

Neuroleptic Medication Administration Fact Sheet

The treating physician may prescribe medications for you if you have capacity to consent and are willing to take neuroleptic medications. Your physician 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 or withhold consent. If you prepared a health care directive, power of attorney for health care or have a guardian/conservator, the court may give preference to your proxy, health care agent or guardian/conservator when appointing a substitute decision maker.

If you refuse consent, medications may only be administered in an emergency situation or by order of the court after a hearing on the issue.

If the court has appointed a substitute decision maker and the substitute decision maker refuses consent, or your proxy for your health care directive refuses to consent, medications may only be administered in an emergency or by order of the court after a hearing on the issue.

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

If the physician 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 physician requests a medication review hearing within that 14 days, the physician may continue the medication through the date of the court hearing if the emergency continues to exist.

Determining Capacity

Capacity to give informed consent must be based on your understanding of your current situation, the reason for your hospitalization and whether or not you believe you have a mental illness. It also includes your ability to understand the risks, benefits, and alternatives to treatment including the consequences of refusing medications. Your decision must be reasoned and not based on delusions. **The fact that you disagree with your doctor about the type of medication or dose is not enough to show you lack capacity.**

Medication Review Hearing

If the treating physician requests a medication review hearing, the court will appoint an attorney (usually this will be your commitment defense attorney) and an examiner. You have the right to a second examiner of your choice. At the hearing, the petitioner must show you lack capacity. You have the right to attend, present witnesses, and cross-examine the petitioner's witnesses.

The court will then decide if you have capacity to give consent or not, and whether or not medication is a reasonable option. If the court decides that medications are needed to treat your illness and orders you to take medications, the order can last no longer than the length of your commitment. For persons 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 on to review the continued need for the court order. This is called a review hearing or .17 hearing.

Standards for Determining Need for Neuroleptics

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

If the person clearly stated what he/she would do when he/she had capacity to give consent, his/her wishes must be followed. This may be done through an advance health care directive or a durable power of attorney for health care.

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

1. the person's 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 in the past and any adverse side effects, and;
4. any other relevant factors.

Advance Directives

There are several forms of advance directives. You can use a Durable Power of Attorney for Health Care, a Declaration under Mn. Statutes 253B.03 subd. 6d or a Health Care Directive [see Mn. Statutes Chapter 145C]. These all allow you to list what you would like your treating physicians 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 of your treating physicians 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 directives, you may contact the Disability Law Center. You may contact them at either 1-800-292-4150 or, 612-332-1441.

More Information

If you would like more information regarding medication review hearings, you may call the Office of Ombudsman for Mental Health and Mental Retardation at 1-800-657-3506 or, 651-296-3848. 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.

Office of the Ombudsman for Mental Health and Mental Retardation Civil Commitment Training and Resource Center

Suite 420, Metro Square Building, St. Paul, Minnesota 55101-2117
651-296-3848 Toll Free 1-800-657-3506 TTY/voice – Minnesota Relay Service 711
E-mail: ombudsman.mhmr@state.mn.us Website: www.ombudmhmr.state.mn.us
Created September 2001, Updated August 2003