

PSYCHIATRIC HEALTH FACILITY POLICIES AND PROCEDURES

COUNTY OF SANTA BARBARA
DEPARTMENT OF ALCOHOL, DRUG AND MENTAL HEALTH SERVICES

Section:	LEGAL	
Subject:	CAPACITY HEARINGS	
Form Ref #:		Feb. 1998 - Effective
Search Item:	L-5.6	May 2006 - Revised
Director's Approval:	_____	Date: _____
Assistant Director's Approval:	_____	Date: _____

POLICY:	<p>To ensure that persons detained for mental health treatment are afforded their right to accept or refuse medication, except in a statutorily defined emergency and/or when there has been a legal finding or incapacity.</p> <p>Capacity Hearings will be held at the Santa Barbara County Psychiatric Health Facility according to procedural requirements outlined in California law.</p>
PROCEDURES:	<ol style="list-style-type: none"> I. All patients will be provided with a Consent to Medications form, which will include medication information and notice of the patient's rights to accept or refuse medication. II. The Capacity Hearing may be initiated by the treating or supervising physician in the following situations*: <ol style="list-style-type: none"> 1. The patient has withheld consent for medication after the treating physician has/ or has attempted to explain the benefits and risks of the recommended medication. 2. Other treatment alternatives have been considered and determined unlikely to meet the patient's needs. 3. Physician is of the opinion that the patient lacks the capacity to understand and evaluate medication information in a rational manner and that a Capacity Hearing is necessary. <p><i>*If an emergency exists, an involuntary patient may be treated with anti-psychotic medication without consent pending a Capacity Hearing (as defined in Section 5008, Welfare and Institutions Code).</i></p> III. The Capacity Hearing will be arranged by the Clerk of the Superior Court in accordance with Superior Court procedures set forth in Rule 210, as follows: <ol style="list-style-type: none"> 1. Filing of Petition <p>Santa Barbara County Alcohol, Drug & Mental Health Services Department petitions for Capacity Hearings pursuant to Welfare and Institutions Code, Section 5333, shall</p>

Section: LEGAL
Subject: CAPACITY HEARINGS

Form Ref #:
Search Item: L-5.6

be filed with the Clerk of the Superior Court, located in the Courthouse at 1100 Anacapa Street, Santa Barbara, CA 93101, or with the Deputy Clerk of the Superior Court at the Psychiatric Health Facility (PHF), located at 315 Camino del Remedio, Santa Barbara, CA 93110, by 4:45 pm of each business day. The form of the Petition for Capacity Hearing shall be as shown in Form 1. (See in Forms section of binder.)

If the filing of the Petition is at the PHF, the Deputy Clerk shall promptly call the Calendar Clerk at the Courthouse for assignment of a case number, and shall thereafter electronically transmit a true facsimile (FAX) of the Petition to the Calendar Clerk.

2. Scheduling and Postponement of Capacity Hearings

Upon issuance of a case number, the Clerk of the Superior Court, or, if filed at the PHF, the facility director or his designee, shall give written notice of the Capacity Hearing to the person who is the subject of the Petition, and his or her advocate or counsel shall receive a copy of the Petition at the time it is filed. The mental health professional delivering the copy of the filing of the Petition shall notify the person of his/her legal right to a Capacity Hearing, including the right to the assistance of the patient rights advocate to provide assistance in preparation for the hearing.

As soon as is practical after the filing of the Petition for a Capacity Hearing, the advocate shall meet with the patient to answer questions and otherwise prepare for the hearing.

The Capacity Hearing shall be held before a Hearing Officer at the PHF in accordance with the following local policy schedule developed by the Presiding Judge of the Superior Court and the County Mental Health Director to ensure that all parties can appropriately respond to the Petition:

- a. Petitions filed on Mondays and Tuesdays shall be heard on Wednesdays.
- b. Petitions filed on Wednesdays and Thursdays shall be heard on Fridays.
- c. Petitions filed on Fridays shall be heard on Mondays.
- d. Variations to have earlier hearings can be had with the unanimous consent of all involved parties.
- e. Postponement of Capacity Hearings may be made by the Clerk of the Superior Court, or Deputy Clerk, in cases of the following hardships: weekends (subparagraph "c" above); legal holidays; untimely physical illness of Hearing Officer, patient, patient's counsel or advocate, attending physician, or treatment facility counsel; or physical unavailability of patient at the PHF (appearance at another proceeding, AWOL, etc.) In no event shall Capacity Hearings be held beyond 72 hours of filing of the initial Petition.

3. Capacity Hearing Determinations

The person who is the subject of the Capacity Hearing shall be given oral notification of the determination at the conclusion of the Capacity Hearing by the Hearing Officer. As soon thereafter as is practical, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the Capacity Hearing determination, which shall include a statement of the evidence relied upon and the reason for the determination. A copy of the Capacity Hearing ruling shall be submitted to the Superior Court.

4. Appeal of Capacity Hearing Determinations

Appeal of a Capacity Hearing determination may be made to the Superior Court by the patient, or, with the consent of County Counsel, by the person who files the original Petition. The Form of an Appeal made on behalf of the patient shall be shown as Form 2.

Appeals of Capacity Hearing determinations shall be filed with the Clerk of the Superior Court, located in the Courthouse at 1100 Anacapa Street, Santa Barbara, CA 93101, or with the Deputy Clerk of the Superior Court at the Psychiatric Health Facility, located at 315 Camino del Remedio, Santa Barbara, CA 93110, by 4:45 pm of each business day.

If the filing of an Appeal is at the PHF, the Deputy Clerk shall promptly call the Calendar Clerk at the Courthouse and shall thereafter transmit a true facsimile (FAX) of the Petition to the Calendar Clerk. Appeal case numbers shall be the same as the Capacity Hearing Petition case number.

All appeals to the Superior Court shall be subject to *de novo* review and shall be heard within 72 hours, not including weekends and holiday.

Upon request, or upon order of the Court, the Public Defender shall represent any person who is not financially able to employ counsel in appeal proceedings resulting from Capacity hearing determinations. In cases where the patient's representative on appeal is the Public Defender, a copy of the notice of the Appeal shall be provided to the Public Defender.

5. Hearing Officer Qualifications and Appointment

Capacity hearings shall be conducted by a Superior Court Judge, a Court-appointed Commissioner or Referee, or a Court-appointed Hearing Officer. All Commissioners, Referees and Hearing Officers shall be appointed by the Superior Court from a list of attorneys unanimously approved by a panel composed of the local Mental Health Director, the County Public Defender, and the County Counsel or District Attorney designated by the County Board of Supervisors. No employee of the County mental health program or any facility designated by the County and approved by the department as a facility for 72-hour treatment and evaluation may serve as a Hearing Officer. All Hearing Officers shall receive training in the issues specific to Capacity Hearings.

These procedures were developed by a committee established by the Santa Barbara County Superior Court and cannot be changed or modified without notice to the Court.