DISABILITY RIGHTS OREGON

FOURTH EDITION

Mental Health Law in Oregon

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610 SW Broadway, Suite 200, Portland OR 97205
Voice: 503-243-2081 or 1-800-452-1694
Fax: 503-243-1738
E-mail: welcome@droregon.org
Website: www.droregon.org

Written 1995 by
Jonna Schuder, Attorney

Updated 2001 by
Jan Friedman, Attorney

Updated 2009 by
Beth Englander, Attorney
Bob Joondeph, Executive Director
McKenna Lebens, Communications Specialist

Updated 2012 by
Beth Englander, Attorney
McKenna Lebens, Communications Specialist

This Guide was made possible in part by funding support from the US Department of Health & Human Services, Substance Abuse & Mental Health Services Administration (SAMHSA). The contents are solely the responsibility of Disability Rights Oregon and do not represent the official views of SAMHSA.

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NOTICE: This Guide is not intended as a substitute for legal advice. Federal and state law can change at any time. You may wish to contact Disability Rights Oregon or consult with an attorney in your community if you require further information.

Purpose of this Guide

This Guide was written to provide information about the rights and protections that individuals with mental illness have under the law in Oregon, and includes citations to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

Oregon Revised Statutes (ORS) are laws that have been passed by the Oregon legislature and approved by the governor or have been approved by the voters through the ballot initiative process.

Oregon Administrative Rules (OAR) are laws that have been approved by state agencies.

Both are available at each county's law library. Contact information for county law libraries is available on the Oregon Council of County Law Libraries (OCCLL) website:

occll.org

In addition, you may access them through the following websites:

Oregon Revised Statutes (ORS)
www.leg.state.or.us/ors/

Oregon Administrative Rules (OAR)
arcweb.sos.state.or.us/pages/rules/

An extensive list of resources can be found at the end of this Guide (pp. 73-76). To obtain more copies of this Guide, contact Disability Rights Oregon or visit our website, droregon.org.

Table of Contents

Chapter

1

Chapter 1: An Introduction to Mental Health Law

Mental illness affects people of every age, race, sex, religion, and income. Early identification and treatment is vitally important. Examples of serious mental illnesses include:

- Major depression
- Schizophrenia
- Bi-polar disorder
- Obsessive-compulsive disorder (OCD)
- Panic disorder
- Post-traumatic stress disorder (PTSD)
- Borderline personality disorder

Most people with mental illness are able to set and reach goals and make valuable contributions at work and in the community.

What does mental health treatment involve?

Every person is different, and every person with mental illness who chooses to engage in treatment deserves a treatment plan that respects individual needs and desires. Many individuals diagnosed with mental illness successfully reduce the impact of their symptoms and develop strategies to manage the illness by actively participating in a treatment plan tailored to meet their individual needs.

What is mental health parity?

Oregon enacted a full parity law that took effect January 1, 2007. It requires most group insurance health insurers to provide the same level of benefits and coverage for mental illness and substance abuse treatment as those offered for general health conditions. This law does not apply to corporations that are self-insured. Policy deductibles and co-insurance for inpatient and outpatient mental health treatment may not be greater than those for the treatment of other health conditions.

All businesses offering group plans are required to comply – there are no exceptions. Unfortunately, this law does not apply to individual plans. ORS 743.566; OAR 836-053-1404.

Where do people with mental illness receive treatment?

Most people with mental illness live in their own homes and receive various kinds of outpatient treatment, like individual psychotherapy or group therapy. In most cases, hospitalization is not necessary. Some people with mental illness need temporary hospitalization to stabilize.

Under what circumstances can I be involuntarily hospitalized?

As an individual with mental illness in Oregon, you can be forced to be hospitalized in five ways.

CIVIL COMMITMENT: Civil commitment is a legal process in which a judge decides whether an individual who is allegedly mentally ill should be required to go to a psychiatric hospital or accept other mental health treatment for up to 180 days. ***See Chapter 6: Civil Commitment, pp. 23-30.***

GUILTY EXCEPT FOR INSANITY (GEI): Individuals who are charged with a crime and have or had a mental illness when the crime was committed and meet the standard for guilty except for insanity (GEI) may be found GEI and hospitalized involuntarily. ***See Chapter 7: Psychiatric Security Review Board (PSRB) Jurisdiction, pp. 31-34 and Chapter 8: State Hospital Review Panel (SHRP) Jurisdiction, pp. 35-39.***

FITNESS TO PROCEED: A person with mental illness accused of a crime may be involuntarily hospitalized if there is a question about whether the person is **unfit to proceed** or **unable to aid & assist.** This means the person does not understand the criminal charges and consequences of the trial, cannot help his or her attorney, and cannot participate in his or her own defense. ***See Chapter 9: Fitness to Proceed – aka Aid & Assist, pp. 41-42.***

SEXUALLY DANGEROUS: A person with mental illness who is convicted of a sexual offense may be hospitalized involuntarily if, after an evaluation and a hearing, a judge finds the defendant to be a sexually dangerous person. ***See Chapter 10: Hospitalization & Treatment of Criminal Defendants Found to be Sexually Dangerous, pp. 43-44.***

GUARDIANSHIP ADMISSION: Individuals may be hospitalized involuntarily by a guardian who has been appointed by a judge if the guardianship includes the right to make placement decisions. ***See Chapter 11: Guardianship, pp. 45-50.***

Chapter

2

Chapter 2: Finding the Right Mental Health Care

If you or someone you know may benefit from mental health services, finding good information to decide whether to seek services and finding the right care is important.

If you decide to get mental health services, deciding where to go for help depends on whether you are an adult or a child, your issue and your symptoms.

In an emergency, call a crisis line or go to the emergency room.

If not an emergency, ask your family doctor, clergy, trusted peer, or a mental health hotline. All can offer suggestions on the kind of mental health professional or alternative supports you could contact.

You can also call your Community Mental Health Program (CMHP). ***See Community Mental Health Programs (CMHPs) by county, pp. 74-75.*** CMHP services are publicly-funded and serve individuals who meet particular criteria. Veterans should contact their regional Veterans Affairs office to find out what services might be available through that system.

Other recommended resources include:

- Family-based service agencies
- School & guidance counselors
- Marriage & family counselors
- Psychiatric hospitals
- Hotlines
- Crisis centers
- Emergency rooms
- 211 Information & Referral Resource Line

See Resources, pp. 73-76, for specific resources and contact information.

What mental health professionals are available?

There are many types of mental health professionals. Finding the right one for you requires research.

An **alcohol and drug abuse counselor** is a counselor with specific clinical training in alcohol and drug abuse to make diagnoses and provide individual and group counseling. All A&D counselors must have a state license.

A **child/adolescent psychiatrist** is a medical doctor with specialized training in diagnosing and treating emotional and behavioral problems in children and adolescents who can also prescribe medication. Child/adolescent psychiatrists must have a state license and be eligible for or certified by the American Board of Psychiatry and Neurology.

A **clinical social worker** is a counselor with a Masters degree in social work trained to make diagnoses and provide individual and group counseling. All clinical social workers are state licensed. Some are further qualified as members of the Academy of Certified Social Workers.

A **counselor** must have a Masters degree in psychology, counseling or a related field, be trained to make diagnoses, provide individual and group counseling, and be licensed by the state.

A **marital and family therapist** is a counselor with a Masters degree with specialized education and training in marital and family therapy. Marital and family therapists make diagnoses, provide individual and group counseling, and must be licensed by the state.

A **mental health counselor** is a counselor with a Masters degree and several years of supervised clinical work experience trained to make diagnoses, provide individual and group counseling, and must be certified by the National Board for Certified Counselors and the Academy of Clinical Mental Health Counselors.

A **nurse psychotherapist** is a registered nurse trained in psychiatric and mental health nursing. Nurse psychotherapists make diagnoses, provide individual and group counseling, and are certified and licensed by the state.

A **pastoral counselor** is a clergy person with training in clinical pastoral education. Pastoral counselors make diagnoses, provide individual and group counseling and are certified by the American Association of Pastoral Counselors.

A **psychiatrist** is a medical doctor with specialized training in diagnosing and treating mental and emotional illnesses. Psychiatrists can prescribe medication, are state licensed and must be Board-eligible or certified by the American Board of Psychiatry and Neurology.

A **psychologist** has a PhD in psychology and two years supervised professional experience. Psychologists are trained to make diagnoses and provide individual and group therapy. Some psychologists are credentialed as health service providers in psychology. Psychologists are not medical doctors and cannot prescribe medication.

Trainees, interns and residents are in training to become the mental health professionals described on the preceding pages. They are required to work under the supervision of trained, licensed professionals.

When you call a mental health professional you should ask about:

- Their approach to working with patients
- Their philosophy
- If they have a specialty or concentration
- The cost of treatment

Many mental health professionals specialize in specific areas, such as child counseling or coping with the loss of a loved one. The cost of treatment depends on many factors, including the type of treatment, the professional's training, where treatment takes place, and your insurance coverage. If you feel comfortable talking to the professional on the phone, this is an indication that he or she might be a good choice for you. If not, you should not hesitate to look for a provider you are comfortable with.

On your first visit, the mental health professional may want to know:

- What problems you are experiencing
- About your life
- What you do
- Where and with whom you live
- Whether you have insurance
- Whether you have received mental health treatment previously

You will probably be asked about your family and friends. This information helps the professional assess your situation and develop a plan for treatment.

If you do not feel comfortable with the professional after the first, or even after several visits, talk about your feelings at your next meeting. Do not be afraid to contact a different mental health professional or explore other forms of therapy and support. Feeling comfortable with the professional you choose is critical to the success of your treatment.

Mental health treatment should help you cope with your feelings more effectively. You should begin to feel some relief from your symptoms, develop confidence, increase your decision-making ability, and improve your relationships with others. If you feel you are not getting results, it may be because the treatment you are receiving is not suited to your individual needs. A competent therapist should be happy to discuss your reactions to therapy and respond to your feelings about the process. If you are still dissatisfied, a consultation with another therapist may help.

What is a mental health evaluation?

A mental health **evaluation** is equivalent to a physical – it is an examination used to assess your mental health. Evaluations are given by many types of mental health professionals, including psychiatrists, psychologists, and therapists. Commonly referred to as mental health evaluations, they are also sometimes called mental health assessments.

In general, evaluations involve a mental health professional asking questions, interviews, and the administration of standardized psychological tests. A commonly used personality test is the MMPI (Minnesota Multiphasic Personality Inventory).

Family, friends and other significant people in your life may also be contacted to give the professional a more complete picture, **but only if you give your permission.** The goal of an evaluation is to get information about your intellectual ability, emotional state, personality, and behavior in order to develop an accurate diagnosis and an effective treatment plan.

What treatments are provided by mental health professionals?

There are numerous types of mental health treatment available. Many of them are listed below.

Animal-assisted therapy (AAT) enables a therapist to facilitate change in a patient through the patient's interactions with an animal.

Behavior therapy includes stress management, biofeedback and relaxation training to change thinking patterns and behavior.

Cognitive therapy identifies and attempts to correct thinking patterns that lead to difficult feelings and behavior.

Dialectical behavior therapy (DBT) is a combination of cognitive and behavioral therapies that addresses problems in regulating emotions, behavior and thinking.

Drug therapy involves the use of medication and may be beneficial for some people with mental or emotional disorders. Ask about risks, possible side effects, and interaction with certain foods, alcohol, and other medications. Drug therapy is usually most effective in combination with other therapies.

Electroconvulsive therapy (ECT), also known as **electroshock therapy,** is a procedure in which electric currents are passed through the brain to trigger a brief seizure, resulting in changes in brain chemistry that can alleviate symptoms of certain mental illnesses that cannot be effectively treated with drugs and/or psychotherapy. Ask about the risks and side effects of ECT.

Exposure therapy is a cognitive-behavioral therapy treatment designed to reduce fear and anxiety responses, especially phobias, such as fear of crowds or heights.

Family therapy involves discussion and problem-solving sessions with every member of the family.

Group therapy consists of a small group of people who, with the help of a trained therapist, discuss individual issues and help each other with problems.

Movement/art/music therapy uses movement, art, or music to express emotions. It is most effective for people who have difficulty expressing feelings.

Occupational therapy helps individuals achieve independence by developing the life skills necessary for living independently.

Psychoanalysis is long-term therapy that reveals unconscious motivations and patterns to resolve issues and to help you become aware of how those motivations influence your actions and feelings.

Psychotherapy is a method of talking face-to-face with a therapist.

What is peer support?

Peer support brings together people with common experiences. Participants share experiences, provide understanding and support, and help each other find new ways to cope with problems. There are peer support groups for nearly every issue, including alcoholism, overeating, the loss of a child, co-dependency, various mental illnesses, cancer, and parenting.

What is self-directed care?

All competent adults have the right to chose the treatment they feel is best for them. However, traditionally, providers have decided what someone seeking mental health treatment needs. **Self-directed care** is mental health care that recognizes the capability of individuals to manage their own care by identifying recovery goals and creating and implementing a plan to achieve those goals.

A self-directed care plan looks at an individual's life as a whole, so self-directed care often consists of services and supports that are not usually considered mental health care, such as financial management services. Many states are moving toward the self-directed care model, including Oregon, which has received grants from the Centers for Medicare and Medicaid Services (CMS) and the state's Medicaid plan to establish innovative pilot projects. One of those projects, Empowerment Initiatives, offers brokerage services that help individuals with mental illness set goals and achieve independence. ***See Resources, p. 76.***

What is recovery education?

Recovery education programs help people prepare to carry out self-directed care, wherever they are on the road to recovery from mental illness. These programs provide encouragement and skills training. In recovery education, the focus is on life goals, identifying triggers and warning signs of escalating mental health issues, developing strategies to self-manage symptoms, and utilizing friends and family, or natural supports, to help cope when difficulties occur.

What is special education?

The Individuals with Disabilities Education Improvement Act (IDEIA), also called IDEA 2004, ensures a **Free Appropriate Public Education (FAPE)** to children with disabilities. This includes children with mental disabilities. An **Individualized Education Program** or **IEP** is the basic tool that is used to provide FAPE. For more detailed information on special education, call Disability Rights Oregon or visit our website for a copy of *Special Education: A Guide for Parents & Advocates*.

What is traumatic brain injury (TBI)?

Traumatic brain injury (TBI) is a brain injury resulting from an external physical force. People with TBI require a wide range of services flexible enough to meet their individual needs. A person with TBI may also require mental health services and therefore need treatment for both conditions, or receive mental health treatment from a professional that understands TBI. ***See Resources, p. 74 (VA), and pp. 75-76 (BIAOR and BISC).***

Chapter

3

Chapter 3: Patient Rights in the Community

Most people who receive mental health services in Oregon now receive them in the community. This includes increasing numbers of people living independently, as well as those who receive services in different facilities in the community, including:

- Residential treatment facilities (RTF)
- Assisted living facilities (ALF)
- Residential care facilities (RCF)
- Adult foster homes

People receiving mental health services in the community have the same rights as any other community member.

In 1993, the Oregon legislature passed legislation that sets out specific rights of people receiving mental health or developmental disabilities services in the community. These include the right to:

- Have a written treatment plan and participate in making the plan
- Choose from available services and have those services provided in the least restrictive way
- Receive only those services agreed to with an informed, voluntary, written consent
- Receive medication only for individual clinical needs
- Protection against the involuntary termination or transfer of mental health services without prior notice of the termination/transfer
- Protection against the involuntarily termination or transfer of services without notice about other available sources for necessary services
- Be treated humanely, be protected from harm and have reasonable privacy
- Be free from abuse and neglect

- Report abuse and neglect without retaliation
- Exercise religious freedom
- Be free from requirements to perform unpaid labor except personal chores
- Fresh air and access to the outdoors
- Visit with family, friends, advocates, and legal and medical professionals
- Be told about rights, reminded regularly about those rights, and be informed of how to report abuse
- File grievances and have them considered in a fair, timely and impartial manner
- Communicate with any rights program or advocate, such as Disability Rights Oregon
- Exercise these rights without any reprisal or punishment
- Participate in treatment planning in a manner appropriate to capabilities

ORS 430.210.

Can I be moved to another facility without notice?

Residents admitted to an assisted living facility (ALF), residential care facility (RCF), residential treatment facility (RTF) or adult foster home on January 1, 2006, or later may be moved out of the facility without advance notice only if **all three** of the following conditions are met:

1. The facility was not notified prior to admission that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime.
2. The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime.
3. The resident presents a current risk of harm to another resident, staff or visitor in the facility, due to:
    - Current or recent sexual inappropriateness, aggressive behavior of a sexual nature or verbal threats of a sexual nature; and
    - Notification from the state Board of Parole and Post-Prison Supervision (BPPPS), Department of Corrections (DOC), or community correction agency parole or probation officer that the resident's assessment indicates a probable sexual re-offense risk to others in the facility.

Even when all three conditions are met, the facility cannot move you until it has contacted the Department of Human Services (DHS) Central Office and reviewed the criteria regarding your current risk of harming others in the facility. DHS must respond within one working day. The Department of Corrections (DOC) parole or probation officer should be included in the review. Only DHS can determine if the criteria for immediately moving you are met, and if so, DHS **must assist** in locating placement options for you.

The move-out notice must be in writing on a DHS-approved form and the form must be completely filled out. Also, a copy of the notice must be delivered in person to you, or to your legal representative. If you are incapacitated and have no legal representative, a copy of the move-out notice must be immediately faxed to the state Long Term Care Ombudsman (LTCO).

Prior to the move, the facility must orally explain to you or your legal representative that you have a right to object to the move and request a hearing. A hearing request does not delay the involuntary move-out. The facility must immediately telephone the DHS Central Office when a hearing is requested. The hearing has to be held within five business days of your move. No informal conference is held prior to the hearing. OAR 411-056-0020; OAR 411-055-0190.

What are the rights of Oregon Health Plan (OHP) members?

The Oregon Health Plan (OHP) is a Medicaid program that provides medical treatment to low-income Oregonians. OHP does not pay for any treatment inside the Oregon State Hospital (OSH). OHP can provide coverage for mental health services in the community including acute care in private hospitals. All OHP members have the general right to be treated with dignity and respect. Examples of other specific rights to which OHP members are entitled include the right to:

- Have a friend, family member, or advocate present during appointments and at other times as needed
- Be actively involved in treatment plan development
- Consent to treatment or refuse services, and to be told the consequences of those decisions (except for court-ordered services)
- Receive necessary and reasonable services to diagnose conditions
- Receive covered services under the Oregon Health Plan meeting accepted standards of practice that are medically appropriate
- Access to their own medical record (unless restricted)
- Execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, chemical dependency or mental health treatment, and the right to execute directives and powers of attorney for health care

- Receive written notices before a denial of, or change in, a benefit or service level is made (unless such notice is not required by federal or state regulations)
- Know how to make a complaint (file a grievance) with the managed care health plan and to receive a response
- Request an administrative hearing with DHS if OHP services are denied or benefits are terminated
- Receive interpreter services

What is a grievance?

A **grievance** is a formal complaint about the care you received, or lack thereof.

You have the right to file a grievance when you are unsatisfied with the treatment or services you receive from any service provider.

In general, facilities and mental health service providers must have grievance procedures. Grievance procedures may be different, but all give a method to voice your concern about the way you are being treated. Usually, the grievance procedure explains how to make a complaint and who will hear the complaint. The grievance procedure should have a way to appeal to someone else if you don't agree with the first decision.

Can I be involuntary medicated in the community?

People living independently, in group homes or in room-and-boards, cannot be medicated without consent (with some exceptions).

Under some circumstances, you may be medicated without your consent if you are receiving mental health services in the community. If you have a legal guardian, the guardian may be able to consent without your approval. ***See Chapter 11: Guardianship, pp. 45-50.***

Civilly committed persons who reside in a hospital, approved non-hospital facility, secure residential facility, intermediate care facility, or enhanced care facility can be medicated without consent under certain circumstances. In certain approved living situations, you can be medicated without consent if there is an emergency or if you are unable to consent and the treatment is in your best interest.

If you live in one of these facilities, a doctor must show that a serious effort was made to obtain your consent, or your guardian's consent if you have one, in order to involuntarily medicate you.

Then, a psychiatrist must consider **three factors** and consult with the treatment team to decide whether:

1. You are unable to consent because you do not have capacity to consent to or refuse treatment. OAR 309-033-0620(4).

2. The proposed significant procedure (like medication) will likely restore health, prevent deterioration of health, alleviate extreme suffering, or save or extend your life.

3. The proposed significant procedure is the most appropriate and least-intrusive treatment.

In addition to these three requirements, another psychiatrist must conduct an independent review. The second psychiatrist cannot provide primary or on-call care to you or to any facility employee.

The independent review must include:

- A review of your clinical record
- A personal examination
- An interview with you about the need for the proposed treatment and your ability to consent
- Consideration of any additional information from you

The second psychiatrist determines whether you have capacity to consent to or refuse the treatment, and approves or disapproves the proposed procedure if you cannot consent or refuse. The facility administrator makes the final decision about approving or disapproving the procedure.

The administrator cannot approve the procedure if the second psychiatrist has found that any one of the three required factors listed above do not apply to you.

If the procedure is approved, the approval is valid until the end of the commitment period, but no longer than 180 days. The approval also ends if you regain capacity to give or refuse consent or if the risks of the procedure increase substantially. Also, once every 90 days, you can request an independent review of the approval to treat you without your consent. If you ask for a review, the facility administrator must begin the independent review within 14 days. OAR 309-033-0600 through 309-033-0650.

How does abuse reporting and investigation in the community work?

In Oregon, since 1991, abuse of people with mental disabilities who receive mental health services in the community must be reported and investigated.

Abuse is defined as:

- Any death caused by other than accidental or natural means
- Any physical injury not caused by accident or that appears to be at odds with the explanation given for the injury
- Intentional infliction of physical pain or injury
- Sexual harassment or exploitation, including any sexual contact between an employee of a facility or community program and an adult who is receiving mental health services

Anyone can report abuse to the Community Mental Health Program (CMHP). CMHP staff provides information about how abuse reporting is handled at your treatment facility or mental health provider, and tells you who to contact about an abuse complaint. You can also report abuse to the Addictions & Mental Health (AMH) Division or to the police.

The office receiving the abuse report must conduct an investigation or make sure that an investigation is conducted. The alleged abuse victim must be provided protective services (action to protect the victim from further harm) if needed. The investigating office should complete a report of the investigation and send it to AMH. ORS 430.735 through 430.765.

If you need help in reporting abuse, you can request assistance from any mental health professional, or a person you trust. You can also request assistance from Disability Rights Oregon (DRO), Adult Protective Services (APS), the state Office of Investigations and Training (OIT), or the Long Term Care Ombudsman (LTCO). ***See pp. 73-74 for contact information.***

The law requires private and public officials to report suspected abuse if there is reasonable cause to suspect that it has occurred, and if they found out about the suspected abuse from communication that was not privileged.

This means that doctors, nurses, aides, psychologists, employees of community mental health programs, employees of mental health services providers, clergy, attorneys, outreach workers, social workers, therapists, police, and others are required to report abuse.

Chapter

4

Chapter 4: Making a Declaration for Mental Health Treatment

Adults normally make medical decisions for themselves. However, someone experiencing a mental health crisis may not have the mental capacity to make a legally valid decision. This is when a **Declaration for Mental Health Treatment** can help.

We use the term Declaration throughout this chapter to mean the Declaration for Mental Health Treatment.

A Declaration is a legal document which works like a power of attorney or advance directive. It lets you state your choices ahead of time about the mental health treatment you want to receive in case you become incapacitated.

It also lets you appoint a friend or relative to make these choices on your behalf, and allows a doctor to treat you even if you cannot give consent at the time of treatment.

What does incapacitated mean?

You are considered incapacitated, or incapable of making valid decisions, when you can no longer receive and evaluate information effectively or communicate your decisions. Decisions about whether you are capable of making valid decisions are made by two doctors or by a judge in a guardianship proceeding. ORS 127.700(5). ***See Chapter 11: Guardianship, pp. 45-50.***

What areas are covered by the Declaration?

It is important to remember the doctor does not have to follow instructions in your Declaration, just as the doctor does not have to do what you say when you have capacity to make decisions. ORS 127.720. ***See pp. 18-19, What precautions should I take before making my Declaration?***

A doctor cannot treat you, however, without some form of consent. Consent can come from you, your Declaration, your legal guardian or through the civil commitment process. A doctor is better able to take effective action if made aware of what does and does not work for you. The Declaration can provide this information.

The Declaration form is divided into three sections:

1. Mental health treatments to which you consent
2. Mental health treatments to which you do not consent
3. Additional information about your mental health

A Declaration allows you to explain your particular preferences. For example, you might say that when you are highly upset, sitting in a dark room with the door open is calming, but that closing and locking the door makes things worse. The Declaration allows you to designate people who should be notified in times of crises, as well as people who should not be informed of your situation.

You can also make choices regarding treatment, including:

- Consenting to certain medications
- Specifying dosages of medications
- Refusing consent for all medications
- Consenting to any medications the doctor recommends
- Refusing consent for certain medications along with an explanation of the adverse side effects or allergies you experienced from those particular medications
- Consenting or refusing consent to electroconvulsive therapy, and if consenting, setting limits of how often and how much
- Refusing or consenting to hospitalization, and if consenting, limiting the number of days in the hospital, specifying a maximum of 17 days
- Consenting to admission to specific facilities
- Refusing consent to admission to specific facilities and explaining why

Even if you consent to hospitalization in your Declaration, if a doctor thinks you need to stay hospitalized longer and you can't or won't agree to stay, the only way the doctor can force you to stay in the hospital longer is through the civil commitment process or with the approval of your legal guardian, if you have one. ***See Chapter 6: Civil Commitment, pp. 23-30 and Chapter 11: Guardianship, pp. 45-50.***

What is a mental health representative?

You can use your Declaration to appoint an adult as your **mental health representative.** A mental health representative makes decisions for you only if you are no longer capable of doing so, and may be a friend, a relative, or another person you trust to make important treatment decisions.

A representative can be a very helpful advocate on your behalf if you are hospitalized. A second person can be appointed as an alternate representative. This person acts as the representative if the first person refuses or is unable to act.

The person you chose as your representative has to sign your Declaration form to show that he or she agrees to be your representative. A representative must follow the directions given in the Declaration.

If your Declaration does not give specific directions, your representative should do what he or she thinks you would want done. If your representative does not know what you want, he or she should act in your best interest.

Your representative will have access to your medical records relevant to treatment decisions that he or she must make, if you are incapacitated.

Friends and family who are not mental health representatives cannot obtain confidential mental health records under most circumstances.

How do I complete and distribute my Declaration?

After filling out a Declaration form, you must sign it and have it signed by two competent adult witnesses.

The following people **cannot** be witnesses:

- Your representative
- Your alternate representative
- Your doctor
- Your mental health care provider
- Your counselor
- The owner or operator of a facility in which you are a resident
- The relatives of the owner or operator of a facility of which you are a resident
- Your relatives

Any representative as well as any alternate representative you have appointed must also sign the Declaration form.

When the Declaration is completed and signed, give it to your doctor and your other mental health care providers who treat you. **Carry a copy of your Declaration so you can show it to anyone who might give you treatment.** Doctors cannot follow your Declaration if they do not know about it.

Can I revoke or change my Declaration?

Yes. Your Declaration can be revoked or changed. **To revoke your Declaration, tell your doctor, provider, representative, and anyone else who has the Declaration that it is being changed or revoked.**

This should be done in writing. Retrieve and destroy all the copies of the revoked Declaration. However, the Declaration cannot be revoked or changed during a time when you have been found unable to understand your mental health treatment options and are not capable of making choices about your mental health treatment. ORS 127.722.

How long is my Declaration valid?

A Declaration stays in effect for three years unless revoked. After three years, a new Declaration must be signed.

However, if you are found incapable of making mental health treatment decisions at the end of the three years, the Declaration stays in effect until you regain capacity to make your own decisions. ORS 127.702(2).

Can I be forced to make a Declaration?

No. No one can force you to have a Declaration and no one can prevent you from having one. The law states you cannot be required to sign or not sign a Declaration in order to get insurance, mental health treatment, or to be discharged from a health care facility. ORS 127.715.

What precautions should I take before making my Declaration?

A Declaration is not something everyone will want. **If you are considering completing a mental health Declaration, it helps to talk to your doctor or mental health provider about your choices.**

In particular, research specific medications and electroshock treatment (ECT) before agreeing to receive them.

The main advantage of a Declaration is that it lets a doctor treat you at a time when you are unable to give your consent. A Declaration can help you get treatment without going through the commitment process. Also, you can use the Declaration to give doctors information and to plan and think about how you would like to be treated in the future.

The disadvantage of a Declaration is that you can be treated and hospitalized without giving your agreement at the time. If you have a Declaration and are found incapable of making decisions, a doctor can treat you by following the instructions in your Declaration.

For example, if your Declaration provides consent for hospitalization, a doctor can hold you in the hospital even if at that moment you do not want to be hospitalized. Under those circumstances no attorney would be appointed and no hearing would be needed to hospitalize you, unless the doctor intends to hospitalize you for more than 17 days.

A Declaration does not guarantee that you would get exactly the treatment you requested and authorized. The doctor still has to agree that the treatment requested is medically appropriate.

When is my Declaration not valid?

There are three situations where the doctor can provide treatment contrary to the directions in your Declaration.

1. If you are civilly committed, you can be hospitalized without consent and a doctor can give drugs and/or administer shock treatment without consent under some circumstances. ORS 127.720(1)(a).

2. In an emergency situation, a doctor can treat without consent. ORS 127.720(1)(b).

3. A person can be held in a hospital without consent on a **pre-commitment hold.** Individuals detained on a pre-commitment hold have to be released or be given a hearing within five working days. ORS 127.720(2).

See pp. 12-13, Can I be involuntarily medicated in the community?

Where can I find the form needed to make my Declaration?

The Oregon Department of Human Services (DHS), Addictions & Mental Health (AMH) Division has forms and instructions for completing a Declaration, available on its website:

www.oregon.gov/DHS/mentalhealth/forms/declaration.pdf

You can also call Disability Rights Oregon (503-243-2081) or visit our website for a copy of *Can I Plan Now for the Mental Health Treatment I Would Want If I Were in Crisis?: A Guide to Oregon's Declaration for Mental Health Treatment*.

Chapter

5

Chapter 5: Voluntary Hospitalization

Hospitalization is a serious step that should not be considered lightly. If you or someone you know needs hospitalization in order to stabilize, it is a good idea to first understand what is involved. Hospitals and other mental health facilities may accept people who voluntarily agree to be in the hospital or facility. Voluntary admissions are not very common in state-run hospitals and facilities.

However, with the use of the Declaration for Mental Health Treatment, voluntary admissions may become more common. ***See Chapter 4: Making a Declaration for Mental Health Treatment, pp. 15-19.***

What if I am a voluntary patient and I want to leave?

The rights of voluntary patients are similar to involuntary patients with a few important exceptions. Voluntary patients **can** discharge themselves from non-state facilities at any time. However, in a state facility you can be held for up to 72 hours after giving notice in writing that you want to be discharged.

If you are a voluntary patient at a private hospital and you decide to leave, doctors who believe you are dangerous to yourself or others may place a physician's hold on you and require you to stay and be evaluated for civil commitment. You have the right to a civil commitment hearing within five working days. ORS 426.220; ORS 426.232. ***See Chapter 6: Civil Commitment, pp. 23-30.***

As a voluntary patient, you cannot be medicated against your will except in emergencies. In other words, you can only be medicated against your will as a voluntary patient if immediate action is:

- Needed to preserve your life or physical health and there is not time to get your informed consent; or
- Required because there is a substantial likelihood of immediate physical harm to you or others as a result of your behaviors. OAR 309-114-0015.

However, voluntary patients who refuse to follow a treatment program prescribed by the doctor may be discharged. Or, if the hospital believes you are a danger, the hospital may try to have you civilly committed.

Are there financial and insurance issues to keep in mind?

If possible, find out what insurance the facility or hospital accepts. If it doesn't accept your insurance, find out if there are alternatives.

If the facility or hospital does accept your insurance, find out what exactly is covered by your insurance. Ask a facility/hospital staff person (often a social worker) to review the coverage with you. That way you will be able to find out if there are separate charges, what the charges are for physicians, therapists or caretakers, how fees are assessed, and about billing.

Sometimes insurance only covers part of the hospitalization cost. Ask if other payment arrangements are available, or if the facility or hospital accepts partial payments, or payments on a schedule.

Chapter

6

Chapter 6: Civil Commitment

Civil commitment is a legal process in which a judge decides whether an individual who is allegedly mentally ill should be required to go to a psychiatric hospital or accept other mental health treatment for up to 180 days. Someone in the process of a civil commitment is sometimes called an **allegedly mentally ill person (AMIP).** A civil commitment is not a criminal conviction and will not go on a criminal record. ***See p. 29, How are my legal rights affected by civil commitment?***

How does the civil commitment process start?

A county health officer, a judge, or any two people filing papers in court may start the civil commitment process. The process may also be started if a doctor or Community Mental Health Program (CMHP) director orders someone to be held involuntarily in a hospital. ORS 426.070; ORS 426.228 through ORS 426.234.

Filing commitment papers in court is the same as filing a civil commitment petition. When a petition for civil commitment is filed, an investigator from the CMHP investigates whether you need to be committed. The investigator interviews you as well as others who know you. The investigator then advises a judge whether or not to hold a court hearing. ORS 426.070; ORS 426.074.

Depending on the investigator's decision:

- The case is dismissed without a hearing.
- You may be offered a 14-day diversion program. ***See p. 26, What is a 14-day diversion program?***
- A civil commitment hearing is held. ***See pp. 26-28, What is a civil commitment hearing?***

If you are being held on a pre-commitment hold, you must be released unless a judge decides civil commitment may be appropriate. In that case a civil commitment hearing must be held within five working days from when you were placed on the hold.

If a civil commitment hearing is held, you have to be provided with an attorney and may have witnesses testify. The judge then makes a decision about whether you should be committed. If you are committed, you may be hospitalized or be required to undergo treatment in some other setting.

What are the requirements for civil commitment?

You can be committed only if a judge finds by clear and convincing evidence that you have a mental disorder, and, because of that mental disorder, are:

1. Dangerous to yourself or others
2. Unable to provide for your own basic personal needs, like health and safety

Additionally, you may be committed if you are found to meet **all** of the following criteria:

- Have a diagnosis of a major mental disability such as chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic disorder
- Have been committed and hospitalized twice in the last three years
- Show symptoms or behaviors substantially similar to those that led to a prior hospitalization
- Unless treated, it is medically probable you will continue to deteriorate and become a danger to yourself or others or be unable to provide for your own basic needs

ORS 426.005; ORS 426.130.

Can I be taken into custody before my civil commitment hearing?

Yes, but not without a valid order. Unless a judge orders you be taken into custody, or a doctor or CMHP director orders you held, you have the right to stay in the community, even if a civil commitment petition has been filed against you.

You cannot be placed in custody unless found to be mentally ill and a danger to yourself or others. In other words, if you are believed to have a mental disability that prevents you from providing for your own basic needs but you are not believed to be a danger to yourself or others, you cannot be held in custody before a civil commitment hearing.

However, you can be taken into custody before a commitment hearing is held if put on a **pre-commitment hold** or placed in **pre-commitment detention.** ORS 426.070; ORS 426.228; ORS 426.231 through ORS 426.233.

If you have been put on a pre-commitment hold, you cannot be held in jail unless you are charged with a crime or present a serious danger to hospital staff or property. ORS 426.140.

In all other cases, you must be held either in a hospital or a non-hospital facility approved by the Addictions & Mental Health (AMH) Division to provide adequate security, psychiatric, nursing and other services. ORS 426.005(e).

You have the right to be held in a mental health facility that provides all care, custody and treatment required for mental and physical health and safety. In other words, you can only be held in a place with staff trained to provide mental health treatment. ORS 426.072(2)(a); ORS 426.228.

How long can I be held before my civil commitment hearing?

No one can be put on a pre-commitment hold for longer than **five working days** without a court hearing. If five working days pass and there is no court hearing, you are free to leave the hospital unless you have asked to postpone the hearing or have agreed to voluntary hospitalization.

Before the end of five working days, the investigator must come and assess you, recommending either a hearing, or that you be let go.

In other words, no one can be held involuntarily longer than five working days unless a judge says so. ORS 426.095.

What rights do I have if I am on a pre-commitment hold?

If you are on a pre-commitment hold you have many rights, including:

- Freedom from electroconvulsive therapy or unduly hazardous treatment
- Treatment up to community standards
- Medication only with informed consent or if necessary to protect your life or safety
- No physical restraint without a treating doctor's approval
- Warning both verbally and in writing that doctor/patient confidentiality does not apply in civil commitment hearings
- Retaining an attorney, or having an attorney appointed if necessary
- Postponement of the hearing for no more than five working days
- Certification for a 14-day diversion program, only if agreed to by all sides

ORS 426.072(2)(c); ORS 426.072(2)(d); ORS 426.072(3); ORS 426.095(2)(c); ORS 426.100(3); ORS 426.237; OAR 309-114-000 through OAR 309-114-0025.

What is a 14-day diversion program?

You may be certified for a 14-day period of intensive treatment if you are on a pre-commitment hold. This 14-day period is commonly called a diversion and is usually an attempt to avoid civil commitment. This only happens if you and your attorney agree to diversion treatment.

If the CMHP director believes you are mentally ill and that there is a placement where you can receive necessary and sufficient treatment, the director can certify you for the 14-day treatment period. This certification includes a statement of the treatment that you will receive. The director has to make this certification no later than three days after you are put on the hold. As soon as the court receives this certification, the court must notify your attorney or appoint an attorney if you do not have one.

The attorney must review the certification with you within 24 hours of the certificate's delivery to the court. **You cannot be held for the 14-day treatment program without agreement of both you and your attorney.**

You can initially agree to a 14-day program but later change your mind and ask for a hearing. The hearing must be held within five working days of the request. If you refuse treatment, the CMHP director can also ask for a hearing to be held within five working days.

During 14-day diversion, transfer from a hospital to a non-hospital facility or transfer from a non-hospital facility to a hospital may happen.

You may be discharged at any time during the 14 days, or may agree to voluntary treatment and ask that the case be dismissed. If you are still being held after 14 days and wish to leave, the facility cannot continue the program without a civil commitment hearing. ORS 426.237(1)(b); ORS 426.237(2).

What is a civil commitment hearing?

At a civil commitment hearing, a judge presides. You (the allegedly mentally ill person), your attorney, the state's attorney, and a **mental health examiner** are also present. Mental health examiners are doctors or other professionals certified by the state to make examinations at civil commitment proceedings. The judge appoints a mental health examiner for the hearing, and will appoint a second examiner if requested. ORS 426.110.

Civil commitment hearings generally take place in the courthouse but can be conducted where you are being held. The investigator and witnesses may also participate.

A civil commitment is an open proceeding, so family and friends can attend. However, witnesses may be asked to wait outside the courtroom while others are testifying so they will not be influenced by what anyone else has said.

You can testify, and have the right to call witnesses. The state's attorney can cross-examine your witnesses and call other witnesses to testify about why you are mentally ill, dangerous, or unable to provide for your own basic needs. ORS 426.095(3); ORS 426.100(1)(d).

Your attorney, the state's attorney, the mental health examiner and the judge may ask the witnesses questions. Mental health examiners usually ask you questions and provide the judge with written opinions of your mental condition. ORS 426.120.

You, or your attorney, have a right to cross-examine witnesses, mental health examiners, and investigators. ORS 426.095(3)(c). After all the testimony, the attorneys make statements to the judge about why you should or should not be committed.

After hearing all the evidence and reading the conclusions of the mental health examiners, the judge makes a decision about whether there is clear and convincing evidence that you should be committed.

Clear and convincing evidence is evidence that the judge believes has a high probability of being accurate.

If you are found by a judge to **not** be mentally ill, you are released and the case is dismissed. ORS 426.130(1)(a).

If the judge decides you **do** have a mental disorder and are dangerous to yourself or others, unable to care for your own basic needs, or meet the expanded criteria regarding prior hospitalizations, the judge will order that you be civilly committed.

If the judge finds you meet the criteria for civil commitment, the judge may:

- Release you, if you are willing and able to participate in treatment on a voluntary basis and will probably do so. ORS 426.130(1)(b)(A).
- Conditionally release you into the custody of a friend or relative. ORS 426.125; ORS 426.130(1)(B).
- Order you committed to the Addictions & Mental Health (AMH) Division for up to 180 days of treatment. If this happens, AMH places you in a hospital, a non-hospital facility, or on **outpatient commitment,** meaning you will be treated outside of a hospital setting. ORS 426.130(1)(b)(C); ORS 426.130(2); ORS 426.130(l)(b)(C)(ii).

If you have been released, you are free to leave.

A **conditional release** means that you are released into the custody of a friend or relative, with certain conditions that you must follow. These conditions frequently include seeing a mental health worker and/or taking medication. Your friend or relative must tell the court if you do not follow your conditions for release. The conditions stay in effect for a period of time decided by the judge, up to 180 days. ORS 426.125.

If you have been committed on an outpatient basis, you will be released under the supervision of the Community Mental Health Program (CMHP).

The CMHP will place certain conditions on your release, and if you do not follow these conditions, the CMHP may tell the court. The conditions stay in effect for a period of time decided by the judge, up to 180 days. ORS 426.127.

What happens if I do not follow the conditions for release or outpatient commitment?

You may face another hearing before a judge if you are on conditional release or on an outpatient commitment and you break conditions. You have the right to an attorney and all the other rights granted to you for a civil commitment hearing. You may be held in custody before the hearing. If so, your hearing must be within five working days of when the custody begins. ORS 426.275.

If the judge finds you broke a condition, the judge can:

- Continue the placement with or without additional conditions
- Order you to be returned to state custody for involuntary care and treatment

How long can a civil commitment last?

A commitment can last no longer than 180 days. You must be released from the hospital at any time before 180 days passes if the treating doctor or facility director believes you are no longer mentally ill. ORS 426.292. The hospital cannot keep you longer than 180 days unless you agree to stay or are re-committed by court order after being offered another hearing. ORS 426.292.

What is a trial visit?

After being committed, AMH and the CMHP director may agree to release you into the community on a trial basis. This release, called a **trial visit,** comes with conditions, like taking medications or attending specific therapy sessions.

You may be brought before the judge for a hearing if you break your conditions for release. The judge may send you back to the hospital or other facility or may continue the trial visit as-is or with added conditions. You have the same rights as someone charged with violating the conditions of an outpatient commitment or conditional release. ORS 426.273; ORS 426.275.

What is a re-commitment?

You may face **re-commitment** by the state if you have been in a hospital or other facility for 180 days and the treatment staff believes you are not ready for release. Before the 180-day commitment runs out, the hospital gives you papers asking you to stay.

If you want to leave the hospital, you must protest re-commitment by signing a protest form or by telling the hospital staff. You have 14 days after receiving the papers to do this. You may be re-committed automatically for up to 180 days if you do not protest the re-commitment.

If you protest re-commitment, the hospital may not keep you in custody unless another hearing is held and the judge decides that you need to be re-committed. For the purposes of this court hearing, you have a right to:

- Be represented by an attorney or to have an attorney appointed
- Have the hearing postponed to prepare or find an attorney
- Have a doctor or other qualified person who is not on the staff of the hospital or facility where you are held examine your mental condition and report the results to the judge

ORS 426.095; ORS 426.303; ORS 426.307.

Can a civil commitment be appealed?

Yes. A judge's civil commitment decision can be appealed. An appeal is a legal way to challenge the judge's decision to commit you. Appeals usually take longer than 180 days to complete. If the commitment is reversed, you probably will not get out of the hospital any sooner, but certain other rights may be preserved.

Contact your commitment hearing attorney if you wish to appeal a civil commitment. Appeal papers must be filed within 30 days of the judge's decision. If you cannot afford to hire an attorney to handle the appeal, one will be appointed. ORS 426.135.

How are my legal rights affected by civil commitment?

Most legal rights are not affected by civil commitment – you retain most legal and civil rights, including the right to vote, unless a court has found you to be "incompetent." ORS 426.385.

However, some specific rights can be limited as a result of civil commitment.

A person who has been committed is forbidden from owning, buying, or possessing firearms. ORS 166.250; ORS 426.130(1)(d). This restriction may be waived in some cases by following the required procedures to show that you do not pose a threat to yourself or the safety of the public. A federal law requires Oregon to tell the FBI that you have been committed in order to prevent you from buying a firearm in another state.

A person committed twice within three years can be committed more easily in the future. ORS 426.495. ***See p. 24, What are the requirements for civil commitment?***

Commitment can affect your ability to get or keep a driver's license. If your mental disability prevents you from exercising reasonable and ordinary control over a motor vehicle, you cannot be licensed. ORS 807.090; ORS 807.700; ORS 809.410(16).

Who pays for civil commitment?

The cost of hospitalization in a civil commitment may be billed to you. This bill is sent to your insurer if you have insurance. The government will pay the bill if you do not have insurance or enough money to pay. ORS 179.610 through ORS 179.770.

Can I sue if I'm falsely accused of being mentally ill and am civilly committed?

Anyone can file a lawsuit. However, you cannot win a suit for a false accusation of mental illness unless there is bad faith, malice or no probable cause existed to believe you could need commitment. ORS 426.280(1).

Can my guardian, friend or relative be sued for my actions after being released into their custody?

Generally, no. A guardian, friend or relative who acts in good faith and without malice cannot be held liable for your actions. ORS 426.280(7).

Can I request copies of my commitment record?

Yes. You can request a transcript of what the witnesses said in court at your civil commitment hearing, but there is a fee for this.

Is my commitment confidential?

All treatment records are confidential, but the fact that you are or were committed to an institution may not be. For example, the fact that you were committed may be disclosed to determine if you may purchase a firearm. While committed, you may give permission to disclose confidential information. If a family member or any other person chosen by you requests this information, the facility where you are being held must disclose:

- Your diagnosis
- Your prognosis
- Your prescribed medications, as well as side effects
- Your progress
- Information about the civil commitment process
- Where and when you may be visited

If you are unable to give permission to disclose confidential information, the hospital will only reveal where you are, but cannot provide details about your condition or care. When you are committed to a hospital or treatment center as a patient, the staff will try to inform your closest family member or a chosen friend that you are committed at the facility. However, that same family member or friend is not entitled to be told when you are released, moved, or seriously sick. As a patient, you can ask the hospital not to reveal any of this information to family or friends, and you must be told if any information was given to anyone else about your care. ORS 426.155.

Chapter

7

Chapter 7: Psychiatric Security Review Board (PSRB) Jurisdiction

Some people are involuntarily hospitalized because they have been found **guilty except for insanity (GEI)** in a criminal proceeding in state court. A person charged with a Measure 11 felony crime and found GEI (referred to as Tier One) may be placed under the jurisdiction of the **Psychiatric Security Review Board (PSRB)** for a term equal to the maximum possible prison sentence for the crime. A person charged with a non-Measure 11 felony crime and found GEI (referred to as Tier Two) may be placed under the jurisdiction of the **State Hospital Review Panel (SHRP)** for a term equal to the maximum possible prison sentence for the crime. ***See Chapter 8: State Hospital Review Panel (SHRP) Jurisdiction, pp. 35-39.***

What does guilty except for insanity (GEI) mean?

A person charged with a crime who has or had a mental illness and who, at the time the crime was committed, lacked the substantial capacity either to appreciate the criminality of the conduct or to conform his or her conduct to the requirements of the law, may be found guilty except for insanity (GEI). ORS 161.295. Those with antisocial behavior or personality disorders cannot be found GEI. ORS 161.295(2).

What is the Psychiatric Security Review Board (PSRB)?

The Psychiatric Security Review Board (PSRB) was created by the Oregon legislature in 1977 to supervise all people found guilty except for insanity (GEI). The PSRB has five members: a psychiatrist, a psychologist, a member with a parole/probation background, an attorney with criminal trial experience, and a member of the general public. The five board members are appointed by the governor for four-year terms.

How can I be found to be GEI?

Anyone who was acutely mentally ill at the time of the alleged crime and charged with that crime should discuss the advantages and disadvantages of using a GEI defense with an attorney. If a GEI defense is used in a criminal case and the district attorney agrees, you (the defendant) can plead GEI instead of pleading guilty or not guilty. This allows you to avoid a trial.

If the district attorney does not agree to using a GEI defense, you can have a trial and try to convince a jury or judge that you were "insane," and therefore lacked the substantial capacity either to appreciate the criminality of your conduct or to conform your conduct to the requirements of the law.

Usually, the defense attorney has experts like psychiatrists and psychologists examine you to see if the GEI defense is advisable. The state also has the right to examine anyone who wants to use the GEI defense with the state's own experts.

If you are found GEI of a Measure 11 crime and a judge finds that you are affected by a mental disease or defect **and** present a substantial danger to others, you are placed under the jurisdiction of the PSRB for care and treatment.

WARNING: Be aware that pleading GEI, or being found GEI, may mean that you must stay in a mental health institution, or in the community under strict conditions set by the PSRB, for longer, sometimes much longer, than you would spend in jail/prison or on probation if found guilty of the crime of which you are accused. Discuss all the details and possible timelines with your criminal defense attorney.

If found GEI for a non-Measure 11 crime, you will be placed under the jurisdiction of the State Hospital Review Panel (SHRP). ***See Chapter 8: State Hospital Review Panel (SHRP) Jurisidiction, pp. 35-39.***

What can I expect if I am under the jurisdiction of the PSRB?

Being under the jurisdiction of the PSRB means that the PSRB has control over where you, as a person under its jurisdiction, live – in the state hospital or in the community. The PSRB can also impose conditions on your release.

WARNING: If you are found GEI, you are placed under PSRB jurisdiction for a period of time equal to the maximum sentence possible if you had been found guilty.

This means that if you are found GEI of Robbery 1 you are placed under the jurisdiction of the PSRB for 20 years, because that is the maximum sentence for Robbery 1. ORS 161.327(1).

Some people under PSRB jurisdiction stay in the state hospital longer than they would have been in prison if they had been found guilty.

For example, a person found GEI of a crime could be placed under the jurisdiction of the PSRB for five years if five years is the maximum sentence for the crime. The PSRB could require the person to stay in the hospital for the full five years. If the same person had been found guilty in court instead of GEI, he or she might have received 60 days in jail and two years on probation.

Before deciding whether to use the GEI defense, you should find out exactly how long the maximum sentence is for the crime you are charged with, and how long you are likely to spend in jail if found guilty.

Where are people under PSRB supervision placed?

Generally, people who plead GEI or are found GEI after a trial are initially sent by the PSRB to **Oregon State Hospital (OSH).** At any time the PSRB may permit someone under their jurisdiction to live outside of the state hospital, but usually under strict conditions. If you are released from the state hospital but are still under the PSRB's jurisdiction and you stop meeting all your conditions of release, you can be remanded by the PSRB back to the state hospital or to another secure facility.

PSRB supervision begins the day you are placed under PSRB jurisdiction, and lasts until the PSRB releases you, or until you have been under PSRB jurisdiction for the entire length of the maximum sentence. People found GEI usually go to OSH in Salem and reside in a high or medium security ward at the hospital. There is somewhat less restrictive housing for people close to release.

After being placed at OSH, the PSRB must hold a hearing within 90 days to decide if you should stay in the hospital. After the initial hearing, you can apply for discharge or conditional release no more than once every six months, and the PSRB must hold a new hearing within 60 days of the request. ORS 161.341(5), (6), (7).

The OSH superintendent can ask the PSRB to conditionally release or discharge you. In this case, the PSRB holds a hearing within 60 days of receiving the request from the hospital superintendent.

The PSRB has to hold a hearing for each person under its supervision at least once every two years, even if no one asks for a hearing. You have the right to an attorney in most PSRB matters. If you cannot afford an attorney, one will be appointed. ORS 161.346(6)(d); ORS 161.346(11).

Conditional release from the hospital is possible if the PSRB approves a **community release plan.** If you are on conditional release, you are still under PSRB supervision while in the community. You can be returned to the hospital for breaking **any** conditions of the release or if your mental illness cannot be controlled in the community.

Examples of PSRB conditions for release from the state hospital include:

- Continuing to get mental health treatment and supervision
- Having a professional report to the PSRB about your status
- Having appropriate housing arrangements
- Agreeing not to use alcohol or drugs, and to submit to random drug screen tests
- Agreeing not to drive or use firearms
- Agreeing to take medications

PSRB supervision lasts only as long as the maximum sentence you could have received if convicted of the charged crime. At the end of that period, the PSRB has no further power.

However, hospital staff can seek civil commitment at the end of the PSRB's jurisdiction term. ***See Chapter 6: Civil Commitment, pp. 23-30***.

You must be freed from PSRB control before the maximum sentence is over if **either** of the following criteria is met:

- You no longer have a mental disease or defect. (However, if the disease is in remission but occasionally becomes active, the PSRB will still consider you to have a mental disease or defect.)
- The mental disease or defect continues but you no longer present a danger to others.

ORS 161.351.

Addiction to drugs or alcohol is not considered a mental disease for the purposes of jurisdiction by the PSRB. If addiction to drugs or alcohol is the only reason you are receiving treatment, you should not be supervised by the PSRB. *Tharp v. Psychiatric Sec. Review Bd.* 338 Or. 413, 110 P.3d 103 Or., 2005.

Chapter

8

Chapter 8: State Hospital Review Panel (SHRP) Jurisdiction

There are now two different paths towards discharge for patients who are at the Oregon State Hospital (OSH) because they were found guilty except for insanity (GEI) for a felony crime.

Previously, a person found GEI for any crime was placed under the jurisdiction of the Psychiatric Security Review Board (PSRB). Now, any person found GEI of a non-Measure 11 felony crime who is sent to the state hospital is considered a Tier Two placement and is placed under the jurisdiction of the State Hospital Review Panel (SHRP, pronounced like "sharp").

Measure 11 covers violent crimes and serious sex offenses only. It does not apply to drug crimes or property crimes. If you are not sure if the crime you were charged with is a Measure 11 crime, contact your criminal defense attorney.

If you were accused of a non-Measure 11 misdemeanor crime, you are not under the jurisdiction of the SHRP. Instead, the superintendent of the state hospital determines whether your release is appropriate or not.

What is the State Hospital Review Panel (SHRP)?

The State Hospital Review Panel (SHRP) decides whether a Tier Two patient (someone who pleaded GEI to a non-Measure 11 felony crime) is ready for discharge or conditional release, and what if any conditions should apply to the conditional release plan.

The SHRP is a panel made up of five members who are appointed by the Oregon Health Authority (OHA). The panel has as its primary concern the protection of society. The panel makes decisions regarding discharge, conditional release, and revocation of conditional release for all adult state hospital patients who are committed to the hospital after successfully using the insanity defense in criminal court for any non-Measure 11 felony crime.

The SHRP is made up of: a psychiatrist, a psychologist, a member with substantial experience in probation and parole, a member of the general public, and an attorney.

What can I expect if I am under the jurisdiction of the SHRP?

To be under SHRP jurisdiction, you must have:

- Been found or plead GEI for a non-Measure 11 felony crime, and determined to be affected by mental disease or defect **and** a substantial danger to others
- Be in a state hospital
- Be an adult (18 or over)
- Not "timed out" or already served equal time to the maximum sentence you could have received if found guilty

SHRP jurisdiction applies retroactively. In other words, even if you were found GEI for a non-Measure 11 felony **before** the SHRP was created, you are now under SHRP jurisdiction.

Juveniles found GEI (even for a non-Measure 11 crime) are placed under the jurisdiction of the Juvenile PSRB, not the SHRP.

What does the SHRP do?

The SHRP monitors the mental and physical health and treatment of any person under its jurisdiction, for the purpose of protecting society.

The SHRP decides:

- Whether you are ready for discharge or conditional release from the hospital
- Under what conditions you can be conditionally released from the hospital
- Whether you were properly revoked back to the hospital from the community

If you are no longer affected by a mental disease or defect or are no longer a substantial danger to the public, the SHRP can give you a full discharge. If you are still affected by a mental illness and are a substantial danger, but can be adequately treated outside of the state hospital, the SHRP can approve you for a conditional release. The SHRP holds hearings to make these decisions.

What happens at a SHRP hearing?

You will get advance written notice of an upcoming SHRP hearing. At the hearing, state hospital staff will testify, and the Oregon Department of Justice will present evidence about whether you should be approved for discharge or conditional release, what conditions are appropriate, whether modifications of conditions are necessary, or whether revocation back to the hospital is appropriate. You will also get to present evidence to support your position regarding discharge or conditional release at the hearing.

At the hearing, you have the right to:

- Be represented by an attorney
- Cross examine all witnesses and documents
- Subpoena witnesses and documents
- Examine all information, documents and reports under consideration

At the hearing, all evidence (even hearsay) that is material, relevant, and reliable may be admitted. The hearing is held in front of at least three members of the SHRP. At least three members of the SHRP must agree in order to make a final hearing decision.

Can I object to a SHRP panel member or staff being at my hearing?

Yes. You can object for good cause to a member or staff of the SHRP. The SHRP member or staff will withdraw if SHRP determines that there is good cause for the objection.

Will I have an attorney at my hearing?

You will be assigned an attorney to represent you at your SHRP hearing if you cannot afford one. There is no cost for the assigned attorney. You can hire (and pay for) your own private attorney to represent you at your SHRP hearing. You can choose to represent yourself at a SHRP hearing. However, the SHRP has the right to take written/oral testimony and decide whether you are capable of understanding the proceedings.

What does burden of proof mean at SHRP hearings?

The burden of proof for SHRP hearings shifts depending on who asked for the hearing, and why. For example, at your first hearing, the state has to prove that you meet all the criteria for SHRP jurisdiction. However, if you ask the SHRP for conditional release, you have to prove that you should be conditionally released.

How often can I have a SHRP hearing?

INITIAL HEARING

Every patient will have an initial SHRP hearing within 90 days following placement under SHRP jurisdiction and commitment to the state hospital. At this first hearing, the state must prove that you meet all the criteria for SHRP jurisdiction, including whether or not you have a mental illness and are a substantial danger to others.

REVOCATION HEARING

A revocation is when a patient who was out of the state hospital on conditional release is required to come back to live at the hospital. Usually this happens because you are accused of failing to comply with some condition of release. Revocation hearings happen within 20 days following an Order of Revocation for violation of conditional release. At this hearing the SHRP will consider if you can be safe in the community on conditional release, or if you must be committed to the state hospital.

DISCHARGE/CONDITIONAL RELEASE HEARING REQUESTED BY PATIENT

You may request a SHRP hearing six months after your last hearing, and a hearing must be held within 60 days of the date when your request was received.

HEARING REQUESTED BY STATE HOSPITAL OR OUTPATIENT SUPERVISOR

The state hospital or an outpatient supervisor can request a SHRP hearing for you at any time, and a hearing must be held within 60 days of the date when the request was received.

TWO YEAR HEARINGS

For all patients under SHRP jurisdiction at the hospital, SHRP hearings must be held at least every two years.

FIVE YEAR HEARINGS

All patients who have been out on conditional release for five years must have a five year hearing. But because jurisdiction of you as a Tier Two person is transferred to the PSRB upon your release from OSH, the PSRB holds the five year hearings.

How long will it take the SHRP to make a decision?

The SHRP has 15 days after the hearing ends to issue a written decision. The SHRP can issue a decision orally, on the record at hearing, but they aren't required to do so. The SHRP usually gives their decision orally at the hearing, and sends out the written order the next week.

For any SHRP decision that approves conditional release, the following must be available:

- Housing
- Mental health treatment in the community

Special conditions can be imposed, such as drug screening, sex offender treatment, and parole and probation supervision.

The SHRP may consider and approve a conditional release plan to have you reside out of state. The PSRB reviews SHRP conditional release decisions and is given the opportunity to provide modifications to the proposed conditions of release.

How long will I be under SHRP jurisdiction?

SHRP jurisdiction lasts until you no longer are affected by a mental disease or defect and are no longer a substantial danger to others, or until you have spent the same amount of time under SHRP jurisdiction as the maximum sentence possible for the crime, had you been convicted.

You are no longer under SHRP jurisdiction when you are conditionally released from a state hospital into the community. Tier Two patients released into the community on conditional release are transferred to the jurisdiction of the PSRB.

Time credit towards the maximum time you can be under SHRP jurisdiction is given for:

- Time spent in custody in jail or prison for the offense for which you are later found GEI.
- Time spent under PSRB jurisdiction for the Tier Two offense.
- Time spent in a state hospital for determination of fitness to proceed, or under detainer for criminal charges for which you were later found GEI.

If at any time the SHRP finds that you are no longer affected by a mental disease or defect, or that you are no longer a substantial danger to others, you must be discharged from the hospital and from SHRP jurisdiction. **If you are fully discharged from the hospital, then you will not be under SHRP or PSRB jurisdiction.**

However, the SHRP can not discharge you if your mental disease or defect may, with reasonable medical probability, occasionally become active, and when active, make you dangerous to others.

How can I challenge a SHRP decision?

At the conclusion of a SHRP hearing, the chair will provide written notification advising you of your right to request reconsideration or appeal a decision you do not agree with. If you want to appeal, you must appeal to the Court of Appeals within 60 days from the date the order is signed. Your attorney will assist you with the appeal.

You may also ask the SHRP to reconsider its findings or ask the Director of the Oregon Health Authority (OHA) to reconsider the SHRP's decision.

Chapter

9

Chapter 9: Fitness to Proceed – aka Aid & Assist

You can be hospitalized involuntarily if charged with a crime **and** there is a question as to whether you understand the charges or are able to help with your own defense. In this situation, you may be hospitalized for an evaluation and, if treatment is deemed possible, may be held for a maximum of three years to await a change in your condition.

A person with mental illness who is accused of a crime cannot be tried for it unless he or she understands the criminal charges and consequences of the trial, can help the defense attorney, and can participate in the defense.

If you have a mental illness and you cannot understand the charges and help with your defense, you are designated as **unfit to proceed** or **unable to aid & assist** in your case. ORS 161.360.

What is the aid & assist process?

If your fitness to proceed in a criminal case is in doubt, the judge orders an evaluation. This evaluation can take place in an outpatient setting or in a hospital. **Evaluations done in the hospital must be done within 30 days of the date you were sent to the hospital for evaluation.**

A mental health practitioner does the evaluation to give an opinion whether you have a mental health condition that is preventing you from being able to stand trial. After the evaluation, the judge holds a hearing to decide if you are fit to proceed. If the judge finds you are fit to proceed, the criminal case continues.

Criminal charges are suspended if a judge decides you are unfit to proceed. The judge can either let you stay in the community with supervision or commit you to the hospital.

If you are in jail and you are found unfit to proceed, you must be transferred to the state hospital within seven days.

Once transferred to the state hospital, you (the defendant) must be re-evaluated within 60 days. The hospital then has to report back to the court whether you are fit to proceed to trial within 90 days of the date when you were transferred to the hospital.

If you still are not fit to proceed, the hospital superintendent has to tell the judge whether there is a substantial chance that you will be fit to proceed to trial in the near future. ORS 161.370(4).

The judge holds a hearing if the hospital tells the judge it is not likely you will be fit to stand trial in the near future. If the judge agrees with the hospital, the judge dismisses the criminal case and discharges you from the hospital or has you civilly committed.

You stay in the hospital if the hospital says it is likely that you will be fit to stand trial within the near future. The hospital reports to the judge on your condition every six months. If you become able to aid & assist in a criminal trial, the criminal process resumes.

Under the aid & assist law, you can be kept in the hospital for three years or the length of the sentence that could have been imposed, whichever is shorter.

If the three years (or the maximum sentence time) ends and you are still unfit for trial, mentally ill and dangerous to yourself or others, or unable to care for your own basic needs, the hospital can try to have you civilly committed.

See Chapter 6: Civil Commitment, pp. 23-30.

Chapter

10

Chapter 10: Hospitalization & Treatment of Criminal Defendants Found to be Sexually Dangerous

A sexually dangerous person, according to the law, means a person who because of repeated or compulsive acts of misconduct in sexual matters, or because of a mental disease or defect, is deemed likely to continue to perform such acts and be a danger to other persons. ORS 426.510.

A criminal defendant may be hospitalized involuntarily if found by a judge to be sexually dangerous. However, the judge can make this decision only if the person has been convicted of a sexual crime and only after an evaluation and a hearing.

A person convicted of a sexual offense may be sent to the state hospital for an evaluation before sentencing. Also, if the judge has probable cause to believe the defendant is a sexually dangerous person, the judge can send the defendant to the hospital for an evaluation and report prior to sentencing. The defendant can be held in the hospital for no longer than 30 days for this evaluation. ORS 426.675.

If, after a hearing, the judge finds a convicted defendant to be sexually dangerous and treatment is available which will reduce the risk of future sexual offenses, the judge can sentence the defendant to participate in a treatment program for sexually dangerous persons. ORS 426.670; ORS 426.675.

The judge can also sentence the defendant to probation on the condition that the defendant participates in and successfully complete a treatment program for sexually dangerous persons. ORS 426.675.

Can I voluntarily request treatment as a sexually dangerous person?

Any person over age 18 may voluntarily request in writing to be admitted to the Oregon State Hospital to receive treatment as a sexually dangerous person.

If voluntarily admitted, you have the right to be released within 72 hours of submitting a written request to leave. As a voluntarily admitted person, you have the right to leave temporarily if, in the opinion of the chief medical officer, the leave will not interfere with your successful treatment or examination. ORS 426.650.

Chapter

11

Chapter 11: Guardianship

(For more detailed information on guardianship, contact Disability Rights Oregon or visit our website for a copy of our *Guardianship Handbook: Protective Proceedings for Adults*.)

Under Oregon law, a judge can appoint an adult to make important decisions about the care and well-being of another person. This is called a **protective proceeding** and the appointed adult is called a **guardian.** A person with a guardian, a conservator or both is called a **protected person.** The relationship between a guardian and a protected person is called a guardianship.

In a protective proceeding, a judge can appoint a **guardian,** a **conservator**, or both, if you are considered **incapacitated.** To be considered incapacitated according to the law, you cannot make decisions well enough to get health care, food, shelter, and other care that is necessary to avoid serious physical injury or illness and, therefore, need continuing care and supervision. ORS 125.060 through ORS 125.080.

A conservator is an adult appointed by a court to make important decisions for you about your finances, and you must be considered **financially incapable** to have a conservator appointed for you. You are considered financially incapable when a condition makes you unable to manage your financial resources effectively.

You may be legally incapacitated in some areas, but not in others. A guardianship should be limited so that your guardian is only given decision-making authority in the area that you are incapacitated. For example, a guardianship may apply only to medical treatment decisions.

The focus of all participants in a guardianship proceeding should be to benefit and assist you in a manner that **maximizes your self-reliance and independence.** ORS 125.300(1). Your guardianship should be tailored to meet your actual needs and therefore limit your guardian's authority to make decisions for you to the specific areas in which the court determines you do not have capacity to do so yourself.

If no limitations are specified, you are under a general guardianship. Only a court can set up a guardianship. If someone states that he or she is your guardian, there must be court papers that show this is true.

If you are a protected person, you may contact the court and review the order of guardianship. In an emergency, a judge can appoint a temporary guardian, a temporary conservator, or both. A judge may order that action be taken on behalf of an adult without appointment of a guardian or conservator. This is called a **protective order.**

Are there alternatives to guardianship?

Yes. Alternatives to guardianship should be considered in terms of whether they are in place or could be in place. Examples include other assistance from a family member or a case manager, or the Declaration for Mental Health Treatment. ***See Chapter 4: Making a Declaration for Mental Health Treatment, pp. 15-19.***

Our *Guardianship Handbook: Protective Proceedings for Adults* includes a Worksheet for Protective Proceedings that provides a list of alternatives to guardianship.

Will I be notified that someone has petitioned the court to become my guardian?

Yes. No one can become your guardian unless you are given prior written notice and are given an opportunity to tell a judge why you do not need a guardian. A guardianship proceeding is started by filing papers in court. Those papers are called a petition, and the person who files the petition is called the petitioner.

A petition for guardianship must state:

- Who you are, and that you need a guardian
- Why you need a guardian
- Who should be your guardian and why he or she is qualified
- Whether your guardian plans to put you in a care facility

You, the person named as needing a guardian, must be personally served with a copy of the petition.

Additionally, you must be given the opportunity to object to all or part of the petition.

How do I object to a guardianship?

You should be given a blue-colored form that explains your rights and includes three sentences that you can check to tell the court why you object to the petition. You are the respondent.

I object to the petition for the following reasons:

___ I do not want anyone else ma king any of my decisions for me.

___ I do not want [name of proposed guardian or conservator] making any decisions for me.

___ I do not want [name of proposed guardian or conservator] to make the following decisions for me:

_____

_____

You must sign and date your form. Also, you need to make sure that your objection form is received by the probate department of the court.

You also have the right to appear in court to convince a judge that you do not need a guardian, and to have an attorney's assistance in the process.

Once someone files a petition for guardianship, the court will send an independent investigator, called a court visitor, to meet with you to verify whether or not you may need a guardian.

The court visitor checks your home and talks with you. He or she will also talk with doctors, caregivers, and others who might have relevant information about whether you need a guardian. The court visitor also talks with the proposed guardian (or conservator) and others who might have relevant information about the qualifications and suitability of the proposed guardian (or conservator).

You should provide the court visitor with the names and contact information of people you believe have relevant information about your current decision-making ability and/or about the suitability of the proposed guardian (or conservator).

The court visitor writes a report to the court to tell the judge whether you need a guardian, and whether the person who wants to become your guardian is qualified, and the best person, to do so. ORS 125.150.

A judge decides whether to appoint a guardian after reviewing all information provided, including the report by the court visitor. If anyone objects to the guardianship, a hearing is held and the judge considers all of the evidence from this hearing. Judges can appoint a guardian for you **only** if you meet the legal definition of incapacitated. ***See p. 45.*** If you do not meet the definition, the case should be dismissed. ORS 125.305(a).

What are my rights if I have a guardian?

Even if you have a guardian, you keep all legal and civil rights provided by law except those that have been specifically granted to your guardian by the court. You keep the right to contact and hire an attorney and to have access to your own records. Also, you maintain your right to vote. At any time, you may petition the court to have the guardianship ended or to have your guardian changed.

You can be admitted to a mental health facility by your guardian if your guardian has been given the authority to make placement decisions. However, this can only happen if the doctor or other professional from the facility agrees the admission is appropriate. You or anyone else may contact the court to object to the placement as not being in your best interest.

Disability Rights Oregon (DRO) is notified any time guardianship papers are filed for a person who lives in a mental health treatment facility, or any time a guardian proposes to put a protected person into a mental health treatment facility. DRO can provide advice to you about your rights as the (proposed) protected person in a guardianship proceeding.

A guardian can be removed or replaced by the court if the court finds that doing so is best for you. A judge may end a guardianship if he or she decides that you have regained capacity to make your own decisions.

What powers and duties does my guardian have?

Your guardian has only those powers given by the court. Generally, guardians make decisions in three primary areas:

- Residential placement
- Health care
- General care and comfort

Your guardian should get as much input as possible from you prior to making decisions on your behalf. This includes finding out your opinions, desires and personal values.

A guardian **may not:**

- Authorize sterilization
- Use your money to pay for room and board provided by the guardian or the guardian's close relatives unless approved by the court
- Put you in a mental health treatment facility, nursing home, or residential facility unless the guardian gives prior written notice to the court, as well as to you and other interested parties, and gives you the opportunity to object and have a hearing

Can I get a different guardian or conservator?

Yes. However, you must get approval of the court, which will require that you follow the court procedures, including showing that the change is in your best interest. Oregon law gives preference to a family member to act as guardian.

Your choice of a replacement guardian or conservator must meet the court criteria and a new petition for the replacement guardian or conservator must be filed with the court.

Can I terminate my guardianship?

Yes, under specific circumstances. Your guardianship has been ordered by the court and lasts until your death, or until the guardianship is terminated by a court. To terminate your guardianship by court proceeding, send a letter to the probate court in the county that your guardianship proceeding took place. In the letter, state the following:

- You want your guardianship terminated because you are able to make decisions for yourself and therefore are not incapacitated.
- You have a medical professional who supports that you no longer need a guardian and who has written a letter to that effect. It is preferable if this letter is from a psychiatrist who can state that you have the capacity to make decisions about all matters given to your guardian by the court. (Enclose the letter.)
- You would like the court visitor to investigate and make a report to the court.
- You would like to have a hearing on the matter. (If your guardian agrees with you, enclose a statement of agreement from your guardian.)
- You would like to request that the court appoint an attorney on the matter to represent you.

Then, the court visitor should interview you, your guardian, and any other relevant people. In the interview, present information that supports your belief that you do not need a guardian. Give the court visitor contact information for people you feel he or she should talk with regarding your capacity to make decisions. Be sure to include your doctor's contact information. The court visitor then files a report with the judge presiding over your guardianship proceedings.

In that report, the court visitor will state **either** that:

- The evidence supports that your guardianship should be terminated because you are no longer incapacitated; or
- The evidence supports that your guardianship should continue because you remain incapacitated.

The court visitor's opinion is not definitive of whether or not the judge will find in your favor. However, his or her opinion will be considered by the judge and at a hearing. If your guardian agrees that the guardianship should be terminated, then a hearing may not be necessary.

If, however, your guardian disagrees, then a hearing should be held where you have a right to be present and to have an attorney. You have the right to contact an attorney and seek legal advice.

You may contact a private attorney who practices guardianship law. The Oregon State Bar's Lawyer Referral Service (1-800-452-7636) can provide you with the names and contact information for three attorneys who practice guardianship law and may be able to represent you.

You may also contact Disability Rights Oregon for information regarding guardianship termination, as well as other guardianship issues, or to request a copy of our *Guardianship Handbook: Protective Proceedings for Adults*.

Chapter

12

Chapter 12: Patient Rights in the State Hospital System

Many rights for patients in the state hospital system are guaranteed by the United States Constitution and federal laws and regulations, as well as by the Oregon Constitution, Oregon Revised Statutes (ORS), and Oregon Administrative Rules (OAR). A summary of basic patient rights must be posted in all the state hospital wards. As a committed person, you have many of the rights you had outside of the hospital, such as the right to vote, to buy consumer items, and to marry. These rights can be limited in some cases, but never as punishment.

What are my basic rights as a patient?

As a patient in the state hospital, you have the right to:

- Communicate freely
- Have reasonable access to a telephone
- Send and receive mail
- Have a written individualized treatment plan, kept up-to-date with your progress
- Participate in developing your own treatment plan at a level appropriate to your capabilities
- Wear personal clothing
- Practice religious freedom
- Keep reasonable amounts of personal belongings on the ward in a private storage area
- Be given a reasonable supply of writing materials and stamps
- Not be forced to work unless necessary for treatment

- Receive wages for work done in the hospital, other than personal housekeeping
- Develop advance directives for care in the case of future serious medical or psychiatric illness
- Daily access to fresh air and the outdoors
- File grievances regarding infringement of rights
- Have grievances considered in a fair, timely, and impartial grievance procedure
- Petition for a writ of habeas corpus, which is a way to ask a court to decide whether detention in the hospital is legal
- Representation by an attorney whenever substantial rights may be affected
- Request documents in alternate formats, like Braille or sign services
- Exercise these rights without any form of reprisal or punishment

ORS 426.385; Oregon State Hospital Policy Number 6.003 (February 5, 2001).

A simple and clear statement of these rights must be prominently posted in each room frequented by patients in all facilities.

You must receive a copy of the statement upon admission. Upon request, copies must be sent to your attorney, guardian, relative or friend. ORS 426.395.

What are my treatment rights?

You are also entitled to an up-to-date written treatment plan consistent with professional standards and provided in a safe and humane environment. At a minimum, you have the right to protection from psychiatric malpractice and must receive treatment that facilitates recovery or improves your mental condition. *Youngberg v. Romeo*, 457 U.S. 307 (1982).

Are AIDS/HIV tests required?

The AIDS/HIV test is an antibody test to see if you have been exposed to the AIDS virus. If the AIDS/HIV test is positive, it may mean you are infected and can infect other people. You have the right to be fully informed about the risks and benefits before deciding whether or not to take the test. Your informed consent is required before AIDS/HIV testing. If doctors in the hospital think that you do not have the capacity to decide whether to have an AIDS/HIV test, they can use the same procedure that is used for involuntary medication/treatment in order to test you.

What is seclusion and restraint?

The term **restraint** refers to a situation in which one person is kept from physically moving by another person, or by some machine or device that restricts movement.

Seclusion, or forcing a person to remain in a room by physically preventing them from leaving, is considered a type of restraint.

You have the right to be free from restraints of any form that are not medically necessary, or are used as a means of coercion, discipline, convenience, or retaliation by hospital staff.

Medication must not be used as a restraint, and must be prescribed and administered only for treatment according to acceptable medical, nursing and pharmaceutical practices.

Restraint should only be used:

- In an emergency
- When other solutions are deemed ineffective to manage your behavior

42 USC § 10841(F); 42 CFR § 482.13 (to Medicaid wards only); OAR 309-112-0010 through OAR 309-112-0017; Oregon State Hospital Policy 6.003.

What are the rules regarding the use of seclusion and/or restraint?

When seclusion and/or restraint are used, the staff must follow certain rules. **You should be asked, if feasible, for your preferences or aversions to various forms of restraint.** While primary consideration must be given to the need to protect you and others in the hospital, your wishes for or against particular forms of intervention should be respected by the person authorizing the use of restraint, particularly if you have post-traumatic stress disorder (PTSD). While in seclusion and/or restraint, you must be observed continually, and must be checked every 15 minutes by staff. After the first hour, staff must evaluate the need for continued seclusion and/or restraint. Further evaluations must occur every four hours at minimum for adults.

If you remain calm and cooperative during two successive observations, you should either be released or a nurse should initiate a face-to-face interaction with you at least hourly to evaluate the need for continued seclusion and/or restraint. If you are not released after the face-to-face interaction, the nurse must document the reasons for continuing seclusion and/or restraint. You should only be restrained standing, sitting, or lying on your back except in an emergency. **No one should ever be restrained laying face down (otherwise known as the "prone" position) because of the risk of suffocation.**

You must be offered food according to regular meal and snack schedules, as well as the opportunity to use the toilet at regular intervals. While in physical restraints, you must be allowed exercise a minimum of 10 minutes for every two hours in physical restraints, except while asleep.

Your environment while in seclusion and/or restraint must be made as comfortable as reasonably possible. Oregon State Hospital Policy 6.003; OAR 309-112-0000 through 309-112-0035.

All restraint orders expire within 12 hours. After 12 hours, you must be re-evaluated and a new restraint order made. After 24 hours of continuous restraint, the hospital staff must get a second opinion in order to continue the restraint. OAR 309-112-0016(5).

Can seclusion and/or restraint be part of a treatment plan?

Seclusion and/or restraint may be used as part of a treatment plan if you give your consent. If you do not agree, seclusion and/or restraint may be used only if you are found incapable to make decisions and the involuntary treatment procedure is used. ***See Chapter 13: Involuntary Treatment in the State Hospital System, pp. 63-68.*** Seclusion and/or restraint must be specifically for treatment purposes, not for punishment or the convenience of staff. OAR 309-112-0017.

What is the level system at the state hospital?

Most wards have a level system. This system lays out the freedoms and responsibilities you can earn by following your treatment program. Levels are described by letters or numbers. Your treatment team decides your level. Your legal rights are not affected by level decisions. **The level system must be used for treatment purposes only, never for discipline or punishment.** If you are unable to change levels, use grievance procedures to question why you are not advancing.

Is going outside a right?

Yes. You have the right to go outside and get fresh air at least once every day and get regular outdoor exercise unless weather or treatment needs make it impossible. ORS 430.210.

What are the rules about money and valuables?

Generally, you may spend your own money as you like, but the hospital can limit the amount of money kept on the ward. The hospital can also limit what you do with your own money if there is a legitimate treatment reason to do so. In such cases, the hospital places the money in an account under your name. Additionally, you can keep a certain amount of personal property in your room. The amount of personal property can be limited by the hospital for health, safety and space reasons.

The hospital is responsible for providing you with a locked storage space off the ward. If your property is being held by the hospital for safekeeping, you have the right to know why it is being held and to have it returned upon your release from the hospital. Property can be kept from you only for safety, space, or treatment reasons. All property has to be listed separately on a written property list. If your property is lost or stolen and it is the hospital's fault, the hospital must repay you. OAR 309-108-0000 through OAR 309-108-0020.

What is a Social Security payee?

If a doctor tells the Social Security Administration that you cannot handle your own money, Social Security appoints an individual or agency to keep your Social Security Disability Insurance (SSDI) money and spend it on your behalf. This individual or agency is called a **payee.** See our *FAQ: Rep Payees.*

You have the right to protest the appointment of a payee, to request a different payee, or to ask permission to manage your own money. Contact Social Security at 1-800-772-1213 with any complaints about a payee.

If the state hospital is appointed as your payee, it usually gives some or all of the money to the state to pay for the cost of your care. If you have special financial needs, like money for discharge, some of the money paid for cost of care can be returned to you. A friend or relative may also be appointed as payee and **cannot** be required to give any of your Social Security money to the state to pay for cost of care. The payee may save this money to purchase items that will improve conditions for you while in the hospital or to help you in the community upon release from the hospital.

Are my Social Security benefits suspended while I'm at the state hospital?

Your Supplemental Security Income (SSI) benefits are totally suspended while you are at the state hospital. Suspension of your Social Security Disability Insurance (SSDI) benefits while you are at the state hospital depends upon the reason you are at the hospital. If you are a patient under PSRB jurisdiction, you will not receive any kind of Social Security benefits while you are at the hospital. If you have been civilly committed, you will continue to receive SSDI and Social Security retirement benefits. If you are an aid & assist patient, you will continue to receive SSDI benefits.

What is hospital cost of care?

Hospital **cost of care** is the cost of your hospitalization. As a current or former patient at the state hospital, you can be billed for the cost of your hospital care – even if the hospitalization was involuntary.

The state looks at your income, property, and resources and determines whether you are able to pay for your own hospital care, and if so, how much. The state is only supposed to charge you what you can afford to pay. If the state decides you should be able to pay for some or all of your hospital care, the state sends out an **ability to pay order.** You can request a hearing to challenge the order once you receive it. This hearing is a chance for you to explain why you do not have the money or other resources to pay for the cost of your hospitalization.

If the hearing officer decides you have to pay hospitalization costs, that decision can be appealed to court. Patients charged for cost of care should explain any extraordinary circumstances they may be facing and ask that the state waive some or all of those costs.

You cannot be forced to sign over money to pay for your care and the hospital cannot punish or treat you differently because you do not or cannot pay your hospital bill.

ORS 179.610 through ORS 179.770; OAR 309-12-0025; OAR 309-12-0030 through OAR 309-12-0035; OAR 309-12-0100 through OAR 309-12-0115.

Are searches allowed?

You may be searched when staff has reasonable cause to believe you have a prohibited item. Only a nurse or doctor can conduct an examination of your body cavities, and then only if the superintendent gives permission. OAR 309-108-0010(7). Each hospital or facility has policies or rules about how and when searches can be conducted.

Who can be transferred to another hospital?

If you have been civilly committed, you can be transferred to another hospital or facility under certain conditions. The Addictions & Mental Health (AMH) Division can transfer you if the transfer is for good cause and is in your best interest. ORS 426.060(2)(b). If you object to the transfer, the transfer must be suspended until a grievance procedure has been completed, unless immediate transfer is necessary for your health or safety. The superintendent must have written procedures for resolving grievances about transfers. OAR 309-33-0430.

No one should ever be transferred to another facility as punishment.

What are the rules regarding ward transfers in the same facility?

Transfer to another ward in the same facility is very different. You can be transferred to different wards for treatment-related reasons or for security reasons without the right to a hearing. Staff must inform you of the transfer before the transfer takes place unless it is an emergency.

If you are transferred to a maximum-security ward, you must be told by staff what behavior will make it possible for you to return to a less restrictive ward. If you do not want to be transferred to another ward you should file a grievance. However, filing a grievance will not necessarily stop your transfer to a different ward.

OSH Administrative Memorandum 1.016 and Oregon Forensic Psychiatric Center Policy and Procedure 3.003.

What can I do if I believe my rights are being violated at the state hospital?

First, try to resolve the problem informally. Start by talking to your case monitor. Try talking with the staff person involved, or with another staff person. Talk to your treatment team to try to resolve the situation. If that does not help, file a **grievance.**

What is a grievance, and how do I file one?

A grievance is a written statement explaining a complaint. The state hospital has a four-level grievance procedure:

- Level One: Treatment Team
- Level Two: Grievance Committee
- Level Three: Oregon State Hospital superintendent
- Level Four: Addictions & Mental Health (AMH) Division administrator

OAR 309-118-0000 through OAR 309-118-0045; OSH policy 7.006.

First, file a written grievance with your treatment team. The grievance has to be in writing and may be written on a form provided by staff or on any piece of paper and given to staff as a grievance.

Hospital staff is required to help you if you want to file a grievance or appeal a decision but are unable to write. Staff must give your grievance to the grievance coordinator. Then, your treatment team meets with you about your grievance and considers your complaint. The treatment team then gives you a written response to your grievance within 20 days of the date you originally made the written complaint.

If you are not satisfied with your treatment team's response to your complaint or with the solution proposed by your treatment team, you may take your grievance to the next level, Level Two, by appealing your treatment team's decision to the hospital Grievance Committee.

Your appeal has to be in writing, state your disagreement with your treatment team's decision, and include a hearing request to the Grievance Committee. The appeal should be filed within 14 days of the treatment team's decision.

The Grievance Committee sets a date for a hearing on your grievance within 21 days of when your Level Two grievance was sent in and informs you in writing what date and what time the hearing will be held, at least three days before the hearing.

At that hearing, you may be represented by an advocate, an attorney or anyone else. You have to get your own advocate or attorney – neither is automatically provided. You can ask witnesses to testify or answer questions, and are allowed to question witnesses called by the Grievance Committee. After the hearing, the Grievance Committee makes its decision, puts it in writing, and gives it to you within 21 days.

If you disagree with the Grievance Committee's decision in the Level Two grievance, you may appeal to the hospital superintendent (Level Three). Your appeal request must be in writing and state the reasons for requesting the review. The superintendent responds to your grievance in writing within 30 days.

If you are not satisfied with the superintendent's decision, you can appeal to the Addictions & Mental Health (AMH) Division administrator (Level Four). Your request for appeal must be in writing. The AMH administrator makes a decision on the complaint, puts it in writing, and gives it to you within 30 days of the date you requested the appeal.

The AMH administrator's decision is final, but you may have the right to ask a court to hear your complaint. Talk to an attorney to determine if your complaint is one that could be filed in court.

What is an emergency grievance?

If you have a grievance that needs to be resolved quickly because you will suffer irreparable harm to a substantial right if it is not resolved promptly, you can file an **emergency grievance.** An emergency grievance is filed like any other grievance – with a complaint in writing either on a grievance form or any piece of paper – **but you should clearly ask for it to be treated as an emergency.**

Your emergency grievance will be reviewed right away by the grievance coordinator, and then directly with the Grievance Committee. OAR 309-118-0000 through OAR 309-118-0050.

What are the protections from abuse and neglect?

You have the right to be protected from physical and mental abuse and neglect. This includes:

- Hitting
- Kicking
- Scratching
- Pinching
- Choking
- Pushing
- Ridicule
- Harassment
- Coercion
- Threats
- Cursing
- Sexual assault or exploitation
- Neglect in care
- Lack of food

If you believe you have been abused or neglected, you can report the abuse to any state hospital staff member in writing. Staff is required to help you write the abuse report if you are unable to do so. It can be written on any piece of paper – no form is required. The abuse report goes to the **Office of Investigation and Training (OIT).** OIT begins an investigation and determines whether you have been subjected to abuse or neglect.

Requesting an investigation of abuse and neglect does not stop you from bringing other claims against the hospital for personal injury or reporting the incident to the state police as a crime.

What is the timeline for abuse/neglect investigations?

Within two hours of the state hospital superintendent receiving an allegation of abuse and/or neglect, the information is reported to the Office of Investigations and Training (OIT).

Within 24 hours, OIT, in consultation with the superintendent, determines if the allegation meets the definition of abuse. If it does, an investigation is triggered.

Within 48 hours the superintendent notifies your guardian, other regulatory agencies and/or law enforcement, if appropriate. The superintendent also provides protective services to ensure your safety. This may require moving staff.

Within 30 days, OIT conducts an investigation of the allegation, which may include interviewing patients and staff and reviewing records, photographs or video. OIT completes a draft report and meets with the superintendent to review the report and discuss recommendations.

Within 45 days, OIT determines if the allegation of abuse and/or neglect is substantiated. OIT prepares a report that includes:

- A statement of allegation
- An outline of the investigation
- A summary of findings and conclusions
- Specific findings
- An action plan to prevent abuse
- Notification of licensing agencies

The OIT report is not automatically given to you – you have to request a copy of the OIT report. OAR 309-116-0000 through OAR 309-116-0090. Anyone concerned with the thoroughness, independence or quality of the investigation itself should contact Disability Rights Oregon (DRO) to monitor and/or review the investigation procedure.

How is an abuse report different from a grievance?

An **abuse report** is a written complaint of physical or mental abuse or neglect reviewed by the Office of Investigation and Training (OIT). Complaints about care, rules or policies, the lack of rules or policies, or any action taken by staff towards you or other patients at the hospital should be addressed by filing a grievance. Grievances are written complaints reviewed first by the hospital staff, followed by upper level hospital administrators and the Grievance Committee if the grievance is not resolved right away.

If you file a grievance, but the Grievance Committee decides it is really an allegation of abuse/neglect, the grievance will be treated as an abuse report and sent directly to OIT for them to review. If you feel you are being abused or neglected at the state hospital, you should file an abuse report. If your rights have been violated, you should file either a grievance or an abuse report, or both.

You do not have to be a patient at a state hospital to make a report of abuse or neglect. Anyone who believes a patient is being abused or neglected at a state hospital should make a report to OIT in writing or by phone. ***See p. 73, Resources.***

Who can sue the state hospital?

Only people with a legal claim can sue the hospital. You might be able to sue the hospital for violations of your civil rights if you were injured while in the state hospital, or for various other reasons. **You cannot be punished or retaliated against for suing the hospital.** Because the hospital is part of the state government, you generally must notify the state of a loss or injury with a **tort claim notice** within 180 days of the loss or injury in order to keep the right to file a lawsuit. Anyone who might have a claim against the hospital or any public agency should speak to an attorney as soon as possible. An attorney can tell whether the claim is valid and what time deadlines apply.

Are there other legal tools available?

Other ways to voice your concern about the state hospital include filing complaints with agencies that fund or certify the hospital, such as the Center for Medicaid and Medicare Services or the Joint Commission on the Accreditation of Health Care Organizations.

How can I get out of the state hospital?

As soon as you have been civilly committed to the hospital, state workers should start planning for your release. When the hospital determines you are no longer mentally ill or are no longer a danger (or that the danger can be managed in a less restrictive setting), the hospital is responsible for finding an appropriate place in the community for you to live. You may be allowed to go home to your family, or may be required to go to a group home or other community facility until your treatment needs change.

If you have been civilly committed and have not been released 90 days after your treatment team has found you "good to go" you are referred to the Extended Care Management Unit (ECMU), a team of social workers who assists you with finding a place to live. If no placement is found in another 90 days, your case is reviewed every month by a special team that reviews the barriers to your placement and tries to find a solution so you can be released.

Anyone frustrated with the progress of their discharge planning can file a grievance and ask Disability Rights Oregon (DRO) for help advocating for better discharge planning. If you have been committed to the hospital after a guilty except for insanity (GEI) verdict or plea, Tier One patients need PSRB approval and Tier Two patients need SHRP approval before being discharged. Hospital staff is required to help find an appropriate placement in anticipation of the PSRB's approval. In most cases, however, staff waits until the PSRB decision has been handed down before beginning discharge planning.

What is an administrative transfer?

In an administrative transfer, an inmate in state prison with a mental illness is transferred from a Department of Corrections (DOC) facility to the state hospital to be evaluated and stabilized by hospital staff. Anyone under DOC supervision can be transferred to the state hospital if not on parole, probation, or post-prison supervision status if you are, because of a mental disorder, one or more of the following:

- Dangerous to yourself or others
- Unable to provide for your own basic needs and not receiving care necessary for health or safety
- Chronically mentally ill
- Been committed and hospitalized twice in the last three years
- Exhibiting similar symptoms or behavior that preceded previous hospitalizations
- Likely to physically or mentally deteriorate unless treated

ORS 426.495 and ORS 426.060.

How long are inmates held at the hospital?

Inmates may be held at the hospital for evaluation and stabilization for up to 30 days. A state hospital superintendent who wants to keep an inmate for longer than 30 days must either have the inmate's consent, or, if the inmate does not consent, conduct a hearing to determine whether the inmate may be involuntarily committed. An inmate committed to the state hospital after a hearing can be forced to stay for an additional 180 days at the hospital. After 180 days, the hospital has to give the inmate another hearing. OAR 291-047-0110(1). **An inmate may never be held at the hospital for longer than his or her prison term.** OAR 291-047-0110(2).

An inmate can be discharged from the hospital and transferred back to the DOC if:

- Treatment is completed
- Continuing treatment is arranged within DOC by the hospital and the DOC's Counseling and Treatment Services Unit Administrator
- Requirements to continue treatment at the hospital are not met

OAR 291-047-0130.

Chapter

13

Chapter 13: Involuntary Treatment in the State Hospital System

(For more detailed information on involuntary treatment, contact Disability Rights Oregon or visit our website for a copy of our *Involuntary Medication Hearing Handbook*.)

Can I be involved in my own treatment decisions?

You have the right to make informed decisions about your own mental health treatment. All patients must receive information about treatment and medications suggested by doctors before agreeing to treatment. ORS 426.385.

You should always be informed, but hospitals can treat without consent for many routine things. If the hospital wants to treat you with a significant procedure (treatment that involves more risk than a routine procedure) they must either get your consent or prove they have the right to treat you without your consent. The hospital can also treat you without your consent in an emergency. OAR 309-114-0000 through OAR 309-114-0030.

What if my doctor believes I need psychotropic medication?

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
- Other treatment options

OAR 309-114-0010.

What happens if I agree to take the medication?

Usually, the hospital must get your informed consent before giving you a significant procedure, which is any treatment that could possibly cause you harm, like electroconvulsive therapy (ECT) or psychotropic medications. In order to try to get your informed consent for treatment, your doctor must talk to you about the proposed treatment. ***See p. 63, What if my doctor believes I need psychotropic medication?***

If you agree to the treatment, then the hospital can give you the medication you agreed to take. **If you change your mind later, you can ask to be safely taken off the medication.** OAR 309-114-0010.

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

The hospital can require you to have a significant procedure without your consent if they believe there is **good cause**. 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
- All other treatments (other than medication) aren't right for you

OAR 309-114-0020.

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

If your doctor thinks there is good cause to require you to accept treatment, the following will happen:

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 Medcial 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?

Tell the doctors what you thnk 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.

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 – whether you can reasonably weigh the risks and benefits of the medication and the risks and benefits of **not** taking any medication.

What happens in an emergency?

In the case of an emergency, the hospital can also treat you without your consent in order to:

- Preserve your life or physical health if there is not time to obtain informed consent according to law
- Avoid immediate physical harm to others

OAR 309-114-0015.

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.

If you agree to take the medication, remember that you can change your mind at any time, refuse to take the medication, and ask for a 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. 71, 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 from Disability Rights Oregon (DRO) at no cost. You do not need to do anything other than check the box on the form requesting an attorney as DRO will be automatically appointed to assist you. Or, you can choose to hire a private attorney, who you will pay for on your own. 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.

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. You also have the right to represent yourself at your hearing.

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.

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.

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. 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.

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. You will have an opportunity for another hearing if the hospital again believes there is good cause to require you to take medication. 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.

For more detailed information, see our *Involuntary Medication Hearing Handbook*.

Chapter

14

Chapter 14: Access to Medical Records & Legal Assistance

Medical records are confidential. Usually, medical records cannot be given to anyone outside the hospital without your written consent or that of your guardian. The law only allows the release of medical records without consent in limited circumstances.

For example, in a medical emergency, records may be released to other service providers for treatment purposes or to governmental agencies for financial re-imbursement. ORS 179.505. You can withdraw permission to share your records by telling medical staff and signing a statement.

Can I access my own medical records?

You have the right to see all your own medical records, except for parts a doctor believes might cause harm to you if you were to see them. If the doctor refuses to release your medical records, you can file a grievance, and pay to have a private doctor review your medical records and decide if showing the records to you would be harmful.

If the private doctor believes the records will not cause harm, that doctor may release the records to you. 42 USC §10841(1)(I)(ii); ORS 179.505(9).

What is a release of information?

If you have signed a **release of information,** a family member, friend or advocate may access your medical records. There may be restrictions on sharing this information with you if a doctor states it may be harmful to your health. ***See p. 30, Is my commitment confidential?***

Can others access my confidential information?

If you are admitted to a hospital or other facility, the facility has to make reasonable attempts to notify your next of kin or anyone else designated of your admission. You may request that this information not be shared.

Facilities respond to direct questions about where you are being held if you are unable to say whether or not you would like your information released, unless the doctor determines it is not in your best interest.

If you give your consent, the hospital may tell a family member or a designated person:

- Where you are being held
- Your diagnosis and prognosis
- Prescribed medications and any side effects
- Progress
- Where and when visits can take place
- Information about any upcoming civil commitment process

ORS 426.155.

By signing a release, you can request to have an outside observer or family member present at your treatment team meetings.

Do I have access to courts and attorneys while I'm hospitalized?

While hospitalized, you have the right to confidential communication with an attorney and may hire an attorney for any purpose.

In some cases, an attorney is appointed if you cannot afford one. For example, attorneys are appointed for Psychiatric Security Review Board (PSRB) matters if you are under PSRB jurisdiction and cannot afford to hire an attorney.

If the state is trying to re-commit you, an attorney is appointed. For issues involving a criminal case, you may be able to have an attorney appointed. For more information about the appointment of attorneys in criminal matters, call Oregon's Office of Public Defense Services at 503-378-3349.

Everyone has the right to use a law library or other legal research resources. Access can be withheld only for security or staffing reasons. **Staff must assist with local and long distance calls to an attorney.** A private telephone must be provided for all calls to an attorney.

Additionally, while hospitalized, you must be allowed to contact Disability Rights Oregon at any time for assistance.

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: _____

Resources

LEGAL HELP

American Civil Liberties Union (ACLU) of Oregon
Voice: 503-227-3186 or 541-345-6162 | Website: aclu-or.org

Disability Rights Oregon (DRO)
Voice: 503-243-2081 or 1-800-452-1694 | Fax: 503-243-1738
E-mail: welcome@droregon.org | Website: droregon.org

Fair Housing Council of Oregon (FHCO)
Voice: 503-223-8197 or 1-800-424-3247
E-mail: information@fhco.org | Website: fhco.org

Oregon Law Center (OLC) / Legal Aid Services of Oregon (LASO)
OLC website: oregonlawcenter.org | LASO website: oregonlawhelp.org

Oregon State Bar – Lawyer Referral Service
Voice: 503-684-3763 or 1-800-452-7636 | Website: osbar.org

GOVERNMENT AGENCIES

Oregon Health Authority, Addictions & Mental Health (AMH) Services
Voice: 503-945-5763 | TTY: 1-800-375-2863
E-mail: amh.web@state.or.us | Website: oregon.gov/OHA/amh

Oregon Department of Human Services, Adult Protective Services (APS)
Contact the DHS office in your area to report abuse or neglect.
Voice: 1-800-232-3020 | Website: oregon.gov/DHS/spwpd/offices.shtml

Oregon Department of Human Services, Office of Investigation and Training (OIT)
Voice: 503-945-9495 or 1-866-406-4287

Oregon Department of Human Services, Seniors & People with Disabilities (SPD)
Voice: 503-945-5921 or 1-800-282-8096 | TTY: 1-800-282-8096
Website: oregon.gov/DHS/spwpd

Oregon's Long Term Care Ombudsman (LTCO)
Voice: 503-378-6533 or 1-800-522-2602 | TTY: 503-378-5847 | Fax: 503-373-0852
E-mail: LTCO.contact@LTCO.state.or.us | Website: oregon.gov/LTCO

Psychiatric Security Review Board (PSRB)
Voice: 503-229-5596 | Fax: 503-229-5085

Social Security Administration (SSA)
Voice: 1-800-772-1213 | TTY: 1-800-325-0778 | Website: socialsecurity.gov/locator

US Department of Health & Human Services, Office for Civil Rights, Region X
Voice: 206-615-2290 or 1-800-362-1710 | TDD: 206-615-2296 | Fax: 206-615-2297

US Department of Justice, ADA Home Page & Information Line
Voice: 1-800-514-0301 | TTY: 1-800-514-0383 | Website: ada.gov

US Department of Veterans Affairs (VA)
Voice: 1-800-827-1000 | TDD: 1-800-829-4833 | Website: va.gov

COMMUNITY MENTAL HEALTH PROGRAMS (CMHPS) BY COUNTY

BAKER Mountain Valley Mental Health Programs | Voice: 541-523-3646

BENTON Benton County Mental Health Program | Voice: 541-766-6835

CLACKAMAS Clackamas County Mental Health | Voice: 503-742-5300

CLATSOP Clatsop County Behavioral Healthcare | Voice: 503-325-8500

COLUMBIA Columbia Community Mental Health, Inc. | Voice: 503-397-5211

COOS Coos County Mental Health Program | Voice: 541-756-2020

CROOK Crook County Mental Health Program | Voice: 541-447-7441

CURRY Curry County Mental Health Program | Voice: 541-247-4082

DESCHUTES Deschutes County Mental Health Services | Voice: 541-322-7500

DOUGLAS Douglas County Health & Social Services | Voice: 541-440-3616

GILLIAM Mid-Columbia Center for Living | Voice: 541-296-5452 or 541-386-2620

GRANT Grant County Center for Human Development | Voice: 541-575-1466

HARNEY Harney Counseling & Guidance Services | Voice: 541-573-8376

HOOD RIVER Mid-Columbia Center for Living | Voice: 541-296-5452 or 541-386-2620

JACKSON Jackson County Health & Human Services | Voice: 541-776-7355

JEFFERSON BestCare Treatment Services | Voice: 541-475-6575

JOSEPHINE Josephine County Mental Health Program | Voice: 541-474-5365

KLAMATH Klamath Mental Health Center | Voice: 541-882-7291 or 1-800-667-0839

LAKE Lake County Mental Health Center | Voice: 541-947-6021

LANE Lane County Mental Health Office | Voice: 541-682-3608 or 541-682-4085

LINCOLN Lincoln County Mental Health Program | Voice: 541-265-4179

LINN Linn County Health Services | Voice: 541-967-3866

MALHEUR Lifeways Behavioral Health | Voice: 541-889-9167

MARION Marion County Adult Behavioral Health | Voice: 503-588-5351

MORROW Morrow/Wheeler County Mental Health Program | Voice: 541-481-2911

MULTNOMAH Multnomah County Behavioral Health Division | Voice: 503-988-5464

POLK Polk County Human Services | Voice: 503-623-9289

SHERMAN Mid-Columbia Center for Living | Voice: 541-296-5452 or 541-386-2620

TILLAMOOK Tillamook Family Counseling Center, Inc. | Voice: 503-842-8201

UMATILLA Umatilla County Mental Health Program | Voice: 541-278-6334

UNION The Center for Human Development for Union County | Voice: 541-962-8800

WALLOWA Wallowa Valley Mental Health Center | Voice: 541-426-4524

WASCO Mid-Columbia Center for Living | Voice: 541-296-5452 or 541-386-2620

WASHINGTON Washington County Health & Human Services | Voice: 503-846-8881

WHEELER Morrow/Wheeler County Mental Health Program | Voice: 541-676-9161

YAMHILL Yamhill County Mental Health Program | Voice: 503-434-7523

ADVOCACY/CONSUMER ORGANIZATIONS

Bazelon Center for Mental Health Law
Voice: 202-467-5730 | TDD: 202-467-4232 | Fax: 202-223-0409 | Website: bazelon.org

Brain Injury Alliance of Oregon (BIAOR)
Voice: 503-740-3155 or 1-800-544-5243 | Website: biaoregon.org

Brain Injury Support Community (BISC)
Website: braininjuryhelp.org

Disability Rights International (DRI)
Voice: 202-296-0800 | Website: disabilityrightsintl.org

Empowerment Initiatives
Voice: 503-249-1413 | Website: chooseempowerment.com

FolkTime
NE Portland: 503-238-6428 | Oregon City: 503-722-5237 | Sandy: 503-757-8224
Email: admin@folktime.org | Website: folktime.org

Job Accommodation Network (JAN)
Voice: 1-800-526-7234 | TTY: 1-877-781-9403 | Website: askjan.org

Lines for Life
HelpLine: 800-923-HELP (4957)
LifeLine: 800-273-TALK (8255) or 800-SUICIDE
Military HelpLine: 888-HLP-4-VET (888-457-4838) | Online chat: MilitaryHelpline.org
YouthLine: 877 YOUTH 911 (877-968-8491) | Online chat: OregonYouthline.org | Text teen2teen to 66746
Linea de Ayuda: 877-515-7848
Website: linesforlife.org

Mental Health America of Oregon
Voice: 503-922-2377 or 888-820-0138 | TTY: use 711 relay | Website: mhaoforegon.com

Mental Health Association of Portland
Website: mentalhealthportland.org

MindFreedom International
Voice: 541-345-9106 or 1-877-623-7743 | Website: mindfreedom.org

National Alliance on Mental Illness (NAMI) Oregon
Voice: 503-230-8009 or 1-800-343-6264 | Website: nami.org/oregon

Pet Partners
Voice: 425-679-5500 | Website: petpartners.org

Portland Hearing Voices
Website: portlandhearingvoices.net

Rethinking Psychiatry
Website: rethinkingpsychiatry.org

Glossary

Ability to pay order A bill from the state for the amount of a patient's cost of care the state has determined the patient can afford.

Abuse Hitting, kicking, scratching, pinching, choking, pushing, ridicule, harassment, coercion, threats, cursing, sexual assault or exploitation, neglect in care, lack of food, or similar acts or failures to act.

Abuse report A written or oral complaint of physical abuse, mental abuse, or neglect that is reviewed by an independent agency (the Office of Investigation and Training) that is required to investigate allegations of abuse.

Administrative transfer When an inmate in state prison who is mentally ill is transferred from a Department of Corrections (DOC) facility to the Oregon State Hospital (OSH), so that the hospital staff can evaluate and stabilize him or her.

Aid and assist A person with mental illness who is accused of a crime cannot be tried for it unless he or she understands the criminal charges and consequences of the trial, can help the defense attorney, and can participate in his or her own defense. If a person with mental illness cannot understand the charges and help with his or her defense, that person is designated as "unfit to proceed" or "unable to aid & assist" in the case.

Appeal A legal process used to challenge a judge's decision.

Capacity Ability to make treatment decisions for oneself.

Civil commitment A legal process in which a judge decides whether an individual who is allegedly mentally ill should be required to go to a psychiatric hospital or accept other mental health treatment for up to 180 days.

Community release plan Conditional release from the state hospital in which a person remains under PSRB supervision while in the community.

Conditional release A person is released into the custody of a friend or relative, with certain conditions he or she must follow. The conditions stay in effect for a period of time decided by the judge, but for no longer than 180 days.

Conservator An adult appointed by the court to make important decisions for another adult who is considered incapacitated about his or her finances.

Cost of care Any current or former patient at a state hospital can be billed for the cost of his or her hospital care, even if the hospitalization was involuntarily. The state looks at income, property and resources to determine whether, and how much, a person is able to pay for his or her own hospitalization. The state is only supposed to charge a person an amount that he or she can afford.

Court visitor An independent investigator sent by the court in a guardianship proceeding who meets with the proposed protected person, the proposed guardian and others to verify whether or not the proposed protected person needs a guardian. The court visitor then writes a report to the court to tell the judge whether the proposed protected person needs a guardian, and whether the person who wants to become the proposed protected person's guardian is qualified, and the best person, to do so.

Declaration for Mental Health Treatment A legal document that lets a person make choices about the mental health treatment he or she wants to receive in case he or she becomes incapacitated.

Discharge planning Planning for the release of a patient from a mental health facility back into the community.

Diversion program (aka 14-day diversion program) A person on a pre-commitment hold may be certified for a 14-day period of intensive treatment and is commonly is called a diversion.

Electroconvulsive therapy (ECT) Also known as electroshock therapy. A procedure that uses electric currents on the brain to trigger a brief seizure that changes brain chemistry in order to alleviate symptoms of certain mental illnesses unresponsive to drugs and/or psychotherapy.

Evaluation Also known as an assessment. An examination used by many types of mental health professionals, including psychiatrists, psychologists and therapists, to figure out a person's mental health.

Extended Care Management Unit (ECMU) The team of social workers that assists a civilly committed person who has not been released 90 days after his or her treatment team has found him or her "good to go" in finding a place to live in the community.

Financially incapable Meaning a condition makes a person unable to manage his or her financial resources effectively.

Grievance A written statement explaining a person's complaint.

Guardian An adult appointed by the court to make important decisions for another adult who is considered incapacitated about his or her care and well-being.

Guilty except for insanity (GEI) A person charged with a crime who has or had a mental illness and who at the time the crime was committed, lacked the substantial capacity either to appreciate the criminality of the conduct or to conform his or her conduct to the requirements of the law, may be found guilty except for insanity (GEI). Such persons are placed under the jurisdiction of the PSRB or the SHRP for a period of time equal to the maximum sentence allowable had he or she been found guilty.

Incapacitated To be considered incapacitated according to the law, a person cannot make decisions well enough to get health care, food, shelter, and other care that is necessary to avoid serious physical injury or illness and, therefore, needs continuing care and supervision.

Insane Meaning a person lacks the substantial capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of the law.

Level system A system in the state hospital that lays out the freedoms and responsibilities a patient may earn by following his or her treatment plan. Levels are described by letters or numbers. The treatment team decides a patient's level.

Medication educator A trained person who is not a member of a patient's treatment team who provides information and answers questions in a neutral manner about treatment options.

Mental health examiner Doctors or other persons certified by the state to make examinations at commitment proceedings.

Mental health parity Prohibits insurers from discriminating between coverage for mental illness and substance abuse and other health conditions, requiring insurers to provide the same level of benefits and coverage for mental illness and substance abuse as for other health conditions.

Outpatient commitment Treatment outside of a hospital setting.

Payee An individual or agency appointed by Social Security to keep a person's money and spend it on his or her behalf after a doctor has determined the person cannot handle his or her own money.

Pre-commitment hold Also referred to as a pre-commitment detention. When a person is held against his or her will in a treatment facility while waiting for a court hearing to determine if he or she will be committed.

Protected person A person with a guardian, a conservator or both.

Protective proceeding The legal process by which a guardianship is established.

Re-commitment If a person has been required to stay in a hospital or other facility for 180 days by a court order of commitment and the state believes he or she is not ready to be released, the state may try to re-commit him or her.

Release of information A legal document that when signed by a person permits his or her family, friends or advocates access to his or her entire medical record.

Representative An adult appointed by a person in his or her Declaration, to make important treatment decisions for the person if he or she is no longer capable of doing so. May be a friend, a relative or another trusted person.

Restraint A situation in which one person is kept from physically moving by another person, or by some machine or device that restricts movement.

Seclusion Preventing a person from leaving a room.

Sexually dangerous A sexually dangerous person, according to the law, means a person who because of repeated or compulsive acts of misconduct in sexual matters, or because of a mental disease or defect, is deemed likely to continue to perform such acts and be a danger to other persons.

Stay An order that tells the hospital to stop giving you medication until the appeal or reconsideration/rehearing is over.

Tardive dyskinesia A risk of some anti-psychotic drugs. Can cause involuntary movements of the mouth, tongue, limbs or body and can be permanent.

Tort claim notice Notification by a person with a loss or injury involving the state, county or local government to the particular agency or office within 180 days of the loss or injury.

Trial visit Release of a person into the community on a trial basis, with certain conditions, which often include a requirement to take certain medications or to attend specific therapy sessions.

Abbreviations / Acronyms

ADA	Americans with Disabilities Act
ALF	Assisted Living Facility
ALJ	Administrative Law Judge
AMH	Addictions & Mental Health Division
AMIP	Allegedly Mentally Ill Person
APS	Adult Protective Services
BPPPS	Board of Parole and Post-Prison Supervision
CMHP	Community Mental Health Program
DBT	Dialectical Behavior Therapy
DHS	Department of Human Services
DOC	Department of Corrections
DRO	Disability Rights Oregon
ECMU	Extended Care Management Unit
ECT	Electroconvulsive Therapy
FHA	Fair Housing Act
GEI	Guilty Except for Insanity
LTCO	Long Term Care Ombudsman
MMPI	Minnesota Multiphasic Personality Inventory
OHA	Oregon Health Authority
OHP	Oregon Health Plan
OIT	Office of Investigation and Training
OSH	Oregon State Hospital
PSRB	Psychiatric Security Review Board
RCF	Residential Care Facility
RTF	Residential Treatment Facility
SHRP	State Hospital Review Panel
SPD	Seniors & People with Disabilities Division
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income

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