



## **YOUR RIGHT TO REFUSE MEDICATION IN A STATE HOSPITAL**

As a person receiving services in a state psychiatric hospital, you have the right to refuse medication in most cases. This means that even if you are hospitalized against your will, you have the right to refuse medications you don't want, don't agree with, or don't understand. This right is guaranteed under state and federal law, and is supported by the policies of the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and its Human Rights Regulations. There are some important exceptions to this right, though. Read on to learn more.

### **When Can I Refuse Medication?**

Adults in Virginia, including those in state hospitals, are generally assumed to be competent to make their own decisions such as whether to take medication. This means that as a competent adult, you can refuse to take medications even in the state hospital. If you have concerns about the medications being prescribed to you in the state hospital, talk with your treating psychiatrist. Always tell them about medications you have taken in the past that have helped, and about any past problems or side effects you have had from the medications they are trying to give you.

### **What Is "Capacity to Make Decisions"?**

People in mental health crisis can sometimes be so affected by their crisis that they temporarily lose the ability to make reasonable decisions for themselves. If two doctors both say you "lack capacity" to make your own decisions, this means they believe that due to mental illness or other reasons, you are not able to understand healthcare information given to you, communicate your wishes, or make a decision in your best interests. If they find you lack capacity, they will seek approval to medicate you against your will. We describe how this happens later in this document.

## **What is “Informed Consent”?**

Capacity and the right to refuse medication go hand-in-hand with another important right - the right to “informed consent.” This means that before giving you any new medication, your doctor or treatment team must give you full and complete information about the medication so you understand what it will do. You also must agree to take the medication before it can be administered to you.

In order for you to have informed consent, the Human Rights Regulations require your treatment team to explain the following information to you in the way you best understand it:

- The reason for prescribing the medication.
- The benefits to you of taking it.
- The possible side effects and any risks you might experience from taking it.
- That you are free to refuse to take the medication, to withdraw your consent, and to stop participating in any treatment or service, without fear of retaliation or prejudice against you.
- How you can raise concerns and ask questions about the medication.

Under the DBHDS Human Rights Regulations, your treatment team is also required to document in your services record that they provided you with informed consent. They are required to do this by getting your or your guardian’s signature on an informed consent form or on your Individualized Services Plan (ISP).

## **What Happens If I Refuse Medication?**

If your doctors agree that you have capacity to make your own decisions, you will not have to take the medication. But, if they believe you lack capacity and you refuse to take medications, they may (and often do) appoint an “Authorized Representative,” or AR, to make the decision and consent to medications “for you.” The AR is generally a family member or a friend you trust. If you have no family or friends who can serve as your AR, your doctors may seek a court order to medicate you against your will. The mere fact that you are hospitalized involuntarily does not give them the right to force you to take medication – if they can’t appoint an AR to make decisions for you, they will have to go back to court and obtain another order to give you medication over your objection.

## **When Can't I Refuse Medication?**

While you can always refuse, there are some exceptions which may "overrule" your refusal:

1. You have an Advance Directive. This is a legal document you can create in which you state your wishes for the health care you want, including mental health care, when doctors say you lack capacity. In your Advance Directive, you can also appoint a "health care agent," a person you trust like a family member or a friend, to make decisions for you when you can't. Your health care agent doesn't have the right to approve medications for you against your will unless you specifically give them that right.

In order for you to give them that right, two actions are required. First, in your Advance Directive, you must specifically state that you are giving your health care agent the right to consent to medication over your objection. Second, a health care professional must sign a statement in your Advance Directive saying that in their professional judgement, you were capable of making an informed decision at the time you created your Advance Directive, and that you understand the consequences of giving your health care agent the right to consent to treatment over your objection. If you don't have an Advance Directive and want to make one, call the disAbility Law Center of Virginia at 800-552-3962.

2. You have a court-appointed guardian who makes decisions for you. You can still refuse medications, but in this case, your guardian can override your refusal.
3. It is an emergency. In an emergency situation, Virginia law allows doctors to give medications to an incapacitated person in certain situations where there is not time to contact another person and obtain consent.

## **What Could Happen If I Refuse to Take Medication in the State Hospital?**

Although you do have the right to refuse in most cases, there may be consequences to refusing!

- It may take longer for you to get better. Many people who take psychiatric medications find medications help to control symptoms of mental illness. If you are in the hospital on an involuntary commitment order and you don't get better, you

may have to stay in the hospital for a longer time. This is because the longer you are considered a danger to yourself or others, the longer you might have to stay in the hospital.

- Depending on the situation, your treatment team may petition the court to appoint a guardian to make your decisions both in the hospital and when you return home.
- If you refuse a medication your doctor believes is essential for you to get better, they may view your refusal as an indication that you might lack the capacity to consent to any medications. A doctor who feels this way is likely not only to evaluate your capacity, but also to treat your refusal as evidence of incapacity. If the doctor decides you lack capacity, and another doctor agrees, then they may seek an involuntary medication order or appoint an Authorized Representative to make your medication decisions.

### What is “Chemical Restraint”?

“Chemical restraint” is the involuntary use of a medication to control a person's behavior when that behavior places them or others at risk of harm and the medication is not a standard treatment for their medical or psychiatric condition. If you believe the hospital staff have given you medications against your will to control your behavior or punish you for it, they may have violated your rights. Contact the state hospital’s Human Rights Advocate, or call dLCV at 800-552-3962.



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