

COPY

August 28, 2008

Dr. Newton
Oregon State Hospital
Unit 48B
2600 Center Street NE
Salem, OR 97301

Dear Dr. Newton:

It has come to our attention that emergency medication was provided to a patient on ward 48B, Todd Giffen, for a time period that appears to be beyond the duration of any emergency circumstances. Our office understands that the order for emergency medication was continued for 10 days because it was originally written for 10 days – irrespective of the continuance of any emergency as defined by law. We understand that this patient has been determined multiple times to have capacity, and therefore be ineligible for forced medication other than in an emergency. Our advocate spoke to you while this situation continued, but was under the impression that you felt the order should be allowed to continue for a full 10 days.

As we have expressed in the past, this office is extremely concerned that the emergency medication provisions in the Oregon Administrative Rules and OSH policies be applied very strictly in order to avoid an end-run around the important protections provided in the rules for patients required to take anti-psych medications against their will on a regular basis.

The basic rule is that patients have the right to refuse (or withdraw consent to) any significant procedure, including anti-psychotic medications. OSH can force a patient to take medications against his or her will only after OSH staff has attempted to obtain informed consent, and a determination has been made that the patient lacks the capacity to refuse or withdraw consent to medications according to the rules in OAR 309-114- 0000 et seq. However, if there is an emergency, the state hospital may administer involuntary medication without following those rules.

Oregon administrative law specifically defines what constitutes an emergency. OAR 309-114-0015(1) state that an emergency exists if:

“in the opinion of the chief medical officer or designee:

(a) Immediate action is required to preserve the life or physical health of the patient or resident and it is impracticable to obtain informed consent as provided in OAR 309-114-0010; or

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(b) Immediate action is required because the behavior of the patient or resident creates a substantial likelihood of immediate physical harm to the patient, resident, or others in the institution and it is impracticable to obtain informed consent as provided in OAR 309-114-0010."

The rules clearly only allow emergency involuntary medication when there is immediate danger. In this case, the patient was seen to be walking around the unit unrestrained, without additional staff assigned to him, interacting with staff and other patients, during the time the facility considered him to require emergency medication.

Further, the administrative rules go on to explicitly forbid the use of emergency medication once the emergency has subsided. OAR 309-114-0015(2)(d) states that:

"The administration of a significant procedure in an emergency situation does not allow the institution to administer these procedures, once the emergency has subsided, without obtaining informed consent."

Of greatest concern to us is what appears to be an interpretation by some staff that emergency medication orders last for 10 days. There is no basis for this in law. The OSH "Guide to Informed Consent Documentation" makes a general statement (on page 4) that emergency medications generally would not be used for more than 10 days. We are concerned that this phrase has been interpreted by staff and applied to mean that an order for emergency medication lasts for 10 days irrespective of whether emergency circumstances exist.

Thank you for responding to this letter by advising us regarding whether our understanding of the situation was incorrect, and how this situation will be avoided in the future.

Sincerely,



Beth Englander
Attorney at Law

cc: Roy Orr, Superintendent
Maynard Hammer
Micky Logan
Jeff Burkholtz
Todd Giffen