RULES
OF
TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION

OFFICE OF THE COMMISSIONER

CHAPTER 0940—1—2
PROCEDURES FOR PRESCRIPTION AND ADMINISTRATION OF PSYCHOTROPIC MEDICATIONS AT MENTAL HEALTH INSTITUTES

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0940—1—2—.01 PURPOSE. The purpose of these rules is to regulate the procedures to be followed at mental health institutes in the prescription or administration of psychotropic medication in conformity with Chapter 0940—1—1.

Authority: *T.C.A. §§33—1—203, 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985, see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.02 PROCEDURES RELATING TO INFORMED CONSENT UNDER RULE 0940—1—1—.03.

(1) A patient's consent for a class of medication may be obtained only by a staff member who has satisfactorily completed the DMHMR course established under rule 0940—1—1—.09 (4) on obtaining informed consent for the administration of psychotropic medication. A patient's consent may be obtained by such a staff member only after:

(a) a clinical professional has determined that the patient does not lack capacity, and

(b) a clinical professional who is qualified to obtain consent has discussed the following with the patient: the nature, type, dosage, and route of the medication prescribed and the anticipated benefits; the risks, consequences and side effects of the medication; the advantages and risks of alternative treatments; and the prognosis if the medication is not given.

(c) a staff member who is qualified to obtain consent has provided the patient with a consent form and medication fact sheet, discussed the content of the form and sheet, offered to answer questions, and advised the patient that the patient may revoke consent at any time.

(2) Any member of the hospital staff may encourage a patient to consent to take medication. A consent is not voluntary if it is given in response to force or the threat of force, discharge, involuntary commitment, transfer to a more restrictive environment, or loss of privileges. Providing information about the benefits of taking medication and adverse consequences of not taking medication is permitted.

(3) Consent forms shall be kept in the patient's chart. The medication information fact sheet shall be accessible to the patient upon request.

(Rule 0940-1-2-.02, continued)

(4) The medication information fact sheet shall include:

(a) names of the medication (trade or generic),

(b) nature of the medication (e.g. major tranquilizer),

(c) dosages, ranges and usual routes of administration,

(d) use and usual effects,

(e) significant risks, consequences and side effects,

(f) measures which might counter side effects, and

(g) any other considerations helpful in securing informed consent and promoting optimal effect of the medication.

(5) Consent forms shall include notice of:

(a) a voluntary patient's right to refuse psychotropic medication except in emergency,

(b) an involuntary patient's rights to refuse and to seek review under these rules,

(c) a patient's right of access to the Patient Rights Advisor and to treatment team members to assist if the patient has questions about or wishes to refuse medication,

(d) the definition of emergency and the duration of medication allowed in emergency situations,

(e) the name, location, and purpose of a Patient Rights Advisor, and

(f) the right of revocation and procedures for revocation.

(6) The consent form shall state the class of medication prescribed and shall contain an acknowledgment that the person who obtained the consent has fully discussed with the patient the contents of the consent form and medication information fact sheet and offered to answer questions and advised the patient that the patient may revoke consent at any time. Such discussion shall include nature, type, dosage, and route of the medication prescribed and the anticipated benefits; the risks, consequences and side effect of the medication; the advantages and risks of alternative treatments; the prognosis if the medication is not given. The form shall include the name of each person who performed the steps required by subsection (1)(a) — (c).

(7) The consent form shall be signed and dated by the person consenting and the person who obtained the consent. If a patient or guardian gives oral consent to medication but refuses or is unable to sign consent form, oral consent shall be noted on the consent form and witnessed by a second staff member.

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985 see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.03 PROCEDURES FOR DOCUMENTATION OF REVOCATION OF CONSENT UNDER RULE 0940—1—1—.04. If a patient revokes a consent to medication, the revocation shall be documented immediately on the consent form by a qualified staff member and shall be recorded on the daily medication log, and a physician's order shall be written for discontinuance of the revoked medication.

(Rule 0940-1-2-.03, continued)

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985 see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.04 PROCEDURES FOR EMERGENCY ADMINISTRATION OF MEDICATION UNDER RULE 0940—1—1—.05.

(1) When a physician determines that emergency medication may be administered under rule 0940—1—1—.05, the physician shall document:

(a) what less restrictive measures were considered;

(b) the reasons for ordering the medication, documenting the existence of at least one of the three criteria below:

1. an immediate threat of serious physical harm to the patient or to others caused by the violent behavior of the patient,

2. an immediate threat to the patient of deteriorating physical well-being with risk to life or long term health caused by the effects of mental illness, or

3. actual violent behavior by the patient causing substantial property damage; and

(c) the patient's behavior, distinguishing between what the physician personally observed and that observed by other staff.

(2) The pertinent documentation and authorization shall be recorded on the Emergency Medication Form.

(3) By the end of the next regular working day the physician shall provide a copy of the Emergency Medication Form to:

(a) the patient's clinical chart,

(b) the Medical Director, and

(c) the Patient Rights Advisor.

(4) Within twenty-four hours of the issuance of the order or, if such period expires on a weekend or a legal holiday, by the end of the next regular working day, the PRA shall:

(a) interview the patient, and

(b) submit comments and recommendation on the PRA Form to:

1. The patient's clinical chart, and

2. The Medical Director.

(5) The patient, the PRA, or the physician may request a review by the TRC. The PRA shall immediately request a review by the TRC if the patient requests that it be done.

(6) Within twenty-four hours of receipt of a request for review of emergency medication or, if such period expires on a weekend or a legal holiday, by the end of the next regular working day, the TRC or designated

(Rule 0940-1-2-.05, continued)

members shall interview or examine the patient. The TRC shall review the patient's chart under the same procedures as for administration of medication under rule 0940—1—2—.06 to persons who are not capable of giving informed consent.

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985 see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.05 PROCEDURES FOR ADMINISTRATION OF MEDICATION UNDER RULE 0940—1—1—.06 TO PATIENTS WHO LACK CAPACITY TO GIVE INFORMED CONSENT.

(1) A clinical professional who determines that a patient lacks capacity shall document the basis for the determination.

(2) A physician who determines that medication is a necessary part of a patient's treatment plan for which there is no reasonable alternative shall document the basis for the determination and shall consider, among other relevant criteria, the following:

(a) whether the medication is necessary to prevent a substantial deterioration of the patient's mental health,

(b) whether the need to prevent violence is greater than the potential harm to the patient,

(c) whether there is any appropriate treatment that can be provided without the use of psychotropic medication, and

(d) whether the patient's lack of capacity is likely to be transitory and can be remedied by medication.

(3) If a physician, who is not a member of the patient's regular treatment team, prescribes medication under rule 0940—1—1—.06, the treatment team shall review such action by the end of the next regular working day.

(4) By the end of the next regular working day following the Treatment Team's review, a copy of the documentation prepared under subsections (1) and (2) shall be provided to:

(a) the patient's clinical chart,

(b) the Medical Director, and

(c) the Patient Rights Advisor.

(5) Within seventy-two hours of the issuance of the order or, if such period expires on a weekend or a legal holiday, by the end of the next regular working day, the PRA shall interview the patient. The PRA shall document comments or recommendations and shall provide copies of the documentation to:

(a) the patient's clinical chart, and

(b) the Medical Director.

(6) When the patient, the PRA, or the physician requests review, the TRC shall interview the patient within five working days, review the patient's chart, and make recommendations to the Medical Director who shall consider all the information provided during the review process before making the final decision regarding medication. The patient's participation in the TRC process shall be encouraged but is not mandatory. The patient may request the PRA or another hospital staff member to assist or to speak on the

(Rule 0940-1-2-.05, continued)

patient's behalf in all meetings under this rule. The TRC shall prepare documentation of its recommendation and the Medical Director's final decision and provide copies to:

(a) the patient's clinical chart,

(b) the Medical Director, and

(c) the Patient Rights Advisor.

(7) The PRA shall continue to monitor the patient and document the Advisor's comments or recommendations and shall provide a copy to:

(a) the patient's clinical chart, and

(b) the Medical Director.

The PRA may, during the regular working day but no more often than at two week intervals, request that a clinical professional evaluate the patient to determine whether the patient still lacks capacity.

(8) If the Superintendent notifies the PRA of the need for a guardian under rule 0940—1—1—.06, the PRA shall review the patient's case at least every thirty days and may request TRC review based on the Advisor's findings. Such review shall continue until adjudication.

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—2—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985 see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.06 PROCEDURES FOR ADMINISTRATION OF MEDICATION UNDER RULE 0940—1—1—.08 TO PATIENTS WHO DO NOT LACK CAPACITY AND WHO REFUSE MEDICATION.

(1) If a patient who does not lack capacity refuses to consent to administration of medication other than emergency medication under rule 0940—1—1—.05, the Treatment Team shall inform the patient of the Treatment Team process and of the patient's right to discuss the case with the members of the Team and to participate in the Team meeting. The patient's participation shall be encouraged but is not mandatory.

(2) The patient may request the PRA or another hospital staff member to assist or to speak on the patient's behalf in all meetings under this rule.

(3) Staff members may continue non-coercive efforts to persuade the refusing patient to take the prescribed and proffered medication throughout the procedures under this rule.

(4) The Treatment Team shall discuss the physician's recommendations and the patient's response.

(5) The Team shall attempt to formulate a plan that is acceptable to the patient, e.g., reduced dosage, alternate medication, alternative treatment if any is available, or a possible trial period of medication, the physician shall document the recommendation of the Treatment Team and the physician's decision in the patient's chart.

(6) If after the Treatment Team meeting, the treating physician believes that medication is a necessary part of the patient's treatment plan and the patient still refuses the medication, a TRC shall be convened. When the patient, the PRA, or the physician requests review, the TRC shall interview the patient within 5 working days, review the patient's chart, and make recommendations to the Medical Director who will consider all the information provided during the review process before making the final decision regarding medication. The TRC shall prepare documentation of its recommendation and the Medical Director's final decision and provide copies to:

(Rule 0940-1-2-.06, continued)

(a) the patient's clinical chart,

(b) the Medial Director, and

(c) the Patient Rights Advisor.

The TRC shall conduct a personal interview with the patient unless the patient refuses to participate and shall review the patient's chart.

(7) The PRA shall see the patient at least every thirty days and shall request review by the TRC as appropriate.

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985, see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.07 PATIENT RIGHTS ADVISOR RESPONSIBILITIES.

(1) The PRA's performance evaluation plan shall include the duties imposed by these rules.

(2) The PRA shall work cooperatively with other hospital personnel, shall be an objective advocate for patient rights, and shall effectively present the patient's views and wishes in the procedures under these rules.

(3) The PRA shall work with hospital staff in conducting both initial and continuing education on the implementation of these rules.

(4) The PRA shall maintain a file and the appropriate monitoring and compliance on each patient receiving medication under these rules.

(5) The PRA shall compile each quarter a summary and interpretative review of actions taken under these rules and submit a report to the Commissioner.

(6) The PRA's duties in implementing these rules take priority over other duties as general patient rights advisors and over other kinds of duties they may have.

(7) The PRA shall receive the training provided under rule 0940—1—1—.09 (4).

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985, see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*

0940—1—2—.08 TREATMENT REVIEW COMMITTEE ORGANIZATION.

(1) The Superintendent shall appoint Treatment Review Committee members. No person who is a member of a patient's Treatment Team shall serve on a TRC for that patient. At least one member of a TRC shall be a psychiatrist.

(2) A TRC shall be composed of four or more members. The members shall be:

(a) as chair, the Medical Director of the Institute or, if the Medical Director is absent, a licensed physician designated by the Medical Director or the Superintendent,

(b) the patient's PRA, and

(c) two or more of the following: a licensed physician, a licensed pharmacist, a registered nurse, a licensed

(Rule 0940-1-2-.08, continued)

clinical psychologist, a licensed psychological examiner, a master's level social worker, or a clinical chaplain.

(3) If a physician is chairing a TRC by designation of the Medical Director, the physician has the authority of the Medical Director under the rules governing psychotropic medication as to cases before the Committee.

Authority: *T.C.A. §§33—1—203 through 33—1—205, 33—3—104 and 33—3—105.* ***Administrative History:*** *(For Administrative History prior to February, 1985, see page 1.001). New rule filed January 9, 1985; effective February 8, 1985.*