

PsychRights' Do-It-Yourself Forced Drugging Defense Package

Seizing Opportunities for Change

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Overview

- Constitutional Rights
- Dr. Jackson's & Robert Whitaker's written testimony (affidavits).
- Form Forced Drugging Defense Package

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Constitutional Rights

- Relationship Between Involuntary Commitment, Inpatient Forced Drugging, and Outpatient Forced Drugging
 - Justification for Involuntary Commitment is Danger
 - Justification For Forced Drugging is "Helping" Someone Who is Too Crazy To Know What's Good for Him/Her
 - Justification for Outpatient Commitment?
 - New York's *KL* case is classic judicial fiction

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Forced Drugging under US Constitution: *Sell*

539 U.S. 166 (2003) (Competence to Stand Trial)

Court Must Conclude:

1. Important governmental interests are at stake,
2. Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),
3. Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and
4. Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of antipsychotic drugs may produce different side effects and enjoy different levels of success.

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Forced Drugging Under State Constitutions

- Alaska: *Myers* (2006)
- Ohio: *Steele* (2000)
- Indiana: *M.P.* (1987)
- New York: *Rivers v. Katz* (1986)
- Massachusetts: *Rogers* (1983)

Note: Incompetence is Threshold Question

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Alaska: *Myers*

138 P.3d 238 (2006)

- Right to be Free of Unwanted Psychiatric Drugging is a "Fundamental" Constitutional Right (under Alaska Constitution).
- When No Emergency Exists, Right May be Overridden Only When:
 - Necessary to Advance a Compelling State Interest, and
 - Only if No Less Intrusive Alternative
 - Query: Is State Required to Provide Less Intrusive Alternative?
- Compelling State Interest in non-emergency is "Best Interest" of a person found incompetent to make own decision.

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Ohio: *Steele v. Hamilton County*

736 N.E.2d 10 (2000)

- Best interest to take the medication, *i.e.*, the benefits of the medication outweigh the side effects
- No less intrusive treatment will be as effective in treating the mental illness

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Indiana: *In re: M.P.*

510 N.E.2d 645 (1987)

- Substantial Benefit, not just control behavior
- Probable benefits outweigh the risk of harm to and personal concerns of patient
- Least Intrusive alternative:
 - “[A]n evaluation of each and every other form of treatment and that each and every alternative form of treatment has been specifically rejected. It must be plain that there exists no less restrictive alternative treatment and that the treatment selected is reasonable and is the one which restricts the patient’s liberty the least degree possible.”

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New York: *Rivers v. Katz*

495 N.E.2d 337 (1986)

- Best interests
- Benefits of the treatment
- Adverse side effects associated with the treatment, and
- Absence of any less intrusive alternative

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Massachusetts: *Rogers (& Roe)*

458 N.E. 2d 308 (1983)

- The patient’s expressed preferences regarding treatment.
- The strength of the incompetent patient’s religious convictions, to the extent that they may contribute to his refusal of treatment.
- The impact of the decision on the ward’s family -- this factor being primarily relevant when the patient is part of a closely knit family.
- The probability of adverse side effects.
- The prognosis without treatment.
- The prognosis with treatment.
- Any other factors which appear relevant.

Note: Less Intrusive Alternative not explicitly stated

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Whitaker & Jackson Testimony Address 2 Key Legal Requirements

- Best Interests
- No Less Intrusive Alternative

Certified Copies of Whitaker & Jackson Testimony Must Be Filed & Served.

See, also transcript of Dr. Jackson oral testimony.
<http://psychrights.org/States/Alaska/CaseXX/3AN-08-493PS/14may08bigley.pdf>

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Do-It-Yourself Package Built Around The Constitutional Principles

- Summary Judgment
 - No Genuine Dispute Over Any Material Fact
- Motion for Expert
 - Without Defense Expert Proceedings Are a Farce
- Motion for Stay Pending Appeal
 - Irreparable Harm to Respondent if Not Granted
 - Harm to Other Side if Granted

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