

Psychiatric Patients' Rights to Refuse Treatment

Legal Rights of Voluntary and Involuntary Patients Under Pennsylvania Law

People who are being treated for mental illness, like all other people, generally have a right to refuse unwanted medical treatment. This "right to refuse treatment" extends, except in limited circumstances, to the right to refuse treatment with psychiatric medications. This fact sheet is designed to give an overview of the circumstances in which persons who are being treated for mental illness in Pennsylvania have the right to refuse to take psychiatric medications.

BASICS OF THE RIGHT TO REFUSE TREATMENT

What is the legal basis for the right to refuse treatment?

In Pennsylvania, Mental Health Bulletin 99-85-10: "Administration of Psychotropic Medication to Protesting Patients", sets out the standards to be followed in determining whether a psychiatric patient can be subject to involuntary medication.

VOLUNTARY VS. INVOLUNTARY STATUS

What is the difference between a "voluntary" and an "involuntary" patient?

"Voluntary" patients are those people who have consented to be treated in a particular out-patient or in-patient treatment program. "Involuntary" patients are those people who are committed against their wishes. The law protects the right of "voluntary" patients to refuse treatment to

a much greater degree than the right of "involuntary" patients.

What are the requirements for being compelled to enter a treatment program as an "involuntary" patient?

Under Pennsylvania law, an individual must present a clear and present danger to self or others in order to be subject to involuntary treatment. Depending on the length of treatment, certain procedural safeguards, including in many cases a judicial proceeding, must accompany this determination of dangerousness.

Except for short-term emergency care, an involuntary patient must be placed in the least restrictive treatment environment appropriate to his treatment needs. Commitment can be on an in-patient or out-patient treatment basis.

Can a "voluntary" patient be converted to "involuntary" status?

"Voluntary" patients can be converted to "involuntary" status if they seek to withdraw from treatment, or seek to decline a particular treatment suggested by treatment personnel. However, the same showing of dangerousness must be made, and the same procedures must be followed, as would be required to designate someone "involuntary" at the outset of their treatment.

SCOPE OF THE RIGHT

What rights do voluntary patients have to refuse treatment?

Under state law, a voluntary patient can refuse psychiatric treatment unless he poses an imminent threat of danger to self or others. If staff conclude such a threat is present, the patient will be subject to involuntary commitment. If the person does not meet the involuntary commitment standards and refuses medication, he may be subject to transfer or discharge except in emergency circumstances.

What rights do involuntary patients have to refuse treatment?

An involuntary patient may be subject to forced medications in an “emergency” which means that it is necessary to protect the health and safety of the individual and others. Present such an emergency, an involuntary patient can be forcibly medicated only if all of the following procedures are satisfied:

- The responsible treatment provider must determine and document that the medication is required to provide adequate treatment or to prevent physical injury. In so doing, *the provider must consider the patient’s wishes and the existence of any less intrusive alternatives.*
- Informed consent must be sought and the reasons for the medication discussed with the patient.
- If the patient continues to refuse to consent to treatment, a second psychiatrist must complete an

independent examination of the patient and his/her medical records. In determining whether the medication is necessary, the consulting psychiatrist *must consider the value of the medication in light of the fact that it will be administered over protest, the reasons for the protest and any alternative treatments that are available that would be less objectionable to the patient.*

- If the second psychiatrist does not concur as to the necessity of the treatment, the treatment team may either not proceed with the medication, or seek an independent examination by a third psychiatrist. *If the third psychiatrist also does not concur with the necessity of the treatment, the treatment may not be administered.*
- If, following the initial round of medication, the patient continues to object to the treatment, the necessity of the medication must be independently reevaluated by a psychiatrist every 30 days.