p) After the initial 14-day treatment period, further treatment may be authorized only after a second administrative hearing is conducted pursuant to this section wherein the hearing panel may then direct treatment to continue for an additional 180 days, or when a court renders a decision.

(q) The state hospital shall request a court hearing as required by law, concurrently or subsequently to the administrative hearing.

(dr) Nothing in these regulations shall affect any existing legal rights of the individual patient to seek a judicial review of the hearing panel's determination for involuntary medication.

(es) Nothing in these regulations shall affect any existing legal authority of the state hospital to involuntarily medicate the individual patient in emergency situations.

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: *In Re Qawi* (2004) 32 Cal.4th 1; *In Re Calhoun* (2004) 121 Cal.App.4th 1315; *In Re Greenshields* (2014) 227 Cal.App.4th 1284; *Washington v. Harper* (1990) 494 U.S. 210; Sections 1026, 2962 and 2972, Penal Code; and Sections 5300, 6316.2 and 6600, Welfare and Institutions Code.

