



# Disability Law Center's Self-Advocacy Materials

Updated January 2025

## 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

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit our website:

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## Informed Consent for Treatment with Psychiatric Medication

### You Will Learn About:

- Your right to make decisions about your psychiatric treatment
- What a doctor must explain to you about proposed treatments
- When a doctor can treat you with medication 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.

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 hospital or in the community. Here we discuss some important information about this right.

## What is Informed Consent

Informed consent is your decision whether to accept a specific treatment after your doctor has explained to you all significant medical information, including the risks and benefits of that treatment. The following information focuses on informed consent with respect to treatment involving psychiatric medication.

## What is My Doctor Required to Explain to Me

When proposing treatment with psychiatric medication, your doctor must explain to you, in words that you can understand, all significant information you need to make an informed decision. This information usually includes:

- The nature of your condition;
- The medication your doctor wants you to take to treat that condition;
- How the doctor reasonably expects the medication to benefit you;
- The nature and probability of risks associated with the medication, and specifically any risks for other conditions you may have (for example, high blood pressure);
- Available alternatives to that medication, including their risks and benefits; and
- The likely result of no treatment.

If you are in a DMH-operated or contracted facility or program, your doctor is required to engage with you in a manner that promotes your participation in all aspects of the decision-making process. They must also:

- provide ongoing medication education;
- provide you with access to additional reliable written information concerning the proposed and alternative psychiatric medications; and
- offer you the opportunity to:
  - ask questions and discuss the information they have provided; and
  - negotiate implementation of treatment with psychiatric medications.

## Are There Times When My Doctor Can Give Me Medication Without my Permission?

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

- 1) Lack of Capacity to Give Informed Consent ("Incompetency"): Because your doctor is required to obtain informed consent, your doctor must be satisfied that you understand the nature of your illness and the proposed treatment. If your doctor is not sure that you have the capacity to understand the information necessary to make an informed decision, they must ask a court to determine whether you are not "competent." If a court makes a finding of incompetence, it will then determine whether you would have agreed to take the medication if you were competent ("substituted judgment").

Before allowing your doctor to treat you against your will, the court must hold a hearing ("Rogers hearing") where the doctor must present witness testimony. The court will appoint an attorney to represent you if you cannot afford one. You and your attorney will have an

opportunity to question witnesses and present other evidence. Before the court allows your doctor to treat you with medication against your will ("Rogers order"), it must:

- Find that you are not able to make informed decisions about the medication;
- Find that if you were competent, you would agree to the proposed treatment (substituted judgment); and
- Approve a written treatment plan.

A court order that permits involuntary treatment with medication is commonly referred to as a "Rogers order." Although the probate court can issue Rogers orders as part of a guardianship ("Rogers guardianship"), they cannot be enforced in the community. You can only be medicated against your will in a hospital setting.

- 2) Emergencies: If you are hospitalized, your doctor can treat you with medication against your will and without a court order in two very limited circumstances:
- Chemical Restraint: Your doctor can give you medication against your will in cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury or attempted suicide.
  - Irreversible Deterioration: If your doctor believes that you have a serious mental illness and are incompetent, they can give you medication if they believe it necessary to prevent an immediate, substantial, and irreversible deterioration of your condition. However, to continue treating you with medication against your will, your doctor must seek a court order.
- 3) Health Care Proxy: In Massachusetts, every person has the right to appoint someone to make medical decisions for them in the event they lose the capacity to make those decisions for themselves. This is called a "health care proxy" and the person you select to make decisions for you is called a "health care agent." Setting up a health care proxy involves filling out a document identifying the person you want to be your health care agent. The document can also include your stated desire to take or refuse medication and what types of medications you would want to take. You must sign the document in the presence of two witnesses and be competent at the time of signing.

Your health care proxy only takes effect once your doctor decides that you lack capacity. At that time, your health care agent will have the legal authority to make decisions on your behalf. If you disagree with your health care agent's decision to agree to a certain treatment, you can immediately terminate it simply by voicing your objection. Having a health care proxy may help you avoid the court's involvement in decisions about your treatment.