



DISABILITY RIGHTS OREGON

FIRST EDITION

Involuntary Medication Hearing Handbook



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Purpose of this Handbook

The purpose of this Handbook is to provide general information about the involuntary medication hearing process to individuals at any Oregon State Hospital campus for treatment of a mental health condition. Your doctor may believe you need a certain type of medication, known as a **psychotropic**. A psychotropic medication can affect your thought process, emotions, or behaviors. This Handbook will give you information about what you can do if your doctor believes you need one or more psychotropic medications.

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Laws and Rules: Where to Find Them

Oregon Revised Statutes (ORS)

Website: www.leg.state.or.us/ors/426.html

Mentally ill persons committed to the authority shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless they have given their express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.737. This right may be denied to such persons for good cause as defined in administrative rule only by the director of the facility in which the person is confined, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the patient's treatment record and shall include the reasons for the denial. ORS 426.385(3).

Oregon Administrative Rules (OAR)

Website: arcweb.sos.state.or.us/pages/rules/oars_300/oar_309/309_tofc.html#114

Oregon Administrative Rules 309-114-0000 through 309-114-0070 are the rules that control how a patient can be required to take psychotropic medications without their informed consent.

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What is a psychotropic medication?

A **psychotropic medication** can affect your thought process, emotions, or behaviors.

What if my doctor believes I need a psychotropic medication?

Before prescribing you this medication as part of your treatment, your doctor must follow certain steps. *See p. 11, Flow Chart: The Involuntary Medication Hearing Process.*

Your doctor must talk with you about the proposed treatment, including:

- Your mental health diagnosis;
- The possible benefits of taking the medication;
- The possible risks and side effects of taking the medication;
- What your doctor believes will happen if you don't take the medication; and
- Other treatment options.

After you and your doctor talk, you have two choices – you can agree to take the medication, or you can refuse to take it.

What happens if I agree to take the medication?

If you agree with your doctor that you need the medication, you can give your **informed consent**. The hospital can then give you the medication you agreed to take. If you change your mind later, you can ask to be safely taken off the medication.

What does informed consent mean?

Giving your **informed consent** means that you:

- Understand the information your doctor gave you;
- Can weigh the risks and the benefits of your treatment options (taking the medication, not taking any medication, or receiving alternative treatments); and
- Have decided that you do want to take the medication your doctor recommends.

What if I don't agree to take the medication?

You can tell your doctor at any time that you do not want to take the medication. You will not be required to take it if your doctor believes that you understand all the risks and benefits of your decision to refuse medication, and can weigh those risks and benefits and make a reasonable decision.

However, your doctor may think that you do not understand all the risks and benefits of your decision to refuse the medication, or that you can't weigh those risks and benefits and come to a reasonable decision.

In this case, your doctor may start a process to require you to take the medication. This should only be done if your doctor has **good cause** to treat you with medication.

What does good cause mean?

Good cause means that:

- You can't make your own decision about whether to take the medication because you can't understand and weigh the risks and benefits of the treatment options;
- The medication is likely to help you;
- It's the most appropriate treatment for your condition; and
- All other treatments (other than medication) aren't right for you.

What happens if my doctor believes there is good cause to require me to take medication?

The hospital must follow specific steps before giving you medication without your permission.

1. Your doctor must meet with you to talk about your treatment options.
2. A second doctor who does not work for the state hospital must also meet with you. This doctor gives a second opinion about whether there is good cause to require you to take medication.
3. **A medication educator** – a person who knows all about the specific medication – must meet with you to give you information about the medication and answer your questions.

4. The Chief Medical Officer or Superintendent of the hospital must consider both doctors' opinions and make a final decision about whether there is good cause to require you to take medication.
5. If the Chief Medical Officer or Superintendent decides that there is good cause to require you to take medication, **you will be given written notice** of the hospital's plan to give you medication without your consent. **This written notice will also tell you about your right to request a hearing if you disagree with the hospital's decision.**

How can I show the doctors that I can make my own decisions about medication?

When you meet with the doctors, ask for more information about:

- Your diagnosis;
- The proposed medication;
- Other treatment options; and
- The risks and benefits of all the treatment options.

After considering that information, tell the doctors what you think the possible risks and benefits from taking the medication might be, what might happen if you take no medication, and which other treatments you think would work better for you, and why.

Explain to the doctors how your decision about treatment will affect your life. For example, tell them how long you think you will stay at the hospital; how you will get along with other people while you are at the hospital; how the decision will affect your relationships with your family and friends; and where you plan to live after you leave the hospital.

The doctors will consider what you say when they decide whether, in their opinion, you have the **capacity** to make your own decision about medication.

What does capacity mean?

Capacity is the ability to reasonably understand and weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment at all.

I got a written notice that the hospital plans to require me to take medication. What are my options?

You have three options:

1. Agree to take the medication.
2. Talk to your doctor about alternatives that may work better for you.
3. Refuse to take the medication and request a hearing.

What happens if I agree to take the medication and don't ask for a hearing?

Your doctor will wait 48 hours before requiring you to take the medication if you were not already being required to take medication. If you were already required to take medication, they will keep giving you the medication.

However, you can change your mind at any time after the 48 hours are over and still ask for a hearing, even if you are already taking the medication.

What happens if I refuse medication and ask for a hearing?

An administrative law judge will decide whether you have to take medication or not. Try to make your request for a hearing within 48 hours of getting the written notice. This is because if you are not already taking medication, you will not be required to take the medication until the hearing is held and the judge makes a decision.

But, if you are already required to take the medication, the hospital can continue to give it to you during the hearing process, unless it stops you from being able to take part in your hearing.

How do I ask for a hearing?

The written notice from the hospital will include a **Request for Hearing Form**. Fill out this form if you want to have a hearing where an administrative law judge will decide whether the hospital can require you to take medication. Then, give the form to a staff member. If you need help filling out the form ask staff to assist you. Or, tell your doctor that you want a hearing. If you need another copy of this form, tell a staff member that you want to have a hearing and ask for the form. *Also see p. 13, Model Form: Request for Hearing Form.*

Can I ask for an attorney to represent me at the hearing?

Yes. You have the right to be represented by an attorney at your hearing. The Request for Hearing Form lets you choose how to get an attorney.

You can choose to get an attorney at no cost. If you check the box on the form to request an attorney, a state-contracted attorney will be automatically appointed to assist you. You have the right to request a meeting with your attorney before the hearing.

If you wish to choose your own attorney, you can hire a private attorney or you can call DRO to inquire about free representation. DRO's staff capacity to represent individuals in medication hearings is very limited.

If you choose a private attorney, you will have to contact and hire that attorney on your own, and write the name and phone number of that attorney on your hearing request form.

Can I represent myself?

Yes. You have the right to represent yourself at your hearing. Write on the Request for Hearing Form that you want to represent yourself.

What happens after I fill out and hand in my Request for Hearing Form?

After you ask for a hearing, you will get a written notice telling you the date for your hearing. Your hearing will usually be held within 14 days of the date you turned in your Request for Hearing Form. If you chose to have DRO represent you, a DRO attorney will contact you before your hearing. If you chose to have a private attorney, you will have to contact that attorney to arrange representation. Your attorney will help you decide if there are any witnesses who have information that can help the administrative law judge make his or her decision.

Get ready for the hearing by thinking about how and why you decided to refuse to take medication, and what records or witnesses would help show the judge that you can make your own decisions about medication. ***For more ideas about how to get ready for your hearing see pp. 15-18, Worksheet: Involuntary Medication Hearing Preparation.***

What if I ask for a hearing, but then change my mind?

You can cancel the hearing before it happens. You may decide it will be too stressful to go through with a hearing in front of a judge. Or, maybe you were able to come to an agreement with your doctor about treatment before the hearing.

The first time you cancel a hearing, you can ask for another hearing at any time in the future by telling your doctor you want a hearing, or by asking for a Request for Hearing Form, filling it out, and giving it to a staff member.

However, if you ask for a hearing a second time and then cancel again, you won't be able to ask for another hearing for six months.

What will happen at my medication hearing?

The hearing is held in a room in the hospital. The administrative law judge is in charge of the hearing. The judge will tape record the entire hearing, and will ask you and anyone else who testifies to swear to tell the truth. Your attorney, the hospital's attorney (or representative) and your treating doctor will all be there. The judge will listen to and ask questions of everyone during the hearing. The hearing is your chance to prove to the judge that you have the capacity to make decisions about your mental health treatment. *See p. 3, What does capacity mean?*

You will have the chance to show the judge:

- That you understand the possible risks and benefits if you take the medication;
- Why you've decided that the risks outweigh the benefits of taking the medication;
- That you understand the possible risks and benefits of not taking medication;
- Why the medication is not the best treatment for you; and
- That there are other less risky treatments that could help you.

The judge will want to know:

- If you have thought about how your decision to refuse the medication will affect your life;
- What effect you think your decision will have on your social life, legal situation, family relationships, and physical and mental health;
- If you've been violent in the past and if medication will help you avoid being violent in the future; and
- Whether you have thought about how likely it is that you will be violent, if you don't take any medication.

You can bring witnesses who have information that will help your case. For example, a witness can tell the judge why they believe you can make your own treatment decisions or how medication has affected you in the past. Your attorney will ask you questions that will help you explain to the judge why you should be able to refuse medication.

The hospital's attorney will also get to ask you questions about your decision to refuse the medication, and can also ask you about your behaviors both inside and outside the hospital, and about other relevant things. Then, your doctor will explain to the judge why he or she believes you need the medication.

How long does it take for the judge to make a decision?

After the hearing, the judge will send you and the hospital a written decision within one to two business days after your hearing. The hospital staff must give you the judge's decision and explain it to you.

What happens after the judge makes a decision?

If the judge agrees with you, the decision will say that the hospital **cannot** require you to take the medication.

If the judge agrees with your doctor, the decision will say that the hospital has **good cause** to require you to take the medication. In this case, the hospital can start giving you the medication right away. *See p. 2, What does good cause mean?*

Can I appeal or change the judge's decision?

Yes. If you disagree with the judge's decision, you have three options:

1. Decide to take the medication even though you disagree.
2. Ask the same judge to either reconsider his/her decision or give you another hearing. The judge can then change the decision, give you another hearing, or do nothing. If the judge does nothing, the original decision still applies.
3. Ask the Oregon Court of Appeals to review the judge's decision.

The judge's written decision will tell you how and when to ask for options two and three. There are strict deadlines for asking for any type of appeal, rehearing, or reconsideration. Be sure to read the information in the judge's written decision carefully.

You are not guaranteed a lawyer from Disability Rights Oregon (DRO) to appeal or challenge a judge's decision.

Can the hospital require me to take medication if I appeal or challenge the judge's decision?

Yes. Even if you ask for reconsideration/rehearing or appeal the judge's decision, the hospital can still require you to take the medication. **You do have the right to ask for a stay.**

What is a stay?

A **stay** is an order that tells the hospital to stop giving you the medication until the appeal or reconsideration/rehearing is over. You can ask for a stay from the judge while he or she re-hears or reconsiders your case. Or you can ask for a stay from the Oregon Court of Appeals while it considers your case.

You may need legal advice in order to request a stay correctly.

How long can the hospital require me to take medication?

If the judge decides that the hospital can require you to take medication, the hospital can only do so for 180 days (six months). After 180 days the hospital has to go through the whole process again of proving there is good cause to require you to take the medication.

See p. 2, What happens if my doctor believes there is good cause to require me to take medication?

This means that you have the chance every six months (180 days) to convince a judge that you have capacity and should be allowed to refuse medication, or that the medications are not the best treatment for you.

If you regain capacity at any time, the hospital should stop requiring you to take medication. If you believe that your mental health has significantly improved since your last hearing and that you now have the capacity to make your own treatment decisions, you can ask for another hearing before 180 days are over.

However, a judge will only let you have another hearing within the 180 days if there has been a big change in your condition since the last hearing.

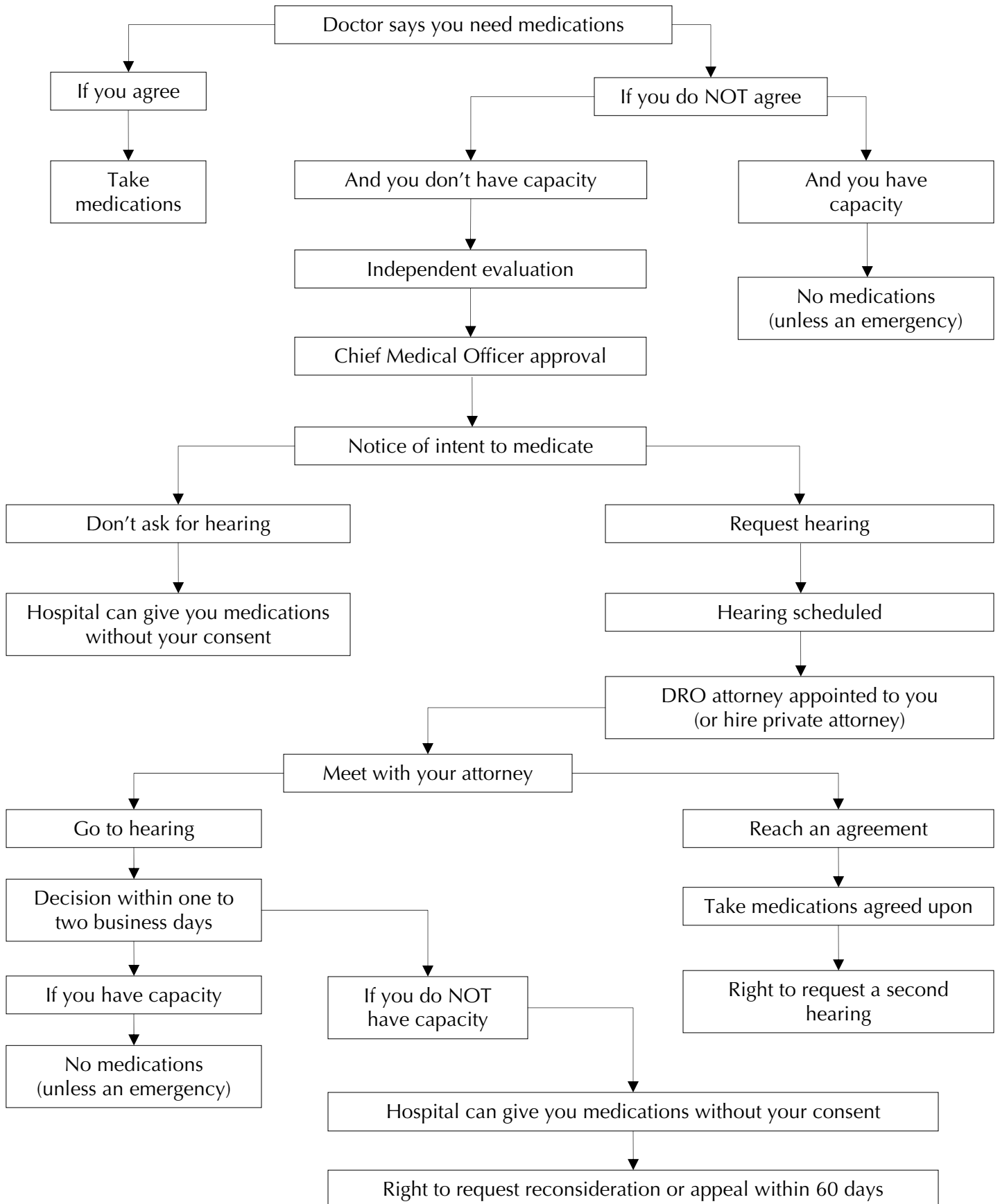
Can the hospital require me to take medication without giving me written notice or a chance for a hearing?

The hospital can require you to take medication without your consent, and without giving you a notice or a chance for a hearing **only if there is an emergency**, such as:

- A doctor has to give you medication immediately to preserve your life or health.
- Your behavior makes it likely that you or someone else at the hospital will be physically hurt right away unless you are medicated.

Once the emergency situation is over, the hospital can no longer give you emergency medication.

Flow Chart: The Involuntary Medication Hearing Process



Model Form: Request for Hearing Form

STAFF: THIS IS AN IMPORTANT LEGAL DOCUMENT. FAX IMMEDIATELY TO 503-947-2955.

Patient Name: _____ Patient Number: _____

Date Notice of Hearing Rights Given to Patient: _____ Time: _____ am / pm

Date of Patient's Request: _____ Time: _____ am / pm

Check Box if Interpreter is Requested:

REQUEST FOR HEARING FORM

If you do not agree with the hospital's decision to give you medication (or another significant procedure) you have the right to challenge this decision in front of a judge who does not work for the hospital.

I DO NOT WANT A HEARING TO CHALLENGE THE HOSPITAL'S DECISION TO MEDICATE ME (OR GIVE ME ANOTHER SIGNIFICANT PROCEDURE).

(If so, check this box and stop here)

I WANT A HEARING TO CHALLENGE THE HOSPITAL'S DECISION TO MEDICATE ME (OR GIVE ME ANOTHER SIGNIFICANT PROCEDURE).

(If so, check this box and go on to the following questions)

OSH STAFF REQUEST A HEARING on behalf of patient because OSH staff believes, based on patient's words and/or actions, that patient wants a hearing.

I WANT SOMEONE TO HELP REPRESENT ME AT MY HEARING. (Check only one box if applicable)

I would like a lawyer or authorized representative to be appointed to represent me at my hearing, at no cost to me.

I will bring a lawyer or certified law student of my choice, at my own expense.
Name of lawyer or certified law student: _____
Contact information (phone, fax, or e-mail if possible): _____

IF I AM NOT ALREADY RECEIVING THE PROPOSED MEDICATION, I WANT TO BE UN-MEDICATED (OR AS UN-MEDICATED AS IS SAFELY POSSIBLE) PRIOR TO A FINAL ORDER BEING ISSUED IN MY CASE.

(If so, check this box)

Signature of Patient or Staff Person Who Completed Form: _____

Date: _____

Worksheet: Involuntary Medication Hearing Preparation

Think about the following questions and how you will answer them at the hearing:

Do you know why your doctor thinks you need medication?

What behaviors or problems in the community led you to be in the hospital?

Could medications address those behaviors or problems?

What other treatment might help address those behaviors or problems?

What medication does your doctor think you should take?

What are the possible benefits if you take this medication?

What are the possible risks if you take this medication?

Have you taken this medication before?

How did it make you feel?

What side effects did you experience from that medication?

Do you want to take this medication? Why or why not? Explain:

Have you taken any other medications? What were they? How did they make you feel?

What side effects did you experience from those medications?

Do you have any serious physical medical conditions?

How would the medications affect your physical medical conditions?

Is there a different medication you would be willing to try?

What other types of treatments would you like to try that you think might work better for you?

Has anyone accused you of being violent in the community?

Has anyone accused you of being violent while in the hospital?

If so, do you think taking medication would have an effect on whether you can avoid being violent?

How will refusing medication affect your:

Social life?

Legal situation?

Family life?

Physical health?

Mental health?

Ability to leave the hospital?

How would taking medication affect your:

Social life?

Legal situation?

Family life?

Physical health?

Mental health?

Ability to leave the hospital?

Are there any records (medical or legal) that would help you show that you can make your own treatment decisions, or that the medication is not the best treatment for you? If so, what are they?

Are there any people who could testify that you can make your own treatment decisions or that the medication is not the best treatment for you? If so, who are they?

What do you think would happen if you left the hospital without any medication?

Is there anything else you would like to tell the judge?



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