

**THE CONDUCT OF RIESE HEARINGS
INFORMATION BOOKLET FOR
DOCTORS AND HOSPITALS**

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SUPERIOR COURT LOS ANGELES COUNTY
OFFICE OF THE COUNSELOR IN MENTAL HEALTH

INTRODUCTION

The legislature and the Courts have placed substantial burdens on the doctor and the treating facility who desire to medicate a psychiatric patient against the patient's will in a non-emergency situation. The burdens include a series of preliminary requirements, the presentation of a "clear and convincing" case and the ability to rebut doubts that may be raised by the representations made by the patient and the advocate.

The material below is designed both to educate physicians as to the specific requirements and to eliminate as much confusion as possible in how to meet those requirements.

PRELIMINARY REQUIREMENTS

A. Informed Consent

California state law requires the disclosure of substantial oral and written information to psychiatric patients before they can be offered anti-psychotic medication. The oral information includes:

- (1) The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.
- (2) The likelihood of improving or not improving without the medications.
- (3) Reasonable alternative treatment available.
- (4) The name and type, frequency, amount and method of dispensing the medication, and the probable length of time the medication will be taken. [abstracted from WIC Section 5152 (c)].

This statute also requires that patients receive the appropriate handbook(s) provided by the State Department of Mental Health related to the class of medication(s) being considered, ie. Neuroleptics, Anti-depressants and/or Lithium.

It is particularly crucial that hostile patients who will not allow a full discussion of these issues or mute patients who will not respond are provided the medication handbooks. The hearing officer is required to make a judgment about how patients respond to the information, and it is not reasonable to do so in a case where the patient has not received the full set of information in one form or another.

The final requirement related to informed consent is that the giving of this information or justification for not giving it should be documented in the patient's chart.

B. Offer of Medication and Refusal

Once the doctor has complied with the legal requirements for informed consent, the patient may be offered the opportunity to accept psychotropic medication. By state law, involuntary patients need not sign the informed consent form and will not be classed as a refuser solely on the basis of not signing. There must be a verbal offer of medication; or, in the case of a mute or hostile patient, a physical offer of medication.

Under these circumstances, a hostile patient is one who rejected the explanation of risks and benefits. The patient who rejects the appropriate offer is a refuser. The mixed patterns of acceptance and refusal are more difficult to classify. In Los Angeles County, any "pattern of refusal" constitutes a refusal. Thus a patient who takes two prescribed medications regularly, but consistently refuses a third, is a refuser. Where patients provide an erratic pattern of acceptance and refusal, the hearing officer may ask for a full recounting of the medication chart for each day of hospitalization and then make a judgment call. Keep in mind that the judgment will be based on the patient's pattern to that point and not on opinions about future patterns.

Where a patient has been determined by the hearing officer not to be a refuser, the petition will be dismissed without prejudice and may be resubmitted at a future time if the patient provides a more clear cut pattern of refusal.

C. Petition and Notice

Once the doctor has provided appropriate information to the patient and the patient has refused the medication, the doctor may petition the court for a capacity or Riese hearing by using the standard three page form provided by the Court. State law requires that patients receive, on the day of the filing, a written copy of a notice that the petition requesting a Riese hearing has been filed with the Court. Patients must also be informed of their right to an attorney or advocate at this time.

Petitions that are filled out as comprehensively as space allows will go a long way toward eliminating hearings having to be called off and rescheduled.

D. Treating Physician

The court policy in Los Angeles County requires the physician to present the case according to the rules of evidence normally used in court. Thus it is important for the presenting physician to have first hand knowledge of the patient's case. At a minimum,

current court policy defines a treating physician as one who has presented the full body of information that is required under informed consent to the patient at least once and who has sufficient first hand knowledge of the case to present it adequately.

It is important to note that the hearing officer has the duty to dismiss the petition in any case where the preliminary requirements have not been met. They include: (1) whether reasonable efforts have been made to provide information to the patient required under WIC Sections 5332 (a) and 5152 (c); (2) whether the patient is a refuser; (3) whether the presenting doctor qualifies as a treating physician and (4) whether proper notice has been provided the patient that the hearing will take place. The dismissal occurs "without prejudice" which means that there may be a new petition submitted on the same patient once the omissions are corrected.

PRESENTATION OF THE CASE

The Riese case provides that the patient who is to be involuntarily medicated must be proven to lack capacity by "clear and convincing evidence". California case law describes this standard as "so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind."

In order to meet this standard, the physician needs to present a compelling case establishing the existence of a mental disorder, a lack of capacity to reason about medications and a link between these two elements. Hearing officers have copies of guidelines for this presentation that may prove useful to you. In particular a description of patient behaviors is preferred over a rendering of psychiatric labels.

Under current law, the standard of proof required to detain and treat a psychiatric patient is significantly lower than the standard required to medicate involuntarily. Thus, there is bound to be a small class of patients who are found detainable at probable cause hearings but not subject to the doctor's desired form of treatment (ie. medication) based on the results of a Riese hearing. As frustrating as the situation may be from a clinical perspective, it is bound to occur when there is a fair application of the law by the respective hearing officers.

REBUTTAL OF THE PATIENT'S CASE

It is the advocate's job to cast as much doubt as possible on the validity of the doctor's presentation. He/she may do so within the rules, by cross examining the doctor, by presenting the patient as a witness, by use of the chart or by presenting other witnesses such as family members. In cross examination, the advocate may ask questions that force a narrow answer; however, the doctor may clarify answers more broadly once the advocate has finished.

The doctor also has the right to cross examine any witness the advocate has called, including the patient. In cross examining the patient, the doctor is restricted to the areas the patient has testified to; but within those areas, the doctor may ask focused questions

that probe irrationality, bizarre behavior, delusions or other matters that point in the direction of limited capacity.

After both sides have presented, each side summarizes the case. An effective summary presents the submitted evidence (no new evidence is allowed at this point) in the context most favorable to your case. It should recapitulate the factors pointing to the existence of a mental illness, a lack of capacity to reason about medications and the connection as perceived by the doctor.

Throughout the hearing, it is the hearing officer's responsibility to ensure that the integrity of all parties is respected.

RIGHT OF REVIEW

Unlike probable cause hearings, the doctor and hospital have a right of review of the hearing officer's decision. The reviews are conducted in Department 95 similar to writs of habeas corpus. The patient is represented by a Deputy Public Defender. A doctor from a public institution or a facility on public contract will be represented by County Counsel Office. A private facility must provide the hospital attorney to represent the doctor. Hearing officers and facilities have been provided with form letters that can be filled in and submitted by fax in requesting a review.

ROLE OF THE COURT.

Court personnel are charged with administering and applying the law as fairly as possible without favoritism to any party. You are encouraged to view the Office of The Counselor in Mental Health of Department 95 as a resource on Riese matters as well as probable cause hearings. Feel free to raise questions on these matters to Sandy Krauss, Tim Dowell or Mike McAleenan at 213-226-2911.