Involuntary Administration of Medications Overview

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Learning Objectives

Participants will learn:

1. Purpose of involuntary medication
2. Applicable statute and case law
3. Current best practices
4. How to get more information

Purpose

Involuntary medications may be indicated when:

- Persons have little or no awareness of their illness, and when they are not being treated with medication they may be dangerous to themselves or others
- A person is unwilling or unable to provide voluntary written informed consent for recommended psychiatric medication

Overview of Ethics Implications

- Medications (i.e., antipsychotics) can have negative health impacts (adverse reactions, side effects, risk of permanent effects, etc.,)
- Forced administration can violate due process

Overview

- Most states provide that an involuntary patient’s refusal of medications may be overridden only by court hearing
- Court-ordered involuntary medications are time limited, often lasting only as long as the patient's commitment or for a period set by the judge
- Extension beyond that time requires a reappraisal of the patient's condition, response to treatment, and likelihood of future compliance

Involuntary vs. Emergency Medications

- Emergency medications are ordered by the treating psychiatrist/physician for a patient who is considered imminently dangerous to self or others, either physically or psychologically, and refuses to take the medications freely
- Emergency medications usually are limited to a few days
- The clinical need for emergency medications must be reassessed frequently, from every several hours to every 24 hours

Involuntary vs. Emergency Medications

- Involuntary medications are granted by a court in non-emergent situations. Mentally ill persons who require chronic administration of medication and yet have minimal insight into their need may warrant involuntary medications.
- The criteria for administering involuntary medications vary from state to state, but commonly include such aspects as incompetence to participate in decisions about treatment and expected clinical deterioration or dangerous behavior to self or others without the medications.
- Court-ordered administration of involuntary medications are time-limited, often lasting only as long as the patient's civil commitment or for a period set by the judge. Extension beyond that time requires a reappraisal of the patient's condition, response to treatment, and likelihood of future compliance.

Sell v. United States Background

A Sell order is an authorization to administer medications involuntarily.

In Sell v. United States, (539 U.S. 166 (2003)), the United States Supreme Court held that the Constitution allows the government to administer antipsychotic medications involuntarily to a mentally ill criminal detainee in order to render that defendant competent to stand trial for serious, but nonviolent, crimes. (539 U.S. 169 (2003).

Sell Order Procedures

In the state of Washington, it is the responsibility of the treating psychiatrist to initiate a Sell Hearing. The process is typically as follows:

1. If the defendant

   1) refuses medications, or

   2) has a pattern of inadequate medication compliance lasting at least a week, and it is the opinion of the treating psychiatrist that the defendant cannot be restored without medication. In this case, the treating psychiatrist will send a letter to the court requesting a Sell Hearing (unless the court has indicated that a hearing has already been scheduled).

2. If the defendant returns from the Sell Hearing (a) without an order for the forced administration of medication, and (b) the defendant continues to refuse to take medication, and (c) it is the opinion of the evaluators that the defendant will not be restored without medication compliance, a report will be submitted to the court indicating the clinically relevant information and rendering an opinion on the defendant's current capacities to stand trial.

Types of Sell Hearings

Pre-admission:

Benefits:

1. Allows for maximum use of restoration time e.g. under current system, if a 45-day restoration case does not have a Sell order, only 2-3 weeks may remain of treatment after a post-admission hearing.
2. Potential decrease of staff and patient injury due to untreated mental illness.

Potential Issues:

1. Requires the review of a psychiatrist and testimony, i.e. staffing issues.
2. Significant number of cases not receiving Sell hearings yet requesting restoration.

Types of Sell Hearings

Post-admission:

Benefits:

1. Allows for direct clinical assessment of need for (involuntary) treatment.
2. If a patient is medication adherent, additional psychiatry clinical time is not required as no Sell order is needed.

Potential Issues:

1. Requires the review of a psychiatrist and testimony, i.e. staffing issues.
2. Loss of restoration time e.g., under current system, if a 45-day restoration case does not have a Sell order, only 2-3 weeks of treatment time may remain after a successful Sell Hearing.
3. Potential for patient/staff injury due to untreated mental illness.

Preparing for a Sell Hearing

Initial Referral

1. Patient who is referred for competency restoration
2. Patient with history of psychiatric disorder whose primary treatment is with antipsychotic medications
3. Patient is presenting as psychotic or having previously been treated for competency restoration and required antipsychotic medication.
4. Patient refusing treatment in jail or at the state hospital/RTF.
5. Pre-sdmission, send Sell request letter to the court with appropriate referral information.
6. Post-sdmission, send letter to the court within 72 hours if meeting criteria.

Preparing for a Sell Hearing

Information the petitioner must present to the court:

1. Diagnosis
2. Previous response to medications, if known
3. Indicated treatment, have an initial and backup plan
4. Plan to manage side effects
5. Current medication compliance
6. If patient is compliant over several consecutive days, consider canceling the hearing

Preparing for a Sell Hearing

The petitioner must ensure that the case is a serious offense defined as:

- Any violent offense, sex offense, serious traffic offense, and most serious offense, as defined in RCW **9.94A.030**;
- Any offense, except nonfelony counterfeiting offenses, included in crimes against persons in RCW**9.94A.411**;
- Any offense contained in chapter **9.41** RCW (firearms and dangerous weapons);
- Any offense listed as domestic violence in RCW **10.99.020**;
- Any offense listed as a harassment offense in chapter **9A.46** RCW;
- Any violation of chapter **69.50** RCW that is a class B felony; or
- Any city or county ordinance or statute that is equivalent to an offense referenced in this subsection.

Preparing for a Sell Hearing

Even if the person is not charged with a serious offense as noted previously, statute allows a medication override if the court finds that the circumstances below constitute a serious offense:

- The charge includes an allegation that the defendant inflicted bodily or emotional harm on another person or that the defendant created a reasonable apprehension of bodily or emotional harm to another;
- The extent of the impact of the alleged offense on the basic human need for security of the citizens within the jurisdiction;
- The number and nature of related charges pending against the defendant;
- The length of potential confinement if the defendant is convicted; and
- The number of potential and actual victims or persons impacted by the defendant's alleged acts.

Situations that may cause a Sell Medication Override order to be declined:

Procedural issues:

- Requesting the hearing too early
- If assaultive, consider multiple dosing
  - An antipsychotic and/or adjunctive treatment should be scheduled BID-TID to allow for multiple offers of medication.
  - Still need to demonstrate consistent medication refusal
- If not assaultive consider extra dose for good faith effort

Situations that may cause a Sell Medication Override order to be declined:

Medication Issues

- Not requesting specific medications and backup medications, particularly if they are not the same medication
- Not requesting a primary antipsychotic and a secondary backup if first line of treatment is not effective
- Requesting a medication that does not have an injectable counterpart
- Requesting long-acting injectable without a short-acting counterpart
- Asking for over the FDA maximum dose
- Be able to testify that patient is offered by mouth medication prior to use of injectable medications

Situations that may cause a Sell Medication Override order to be declined:

Lack of evidence of collaboration with other disciplines and ensuring that the treatment plan is the correct course of action

- Have a clinical consultation:
  - Include pharmacists, psychologists, social work
  - Give the patient multiple options to participate with treatment
  - If patient declines to participate this can be reported to the court
- Make sure to report to the court the date, time, participants who attend a team meeting and whether the patient participated

Situations that may cause a Sell Medication Override order to be declined:

How to mitigate risk factors:

- 24-hour observation
- Use of medications which have been safe and effective in many other patients
- Standard of care for this disorder
- Labwork to assess lipids, diabetes, electrolytes
- Review case frequently with clinical pharmacist

Inform court that failure to provide appropriate treatment may:

- Extend hospitalization
- Create a risk to self or others

Harper Hearings

Background

Washington v. Harper, 494 U.S. 210 (1990)

Lawsuit by inmate who was forcibly medicated under DOC policy, appealed to Washington State Supreme Court:

- State Supreme Court
  - Required a judicial hearing
  - Provide “clear, cogent, and convincing” evidence of being both necessary and effective and furthering a state interest
  - Numerous other requirements above DOC policy

Background

Washington v. Harper, 494 U.S. 210 (1990)

United States Supreme Court:

- Overturned Washington Supreme Court decision
- Internal institutional review was adequate
- Multiple subsequent cases:
  - *US v. Loughner*, 672 F.3d 731 (9th Cir. 2012)
    - Applied to Competency restoration patient
  - *Jurasek v. Utah St. Hosp.*, 158 F.3d 506 (10th Cir. 1998).
    - Applied to civilly committed patients

Harper Hearing:

The facility may engage in a formal non-judicial process to assess the need for involuntary administration of antipsychotic medications to a person who (1) has a serious mental illness, and (2) is gravely disabled or poses a likelihood of serious harm to self, others, or property; and the treatment is in the person's medical interest (*Washington v. Harper*, 1990). The hearing is held at the request of an inmate's treating psychiatrist and overseen by a special committee of jail mental health staff. It does not require following the more stringent "rules of evidence" required in judicial proceedings and the person is not entitled to having an attorney present, but is entitled to a lay advocate to assist them in presenting their wishes and evidence.

Harper Hearing Process:

1. A hearing may be requested if:
    a. The person has a serious mental illness; and
    b. The treating psychiatrist believes that the individual is a serious danger to self or others; and
    c. The involuntary administration of antipsychotic medication is in the person's medical interest.
2. A special hearing committee is then convened, which generally must include a psychiatrist, a psychologist, and another staff member who usually acts as the committee chairperson. None of these committee members may be involved with the inmate's treatment or diagnosis.
3. The inmate is given notice of the hearing and an opportunity to identify and present witness testimony and other evidence, often with the assistance of the lay advocate.

Harper Hearing Process cont.

4. The inmate's attorney should be given notice of the hearing and have an opportunity to provide information or opinion, but the inmate does not have the right to have an attorney represent them at the hearing.

5. The lay advocate must attempt to meet with the inmate prior to the hearing to discuss the inmate's wishes.

6. The hearing should be held in a confidential setting and the inmate must be given the opportunity to be present. The lay advocate should be present whether or not the inmate is present. The lay advocate represents the inmate's wishes and position at the hearing, although the inmate does not have to rely on the lay advocate.

Harper Hearing Process cont.

7. After the hearing, a determination is made regarding whether sufficient evidence supports the requirements needed for involuntary administration of medication. The decision is made by committee majority vote, though the non-treating psychiatrist must vote in favor of involuntary medication for it to be approved.

8. The inmate must be notified of the decision and given information and an opportunity to appeal if the inmate disagrees with the decision.

- Note that the lay advocate should be someone who understands the psychiatric issues enough to sufficiently protect the inmate's right to due process. The sufficiency of the lay advocate should be seriously questioned if the advocate fails to present or question evidence on behalf of the inmate; fails to present the inmate's reasons for objecting to medication; presents any testimony or evidence against the inmate; or otherwise lacks meaningful participation.

Harper Hearing: Individual's Rights

A person may choose to accept or decline antipsychotic medications, and their choice should be considered and respected. However, there may be times when an person's decision to decline medication may pose a risk to health and safety, and may not be in the person's medical interest. The decision to proceed with the involuntary administration of medication requires weighing the rights of an individual to refuse antipsychotic medicine against the likelihood that the administration of antipsychotic medication is medically necessary (RCW 71.05.215). Considerations that should be addressed when administering medication involuntarily include the following:

- Documentation of and adherence to the components required in accordance with RCW 71.05.215
- Ensuring that the rights of the person are respected
- Steps to manage how involuntary medications are ordered
- Assuring safety during the administration of medications
- Following established written protocols and defined procedures for the involuntary administration of medications

For more information

- United States v. Sell: Involuntary Administration of Antipsychotic Medication - Are You Dangerous or Not Available at: https://pdfs.semanticscholar.org/2df7/706e1d9c1f97e2cbfcfcf62c1dc04a854800.pdf

What questions do you have?

For additional assistance or training on this process please email us at:

jailassistance@dshs.wa.gov

Thank you!

Please don't forget to complete our training evaluation survey at https://www.research.net/r/KRD8QY8

A downloadable PDF version of this training and video is available at our website:

https://www.dshs.wa.gov/bha/office-forensic-mental-health-services/jail-technical-assistance-program