



# MENTAL HEALTH BULLETIN

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SUBJECT

Administration of Psychotropic  
Medication to Protesting Patients

BY

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## SCOPE

Superintendents, State Mental Hospitals  
State Mental Hospital Physicians  
County MH/MR Administrators  
Community MH/MR Providers Association

## PURPOSE

To adopt standards and procedures for determining when to administer antipsychotic or other psychotropic medication over objection.

## BACKGROUND

In 1981, the United States Court of Appeals for the Third Circuit (Pennsylvania is under the jurisdiction of the Third Circuit) held that competent involuntary mental patients committed to mental hospitals under New Jersey law have a qualified constitutional right to refuse antipsychotic medication in non-emergency situations; that right could be overridden by concurrence of a second physician in the necessity of the medication Rennie v. Klein, 653 F.2d 836 (3d Cir. 1981). In 1982, this decision was vacated by the U.S. Supreme Court and remanded for reconsideration, 102 S. Ct. 3506. On October 13, 1983, the Third Circuit reinstated its earlier decision, 720 F.2d 266 (3d Cir. 1983), but given recent developments in Pennsylvania law about the competence of involuntary patients, it did so in a way that creates uncertainty about the legal basis for the administration of antipsychotic medication to protesting patients under the Mental Health Procedures Act.

There are several reasons for the uncertainty. First, the Rennie decision is applicable only to patients who have not been adjudicated incompetent, 653 F.2d at 846, n. 12. A recent Pennsylvania Supreme Court case suggests that under the Mental Health Procedures Act, 50 P.S. Section 7101 et seq., an involuntary commitment is at least a limited adjudication of incompetency regarding treatment decisions: In re Hutchinson, 454 A.2d 1008 (Pennsylvania 1982). The Third Circuit's Rennie decision therefore may be inapplicable in Pennsylvania for involuntarily committed patients.

Second, because there was no majority opinion in Rennie (there were ten judges and five opinions) and because the judges did not specifically and consistently state under what circumstances a patient may be medicated over objection, it appears permissible to medicate over objection to facilitate treatment. It is clearly permissible to medicate over objection to prevent injury to the patient or others.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Community and Hospital Program Managers - see attached list.

Third, because the Court did not directly address procedural issues in its second Rennie opinion, it is not clear whether concurrence of a second physician is necessary to authorize medication over objection.

### POLICY

Given the uncertainties of the recent Rennie ruling, and in light of concern about possible long-term side effects of antipsychotic and other psychotropic medication, the following procedures are to be followed whenever a patient is voluntarily admitted under Section 201 or is committed for involuntary treatment under Sections 302, 303, 304 or 305 of the Mental Health Procedures Act and protests the administration of antipsychotic or other psychotropic medication.

Although Rennie v. Klein concerns only antipsychotic medication, prudence suggests that the following procedures be followed with any psychotropic medication. For a list of commonly used psychotropic medications, see American Psychiatric Association, Psychiatric Glossary (5th ed., 1980), pages 63-64.

### Voluntary Patients

- a) The refusal of any psychotropic medication by any voluntary patient age 14 and above is to be honored unless the patient poses an imminent threat of danger to self or others. In such an emergency situation, however, the voluntary patient's protest can be overridden only when staff also initiate the involuntary emergency commitment process under Section 302 of the Act. When the mentally ill patient protests the administration of medication, and the lack of medication does not precipitate an emergency but does pose a serious danger to self or others or demonstrates an inability to care for self, a court-ordered involuntary commitment should be initiated under Section 304(c) of the Act. Voluntary patients with guardians of the person may be converted to involuntary status if either the patient or guardian protests necessary medication and the patient meets involuntary commitment standards. If involuntary commitment standards are not met, the patient or guardian protests, and effective treatment without medication is not possible, the patient may be transferred or discharged and referred to an alternative clinically suitable program.
- b) When voluntary patients who do not meet involuntary commitment standards protest any psychotropic medication, the treating physician must decide whether other medication or treatment without medication can be effective. If the protested medication is determined to be an essential treatment, this should be explained to the patient. Those who have the patient's trust should discuss the benefits and risks of the medication with the patient.

The patient's concerns should be explored and discussed. If the patient continues to refuse and the physician takes the position that effective treatment cannot be provided without medication, the patient may be transferred to another physician's care or to another facility or may be discharged and referred to an appropriate mental health service. Patients may not be denied appropriate referral on the basis of refusal to take psychotropic medication.

#### Involuntary Patients

- a) During an emergency of any involuntarily committed patient under Sections 302, 303, 304 and 305 of the Act, those in charge of treatment are authorized to provide the necessary treatment to protect the health and safety of the individual and others. The key issues to document are that the medication is for the purpose of protecting the health and safety of the individual or others and that it seeks to relieve the mental illness which creates the emergency condition.
- b) Procedures for the non-emergency prescription and administration of antipsychotic or other psychotropic medication over objection of persons involuntarily committed under Sections 302, 303, 304, and 305 of the Act, which should be carried out in accord with the individualized treatment plan, are outlined in the following section.
- c) For the purposes of administering psychotropic medication to involuntarily committed adolescents (age 14-17), physicians should treat these patients in the same way as involuntarily committed adults.

#### Procedures - Nonemergency Administration of Medication Over Objections:

Whenever a mentally ill person in involuntary treatment pursuant to Sections 302, 303, 304 or 305 of the Act protests treatment with any psychotropic medication, the following procedures are to be followed by the treatment team director or his/her designee:

- (1) Determine and document whether the medication is necessary (i.e., is reasonably required to provide adequate treatment or is needed to prevent physical injury) in light of the objection and whether there are reasonable alternatives.
- (2) Discuss with the patient the reasons why a specific medication is indicated and any available alternatives. Discuss with the patient his or her concerns and the reasons for the protest. Seek informed consent. Document these discussions, the reasons for the protest and whether or not consent is obtained.
- (3) If the patient continues to refuse medication, obtain a second opinion from a psychiatrist concerning the degree of medical necessity/advisability for the medication. The psychiatrist providing the second opinion may be a colleague of the treating psychiatrist. However, the second opinion should be based on an independent examination of the patient and an independent review of all medical records or tests.

- (4) If the consulting psychiatrist concurs that the protested medication is necessary, the medication may be administered. Appropriate respect shall be shown for the patient's feelings and dignity. If the second opinion does not agree with the necessity of the proposed medication, a third psychiatric opinion should be obtained before proceeding. Psychiatrists consulted for a second opinion should consider the risk/benefit value of the medication if administered over protest, the reason(s) for the protest, and alternative treatment approaches available.
- (5) If protests persist after medication has been tried, an additional second opinion based upon independent review should be obtained every 30 days as to the continuing need for the medication.
- (6) Treatment team planning and review sessions should afford the patient and those helping the patient with opportunities to discuss concerns about or protests to any aspect of the proposed treatment. Medication over objection should be documented in the individualized treatment plan.

#### Children

For children under 14 who are voluntarily admitted via their parents' consent (see Section 201 of the Mental Health Procedures Act, 50 P.S. Section 7201), the relevant legal consent or protest is that of the parents. However, when either a voluntarily admitted child under 14 years of age or his/her parents/guardian protest medication, a second psychiatric opinion should be obtained; the procedures set forth above with respect to voluntary adult patients then should be followed. The parents rather than the child should be given the choice of hospitalization with medication (if medication is deemed by second opinion to be necessary) or discharge and referral. A Section 304 involuntary commitment application may be filed if the child meets involuntary commitment standards and the parents/guardian continue to object to medication.

When an involuntarily committed child under the age of 14 protests medication, the treating physician should discuss the medication and the patient's concerns in order to determine benefits of the value of proceeding to medicate over objection. A second opinion may be requested if the treatment team leader concludes with the treating physician that it is necessary or worthwhile.

#### Patients With a Guardian of the Person

In the event that any patient, voluntary or involuntary, has a court-appointed guardian of his/her person, and the guardian protests medication, legal counsel should be consulted, as the terms of the court order appointing the guardian must be considered on a case-by-case basis.

This bulletin does not alter the regulation to be followed when the patient's protest is based upon religious objections (Title 55, Pa. Code 5100.54, Article II).

The implementation of the policy and procedures in state mental hospitals and community mental health programs will be evaluated as part of management and/or licensing reviews conducted by the Office of Mental Health.

This bulletin supercedes MH Bulletin 99-83-06 entirely.

Attachment