

Administration of Neuroleptic Medication MN Statute §253B.092

The treating medical practitioner may prescribe neuroleptic medications for you if you have capacity to consent and are willing to take the medications. You are presumed under the law to have the capacity to make decisions regarding neuroleptic medications. The burden is on others to prove otherwise. Your medical practitioner will have you sign a consent form after informing you of the risks and benefits of the medication.

If you lack capacity to consent and are willing to take neuroleptic medications, the court will appoint a substitute decision-maker to give consent on your behalf. A substitute decision-maker is a person appointed by the court to either grant or withhold consent to the administration of neuroleptic medications. If you prepared a health care directive, power of attorney for health care or you have a guardian, the court may give preference to your proxy, health care agent or guardian when appointing a substitute decision-maker. The substitute decision-maker can consent to the administration of neuroleptic medication if you are not refusing.

If you lack the present capacity to consent and are not refusing, the treating medical practitioner can continue to give you neuroleptic medication that has been prescribed to you before you were admitted to the treatment facility. In such a case, the medication can be given to you for up to 14 days while a substitute decision maker is being requested or a request is made to obtain a court order or change an existing court order for medication. For example, the treating medical practitioner wants to change the type and/or dosage of the neuroleptic.

If the court has appointed a substitute decision-maker and either you refuse consent or your substitute decision-maker, health care agent or proxy refuses consent, medications may only be administered in an emergency situation or by order of the court after a hearing on the issue.

An emergency may be declared by a medical practitioner only when you lack capacity to give informed consent and you are refusing neuroleptic medications. An emergency may only be declared when the treating medical practitioner determines that neuroleptic medication is necessary to prevent serious, immediate physical harm to you or others.

If the medical practitioner declares an emergency, the neuroleptic medication may only be administered for as long as the emergency continues to exist, up to 14 days. If the medical practitioner requests a medication review hearing within that 14 days, the medical practitioner may continue the medication through the date of the court hearing if the emergency continues to exist.

Determining Capacity to Make Informed Decisions

Capacity to give informed consent must be based on your understanding of your current situation, the reason for your hospitalization and an understanding of the consequences of refusing neuroleptic treatment. It also includes your ability to understand the risks, benefits, and alternatives to treatment. Your decision must be a reasoned one and not be based on a symptom of mental illness. **The fact that you disagree with the treating medical practitioner about the type of medication or dosage is not enough to show you lack capacity.**

If the treating medical practitioner requests a medication review hearing, commonly referred to as a “Jarvis Hearing,” the court will appoint an attorney (usually this will be your commitment defense attorney) and a court examiner. You have the right to a second examiner of your choice. At the hearing, the petitioner must show you lack capacity. Through your court-appointed attorney, you have the right to attend, present witnesses, and cross-examine the petitioner’s witnesses.

Medication Review Hearing “Jarvis Hearing”

The court will then decide if you have capacity to give consent to the medication, and whether medication is a reasonable option. If the court decides that medication is needed to treat your illness and orders you to take medications, the order can last no longer than the length of your commitment. If you are civilly committed for an indeterminate period, the order can last no longer than two years.

You have the right to appeal the court’s order. If you wish to file an appeal, contact your attorney. You also have the right to request a hearing later to review the continued need for the court order. This is called a review hearing or a [253B.17](#) hearing.

Standards for Determining Need for Neuroleptics

The following are the standards the court or your substitute decision maker must use to make decisions regarding the administration of neuroleptic medications when you lack the capacity to give informed consent.

If you clearly stated what you would do when you had capacity to give consent, your wishes must be followed. Evidence of your wishes may include any written document such as the Health Care Directives described below.

If there is no evidence of what you would prefer, or if there is conflicting evidence, the decision must be based on what a reasonable person would do. This must include a consideration of:

- 1) your family, community, moral, religious and social values;
- 2) the medical risks, benefits and alternatives to neuroleptic medications;
- 3) whether or not neuroleptic medications have worked for you in the past and any bad side effects you may have experienced, and;
- 4) any other relevant factors.

Health Care Directives

There are several forms of advance health care directives. You can use any of the three types of Health Care Directives under [MN Statute §145C](#), a Declaration under [MN Statute §253B.03](#) subdivision 6d or an Advanced Psychiatric Health Care Directive. These documents all allow you to list what you would like your treating medical practitioner to do if you suddenly become unable to give informed consent to medical treatment.

If you use one of these directives, you need to give a copy to all your treating medical practitioners to ensure your wishes will be followed. If you have a county case manager, it is also a good idea to give that person a copy of the directive.

If you would like more information on advance health care directives, you may contact the Disability Law Center at either 1 (800) 292-4150 or (612) 332-1441.

More Information

If you would like more information regarding the administration of neuroleptic medication under the Commitment Act, you may call the Office of Ombudsman for Mental Health and Developmental Disabilities at 1-800-657-3506 or 651-757-1800. You may also contact the Disability Law Center at the phone numbers listed above. If you are currently under civil commitment, you may contact your court-appointed attorney for assistance.

ADA Statement: If you have a disability and want this notice in a different format you may request this from the county. For more detailed information on the commitment process, contact the Office of the Ombudsman for Mental Health and Developmental Disabilities, 332 Minnesota Street, Ste W1410, First National Bank Building, Saint Paul, Minnesota 55101-2117, <https://mn.gov/omhdd/> Voice: 651-757-1800 or Toll Free: 1-800-657-3506.