

YOUR RIGHTS REGARDING MEDICATION IN MASSACHUSETTS

Prepared by the Mental Health Legal Advisors Committee
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Massachusetts law protects your right to decide your course of treatment and, more specifically, to refuse medication. You have this right whether you are receiving inpatient or outpatient treatment, voluntarily or involuntarily hospitalized, in a public or private setting, or in a mental health or mental retardation facility.

INFORMED CONSENT

Before administering *any* type of treatment, including medication, your physician must obtain your **informed consent**.

In order to exercise informed consent, you must be told in terms you can understand:

- the **nature and extent** of your **illness**;
- what **medication** the doctor wants to prescribe for you and why;
- the **benefits** the doctor believes will result from taking the medication;
- the nature and probability of the **risks** associated with the medication generally, and any special risks which the medication may pose for you specifically (for example, if you are pregnant or have a heart problem, some medications may be particularly dangerous);
- **alternative treatments**, including not having treatment; and
- the **prognosis** with and without treatment.

Further, if you are in a facility that is operated or funded by the Department of Mental Health, your doctor must:

- respond to your questions about the medication;
- provide you with medical information written in "everyday language" about the benefits, risks and side-effects of the medication prescribed to you;
- provide a periodic written assessment of treatment progress including any modification and the rationale for modification, all documented in the patient's record;
- explain that you have the right to freely refuse the treatment without coercion, retaliation, or punishment; and
- explain that you have the right to withdraw your consent to treatment, either orally or in writing, at any time.

The fact that you have been admitted or committed to a mental health or retardation facility *does not* mean that you are incompetent to give or withhold consent. To the contrary, in Massachusetts, an adult is presumed competent to make his or her own decisions regarding antipsychotic medication until he or she is proven incompetent to do so in court.

Neither your doctor nor the staff may threaten or punish you for refusing to consent to treatment. The hospital *may not* deny you privileges because you refuse to take medication.

EXCEPTIONS TO INFORMED CONSENT

The law recognizes only two situations in which your informed consent to treatment is not required: incompetency and emergency.

Incompetency

When your physician believes that you do not understand the nature of your illness or the proposed treatment, she may conclude that you are not competent to make your own treatment decisions, and, therefore, that she may not legally treat you on the basis of your consent. The only consideration for competency should be whether or not you are able to make or communicate informed decisions. The physician's opinion must not be based upon her belief that you made a "bad" treatment decision.

Rogers Hearings

When a doctor believes you are incompetent, she may initiate a guardianship proceeding, popularly called a ***Rogers*** hearing.

At this court proceeding you have the right to be represented by an attorney, and, if you cannot afford an attorney, the court will appoint one for you. The court shall authorize treatment with antipsychotic medication only if:

- it finds you *not capable of making informed decisions* regarding medication;
- by applying a *substituted judgment* test, it finds that you would accept the treatment if competent; and
- it approves and authorizes a *written antipsychotic treatment plan*.

Probate Court *Rogers* and District Court *Rogers*

Probate Court *Rogers* hearings are commenced in probate court. The statute governing probate court *Rogers* guardianships does not establish a time period for the duration of the guardianship. The Supreme Judicial Court, however, has ruled that all probate court *Rogers* orders must provide for periodic review and include a termination date. You may file a petition with the probate court at *any* time for termination of the guardianship.

District Court *Rogers* hearings are commenced in district court. They may be initiated only when you are hospitalized *and* the subject of a petition for commitment. The petition for guardianship with authority to administer

antipsychotic drugs is separate from the commitment proceeding and the court may consider it only after the judge issues an order for your commitment. A district court guardianship expires at the end of your commitment. You may petition the court at *any* time for termination of the medical treatment authorization.

Emergency

Absent a court-ordered *Rogers* guardianship you may be medicated against your will in only two emergency situations: to prevent violence against yourself or others *or* to prevent irreversible medical damage to yourself.

Chemical Restraint

A physician may authorize the use of chemical restraint to prevent violence in an emergency situation "such as the *occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide.*"

Emergency Psychiatric Treatment

If your doctor believes that you have a serious mental illness, you are incompetent, and an "*immediate, substantial, and irreversible deterioration*" of your medical condition will occur unless you receive the medication, she may administer a **single** treatment of medication without your consent. However, this emergency treatment cannot continue without a judge's authorization.

HEALTH CARE PROXY

In 1990, Massachusetts enacted the Health Care Proxy law. The proxy allows you to choose, while competent, a trusted relative or friend to make medical treatment decisions for you if, and when, you are no longer competent to do so. The proxy only takes effect after your doctor determines that you lack the capacity to make decisions about your course of treatment. A health care proxy may negate the need for future substituted judgment determinations by a court.

WHAT TO DO IF YOU HAVE BEEN ILLEGALLY MEDICATED

If you believe that you have been illegally medicated while at a program or facility operated by DMH, contracted for by DMH, or licensed by DMH, ask to speak with the Human Rights Officer. You may also file a written **complaint** with the Person in Charge of the program or facility. You may give your complaint to any facility employee; he or she must forward it to the Person in Charge. If you are dissatisfied with the response of the Person in Charge and believe that additional fact-finding should occur, you have 10 days to request **reconsideration**. You also may file an **appeal** to a higher level up to 10 days after receiving a decision. In most cases, you have the right to a **further appeal**, which must be filed within 10 days of receiving the *appeal* decision. If you have questions about the complaint process, contact the Human Rights Officer or the Mental Health Legal Advisors Committee (1-800-342-9092).