



Disability Law Center's Self-Advocacy Materials

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Rights in Facilities

This document is designed for people with disabilities. The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

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<http://www.dlc-ma.org/about/funding/>

Your Right to Get and Refuse Treatment in a Psychiatric Unit or Hospital

You Will Learn About:

- Informed Consent
- What a Doctor Has to Explain to You
- When a Doctor Can Give You Medicine without Your Permission

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Your Right to Get and Refuse Treatment in a Psychiatric Unit or Hospital

If you are receiving mental health treatment in Massachusetts, you have the right to participate in your treatment planning and to refuse treatment. It doesn't matter if you are in a public or private hospital or whether you are there voluntarily or against your will. Here we discuss some important information about this right.

What is Informed Consent?

Informed consent is your decision to accept mental health treatment after your doctor has explained to you the type of treatment – including medication – which he or she recommends for you.

What has to be explained?

The doctor has to explain to you, in words that you can understand, the following information:

- What is your illness;
- What medication the doctor wants you to take and why;
- How the doctor believes the medication will help you;
- What are the dangers of taking the medication, in general, and specifically for someone like you (if you have some other conditions, for example);
- Other treatments that you could receive, including no treatment;
- What could happen to you with and without treatment, including if the doctor believes you will get better with medicine or what might happen to you if you do not get medicine.
- That you have the right to refuse the treatment and they cannot force you or punish you for saying no; and
- That even if you agree to get the treatment, you can always change your mind either by telling your doctor or in writing.

Your doctor should also answer any questions you have about the medication or the treatment in general.

Are there times when they can give me medicine without my permission?

Yes. There are TWO situations that give the doctors permission to give you treatment without your informed consent.

1. Incompetency: If your doctor believes that you do not understand your illness or the treatment he or she wants to give you to make you better, the doctor may decide that you cannot consent. If this happens, the doctor can file documents in Court to ask a judge to give permission for the treatment. The court hearing that takes place is very often called a Rogers hearing. You have a right to a lawyer for this and if you cannot afford one, the court will give you one. The judge can only give permission for your treatment with medications (called a Rogers order) if all three of the following conditions exist:

- A finding that you are not able to make informed decisions about the medication
- A finding that if you were competent, you would agree (substituted judgment test)
- Approval of a written treatment plan

2. Emergency: If there is no Rogers order, that gives permission for you to get medication against your will, then you can only be given medication without your permission in two emergency situations: to prevent harm against yourself or others, OR to prevent you from medical harm that cannot be repaired.

- **Chemical Restraint.** A doctor can authorize for you to get medication against your will if it is necessary in order to prevent you from extreme violence to yourself or others. This can include personal injury or attempted suicide. When the doctor decides to give you medication in a situation like this, you may get the medication through an injection. This emergency medication is called a chemical restraint.
- **Emergency Psychiatric Treatment.** If your doctor believes that you have a serious mental illness, that you are incompetent, and that your medical condition can get so bad that you might not be able to recover, he or she can give you medication once without your consent. After that one emergency medication, the doctor cannot do this again without an order from a judge.