	Department of Corrections and Rehabilitation **NOTICE OF CHANGE TO REGULATIONS** **Section(s): 3353, 3353.1, and 3353.2**	**Number:** **16-11** **Publication Date:** **September 30, 2016** **Effective Date:** **To Be Announced**

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Sections 3353 and 3353.1, and the adoption of Section 3353.2, of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning Informed Consent and Capacity Determination and Selection of Surrogate.

IMPLEMENTATION:
To Be Announced

PUBLIC COMMENT PERIOD
Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to **RPMB@cdcr.ca.gov.** All written comments must be received by the close of the public comment period **November 18, 2016.**

PUBLIC HEARING INFORMATION
A public hearing regarding these proposed regulations will be held **November 18, 2016, from 9:00 a.m. to 10:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, Sacramento, CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING
This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 09/14), Certification of Posting, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual Sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON
Inquiries regarding the subject matter of these regulations may be directed to Bill Davies, Staff Counsel III, Office of Legal Affairs, at (916) 324-1849. Inquiries regarding this Notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone (916) 445-2269 or e-mail **RPMB@cdcr.ca.gov.**

Original signed by:

SCOTT KERNAN
Secretary
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, proposes to revise Sections 3353 and 3353.1 and add Section 3353.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Informed Consent and Capacity Determination and Selection of Surrogate.

PUBLIC HEARING:

Date and Time:	**November 18, 2016 – 9:00 a.m. to 10:00 a.m.**
Place:	Department of Corrections and Rehabilitation Kern/Colorado Room 1515 S Street – North Building Sacramento, CA 95811
Purpose:	To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **November 18, 2016 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at *RPMB@cdcr.ca.gov* before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

S. Garcia
Regulation and Policy Management Branch
Telephone (916) 445-2266

Questions regarding the substance of the proposed regulatory action should be directed to:

Bill Davies
Office of Legal Affairs
(916) 324-1849

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action:

- Specifies the provisions of Penal Code 2604 and provides authority and direction to CDCR staff regarding the criteria for determination of capacity for informed consent, and selection of a surrogate decision maker.
- Establishes Procedural Due Process for affected inmates.
- Details the necessary forms to be used for Informed Consent, Capacity Determination and Selection of a Surrogate.

FORMS INCORPORATED BY REFERENCE:

CDCR MH-7701 (06/16), Penal Code 2604 Rights
CDCR MH-7702 (06/16), Petition for Capacity Determination
CDCR-MH-7702-1 (06/16), Petition for Capacity Determination-Add-A-Page
CDCR MH-7703 (06/16), Renewal Petition for Capacity Determination
CDCR MH-7704 (06/16), Penal Code 2604 Reconsideration
CDCR MH-7705 (06/16), Confidential Surrogate Decision Maker Screening
CDCR MH-7706 (06/16), Notice of Non-Renewal of Penal Code 2604 Order

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The proposed regulatory action will protect public health and safety and worker safety, and benefit CDCR staff and inmates by providing direction to CDCR staff for proper identification of patients who lack capacity to give informed consent. A standardized set of due process procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of an inmate's lack of capacity to give informed consent will be put in place by all institutions. Appointment of a surrogate decision maker provides an ethically and legally appropriate method to ensure timely care is provided within the scope of the patient's known wishes.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

The Department has researched existing regulations and has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. After a review for any regulations that would relate to or affect this area, CDCR had concluded that these are the only regulations that concern CDCR inmates for capacity determination and selection of a surrogate decision maker.

LOCAL MANDATES:

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500 – 17630.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on the state's environment, because the proposed regulations relate strictly to the internal management of CDCR institutions. This regulatory action may ensure the health, safety and security of inmates, CDCR employees, contractors, and other persons and entities by establishing procedures for inmates needing capacity determination for informed consent or selection of a surrogate decision maker.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

Alternatives Considered:

1. Use of PC 2602 Process

The Department considered whether affected inmates could be adjudicated within the existing PC 2602 administrative process. They cannot. PC 2602 is for involuntary psychiatric medication, whereas the class of inmates who may fall under PC 2604 will be alleged to lack capacity for informed consent, who may not meet criteria for involuntary medication on the basis of being a danger to self, danger to others, or gravely disabled. For these reasons, the Department rejected this alternative.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website http://www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

3353. Informed Consent Requirement

Section 3353 is amended to read:

When unusual, serious or major health care procedures are indicated and time and circumstances permit, the ~~inmate's~~ patient's specific written informed consent shall be obtained before treatment is undertaken, except as otherwise provided in sections 3351, 3353.2, and 3364. If the ~~inmate~~ patient or the ~~inmate's~~ patient's guardian or responsible relative objects to the recommended treatment, such objection shall be documented for inclusion in the ~~inmate's~~ patient's health record.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

3353.1. Capacity for Informed Consent

Section 3353.1 Introduction is deleted:

~~An inmate shall be considered capable of giving informed consent if in the opinion of health care staff the inmate is:~~

Subsections 3353.1 (a) through 3353.1 (c) are amended to read:

(a) ~~Aware that there is a physiological disorder for which treatment or medication is recommended.~~ Informed consent means that the patient, without duress or coercion, is able to clearly give consent for the proposed course of treatment, after being advised of reasonable alternatives, risks, and benefits, and that the patient exhibits a reasonable understanding of his or her current condition and symptoms, and demonstrates capacity to consent to the proposed treatment.

(b) ~~Able to understand the nature, purpose and alternatives of the recommended treatment, medication, or health care procedures.~~ Informed consent to an action or course of treatment may be given or withheld by a patient with capacity. A patient shall be considered capable of giving

informed consent if in the opinion of health care staff the patient:

(1) Is aware that there is a mental illness or physiological disorder for which treatment or medication is recommended.

(2) Has capacity to understand the nature, purpose and alternatives of the recommended treatment, medication, or health care procedures.

(3) Has capacity to understand and reasonably discuss the possible side effects and any hazards associated with the recommended treatment, medication, or health care procedures.

(c) Capacity or lack of capacity is to be determined by evaluating the patient's:

(1) Ability to communicate a choice.

(2) Ability to understand relevant information.

(3) Ability to appreciate the nature of the situation and its likely consequences.

(4) Ability to manipulate information rationally.

(d) Informed refusal occurs when a patient who has documented capacity to give informed consent elects to knowingly refuse to consent to a given action, medication, or recommended course of treatment.

(e) If the healthcare staff at an institution becomes aware of a patient who lacks capacity for informed consent and an issue or issues arise that would require the patient's informed consent, the procedures in section 3353.2 may be followed.

(f) If a surrogate has been lawfully appointed to act on behalf of a patient, either pursuant to PC 2604 or by a superior court, the institution or facility caring for the patient shall accept the surrogate's informed consent or informed refusal in lieu of seeking informed consent or refusal from the patient. Informed consent by a surrogate is preferable to involuntary treatment of a patient who has been adjudicated to lack capacity, except in the case of a medical emergency.

~~(c)~~(g) ~~Able to understand and reasonably discuss the possible side effects and any hazards associated with the recommended treatment, medication, or health care procedures.~~ A~~n~~ ~~inmate~~ patient shall not be deemed incapable of informed consent solely because of being diagnosed with a mental illness ~~as mentally disordered, abnormal, or mentally defective~~.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

3353.2. Procedure for Capacity Determination and Selection of Surrogate.

New section 3353.2 is adopted to read:

3353.2 Procedures For Capacity Determination And Appointment of Surrogate Decision Maker

(a) A licensed physician or dentist employed by the California Department of Corrections and Rehabilitation (CDCR) may file a verified petition for determination of a patient's capacity for informed consent as provided herein and in Penal Code section 2604.

(b) The hearing on any such petition shall be heard by an Administrative Law Judge (ALJ) and will be conducted at the institution or facility designated in the petition that has been served on the patient.

(c) The hearing shall be documented by having an attorney from the Office of Legal Affairs capture a sound recording and a signed order, either on paper or electronically, by an ALJ. The recording of the hearing shall be maintained by the CDCR for five years.

(d) The ALJ shall find, by clear and convincing evidence, that the patient has been provided adequate notice of the hearing, their statutory rights, and an opportunity to be heard; that reasonable efforts have been made by a physician to obtain informed consent from the patient; that reasonable efforts have been made to identify and locate next-of-kin who could serve as a surrogate decision maker; that as the result of one or more deficits, the patient lacks capacity to give informed consent within the meaning of section 15 CCR 3353.1, and is unlikely to regain capacity within the next year; and that reasonable efforts have been made to identify and contact family members who might be suitable to act on behalf of the patient as a surrogate.

The ALJ shall find, by a preponderance, that the patient is an adult committed to state prison; the existence or non-existence of applicable deficits affecting the patient's capacity; that there is no person with legal authority to provide informed consent for the patient; that no valid advance directive or Physician Orders for Life Sustaining Treatment (POLST), executed while the patient had capacity, exists; and that based on evidence presented, one specific candidate appears to be the best suited to act as decision maker based on available information.

(e) Initial proceedings to determine a patient's capacity to give informed consent and make a health care decision shall be legibly documented and noticed by CDCR MH-7702 (06/16), Petition for Capacity Determination and CDCR MH-7701 (06/16), Penal Code 2604 Rights, which are incorporated by reference. These forms may be dictated, completed by hand, or completed on computer, and shall be served to the patient, the patient's appointed or retained attorney, the state's attorney, and any persons identified as potential surrogates identified and located pursuant to Penal Code section 2604(c)(7) on the CDCR MH-7702. If there is too much information to fit on the petition form, additional pages may be added using form CDCR-MH-7702-1 (06/16), Petition for Capacity Determination-Add-A-Page, which is incorporated by reference. The patient shall be personally served. A copy shall be filed electronically with the Office of Administrative Hearings the same day the patient is served with the CDCR MH-7702 and CDCR MH-7701.

(f) Renewal proceedings to determine capacity to give informed consent and make a health care decision shall be legibly documented and noticed by CDCR MH-7703 (06/16), Renewal Petition for Capacity Determination, which is incorporated by reference, and CDCR MH-7701. These forms may be dictated, completed by hand, or completed by computer, and shall be served to the patient; the patient's appointed or retained attorney; the state's attorney; and if applicable, the previously appointed surrogate decision maker, if the renewal petition is not being filed by said previously appointed surrogate decision maker. If there is too much information to fit on the

petition form, additional pages may be added using form CDCR-MH-7702-1. The patient shall be personally served. A copy shall be filed electronically with the Office of Administrative Hearings the same day the patient is served with the CDCR MH-7703 and CDCR MH-7701.

(g) The CDCR MH-7702 and CDCR MH-7703 shall be reviewed and signed under penalty of perjury by the licensed physician or dentist who completes the petition prior to filing with the Office of Administrative Hearings. Petitions signed under penalty of perjury may utilize digital authentication and verification to facilitate electronic transmission. Other clinical staff who work with the petitioning practitioner may help gather necessary data or record observations to complete portions of the forms as needed.

(h) The institution's Medication Court Administrator (MCA) shall collect and securely transmit appropriate relevant supporting documentation of any filed petition, as well as contact information for family members who may have an interest in the case, by electronic means to both state's and patient's attorneys within seven (7) business days from the date of service on the patient. In the unlikely event this is not possible, the institution should attempt to allow the patient's attorney access to view the pertinent records on site prior to the hearing.

(i) If the petition alleges a healthcare condition that a reasonably competent attorney could not properly investigate or litigate by speaking to the declarant in the petition, the patient's attorney may request in writing that the ALJ appoint an independent expert to evaluate the patient at the Department's expense. The Department shall have ten (10) calendar days to respond to any such request. The decision to appoint an independent expert rests in the discretion of the ALJ to make a finding by a preponderance that the case cannot be fairly presented without an additional expert.

(j) In any proceeding involving a condemned patient, a digital version of any petition initiating or renewing a capacity determination shall be sent by the institution's MCA to the California Appellate Project via encrypted or secure email to keyhea@capsf.org, who will act as a distribution point for involved capital attorneys, and to the Department of Justice, Capital Unit. This is a courtesy notice, does not include discovery materials, and the Office of Administrative Hearings shall continue to appoint an attorney for the patient unless an outside retained attorney enters an appearance. ALJs shall retain the discretion to manage all aspects of the hearing and courtroom process on the day of the hearing.

(k) On the day of the hearing, the institution shall provide a space for the patient's attorney and each patient to meet confidentially if the patient is ambulatory. If the patient is not ambulatory, the ALJ may determine how to best accommodate a meeting between the patient's attorney and the patient.

(l) The Office of Legal Affairs shall search for and contact family members identified in the petition, or identifiable from the patient's chart, who are potential decision makers. The Office of Legal Affairs shall utilize CDCR MH-7705 (06/16), Confidential Surrogate Decision Maker Screening, which is incorporated by reference, to ensure consistency of data when contacting potential surrogates. Raw information gathered will be confidential and not part of the administrative filing, but can be shared with the ALJ or patient's attorney upon request or direction from the ALJ. Each potential surrogate shall be asked to fill out his/her background information on a CDCR MH-7705. The MCA shall have available to testify by phone on the day of the hearing any family member who is being recommended for appointment. The patient's

attorney may attempt to contact the potential surrogates as identified either by the patient or by the Office of Legal Affairs.

(m) Evaluation of the suitability of family members as potential surrogate decision makers shall be conducted by having the Office of Legal Affairs contact family members who have submitted an MH-7705. A summary of information gathered on collected CDCR MH-7705 forms shall be included in a supplemental petition prepared by the Office of Legal Affairs to allow the ALJ to determine whether a family member should be appointed, or if not, who at the institution should be appointed.

(n) If the Department is recommending a particular family member to the exclusion of other candidates, the Department should articulate its reasoning in the supplemental petition, and confirm the proposed candidate's willingness to act on behalf of the patient.

(o) Any expression of agreement or disagreement by family members of the patient with the contents of the Petition shall be disclosed to the ALJ and with the attorney for the patient.

(p) On the day of the hearing, the patient shall again be given the advisements listed in section 2604(e)(1) in a language that the patient can understand, and be further advised that he or she may attend the hearing and may contest the petition with the assistance of counsel. In the event the patient refuses to meet with his/her attorney, if the petition is the initial petition, the patient's attorney should be taken to the patient's housing location to attempt an interview and assessment. If the petition is a renewal petition and the patient refuses to meet with his/her attorney, the advisements may be given to the patient by a sworn correctional officer or by a sworn MCA.

(q) The patient shall be brought to the hearing unless one of the following exceptions has occurred:

(1) Where the patient is unable to attend the hearing by reason of a medical unavailability. CDCR shall establish the patient's medical inability by declaration or testimony of a clinician familiar with the patient's condition. Medical unavailability is presumed if the patient is at an outside hospital for emergent care. The ALJ may conduct a hearing with the patient in absentia if the patient is medically unavailable.

(2) Emotional or psychological instability is not good cause for the absence of the patient from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the patient.

(3) The ALJ and the attorneys may conduct a hearing in a Mental Health Crisis Bed or other medical setting as long as safety precautions are in place.

(4) If a sworn correctional officer or other CDCR employee indicates that the patient is not willing to attend the hearing, or that the patient expressly chooses not to attend the hearing, or that the patient does not wish to contest the petition, the ALJ presiding over the hearing shall appoint the MCA, the patient's attorney, or other sworn person to do the following:

(A) Interview the patient personally, or with assistance of an interpreter, and provide enough facts to allow the judge to determine whether the patient has capacity to knowingly and

intelligently waive his or her attendance at the hearing;

(B) If the patient has capacity to understand the nature of the proceedings, inform the patient, in a language the patient can understand, of the contents of the petition, of the nature, purpose and effect of the proceeding, the right of the patient to attend the hearing, to oppose the request for determination of capacity and appointment of a surrogate decision maker, to be represented by legal counsel, to confront the witnesses, to have his or her attorney cross-examine witnesses, and to testify on his or her own behalf;

(C) Determine whether the patient is able to attend and participate in the hearing and, if able to attend, whether the patient wishes to attend the hearing;

(D) Determine whether the patient wants to contest the petition;

(E) Determine whether the patient wishes to speak to his or her appointed attorney or, if the patient has retained private counsel, obtain the name or any other identifying information about private counsel so that the petition and supporting documentation can be served by the MCA on privately retained counsel and a new hearing date can be set within a reasonable time for the appearance of private counsel;

(r) The ALJ shall take sworn testimony from the person who contacted the patient to establish that procedures to obtain a knowing and intelligent waiver as described in Penal Code section 2604 subdivision (e). If the agent of the court reports that the patient may have capacity or limited capacity, the ALJ shall make further inquiry before proceeding. After receiving this information, the ALJ must make an express finding by a preponderance that the patient's presence at the hearing is excused and/or find that the patient has made a knowing and intelligent waiver of his or her right to be present at the hearing or is medically unavailable. If any party, or the ALJ, raises a question as to the patient's capacity to waive presence at the hearing, the ALJ should order the patient brought to the hearing, or conduct the hearing at the patient's cell.

(s) If the patient is unable to attend the hearing due to a medical condition, the ALJ may continue the hearing if it appears that the patient will be able to attend the hearing within a reasonable time, issue temporary orders based on the circumstance presented, including orders that any necessary treatment may proceed, or proceed with the hearing in the absence of the patient if it appears that the patient's medical condition will preclude his or her appearance within a reasonable time period.

(t) Where feasible, renewal interviews shall be conducted in person with the patient by a physician or dentist. When it is not possible to conduct the interview in person, the use of videoconferencing or teleconferencing is acceptable.

(u) If the clinician with the most knowledge of the patient’s condition is not available to testify in person, that clinician may present either an initial case or a renewal case by way of videoconference or teleconference.

(v) Motions for Reconsideration by patients shall be legibly documented and noticed by CDCR MH-7704 (06/16), Penal Code 2604 Reconsideration, which is incorporated by reference. Patients who fill out this form should hand the form to the MCA, who shall scan and send a copy on the same day as received to the Office of Legal Affairs, the inmate’s previously-appointed

attorney, and to the Office of Administrative Hearings. Patients may seek reconsideration within one year of the decision for which review is sought. The Office of Administrative Hearings shall notice all involved parties of its decision on the Motion for Reconsideration. Upon receipt of a reconsideration ruling by the Office of Administrative Hearings, the Office of Legal Affairs shall forward a copy of the judicial order to the institution's MCA, who is responsible for providing the order to the local health records department to be scanned into the electronic health record at the institution where the patient is housed.

(w) Motions for Reconsideration by the Department may be filed using a pleading form, filed with the Office of Administrative Hearings within thirty (30) calendar days of the signed order for which reconsideration is being sought. If the state's attorney files the Motion for Reconsideration, the patient shall be served with a copy. A copy shall be filed electronically with the Office of Administrative Hearings the same day the patient is served. The Office of Administrative Hearings shall notice all involved parties of its decision on the Motion for Reconsideration. Upon receipt of a reconsideration ruling by the Office of Administrative Hearings, the Office of Legal Affairs shall forward a copy of the judicial order to the institution's MCA, who is responsible for providing the order to the local health records department to be scanned into the electronic health record at the institution where the patient is housed.

(x) If a petition under this section is denied by an ALJ and there exists new material information that may not be raised in a Motion for Reconsideration, the Department may elect to re-file the case and set forth the additional information.

(y) Every case currently pending needs to either be renewed or not-renewed. Legitimate reasons not to renew a case include, but are not limited to, that the patient has regained capacity for informed consent, that a specified medical condition has abated, or that the patient has been released from custody of the Department. The treating clinician shall document reasons for non-renewal on a CDCR MH-7706 (06/16), Notice of Non-Renewal of Penal Code 2604 Order, which is incorporated by reference, documenting the reasons that non-renewal is being considered. The treating clinician can recommend the non-renewal take effect immediately or upon the natural expiration of the existing court order. If there is internal disagreement about the patient's capacity, the matter should be taken to a local ethics panel or referred to the Headquarters Multidisciplinary Health Care Ethics Committee at the institution to determine how to proceed. If the surrogate is a family member, the institution shall send a copy of this form to the appointed surrogate decision maker to advise the surrogate of the decision to terminate the order.

(z) The ALJ may review the CDCR MH-7705 (06/16) for any family member who has returned the form, and shall consider the supplemental petition prepared by the Office of Legal Affairs summarizing the available candidates and their relative suitability or lack of suitability. If a family member is being recommended as surrogate, the ALJ may direct that the family member appear at the hearing by phone. Based on the verified petition, the recommendations of the Department, and the background screening documentation reviewed at the hearing, the ALJ shall make an independent determination of suitability by preponderance, then select and appoint a surrogate.

(aa) If an appointed decision maker gives notice that they can no longer serve as decision maker, or becomes incapacitated and thus unable to serve as decision maker, or if there is any indication that the appointed decision maker is not appropriately fulfilling their duties, the

Department shall place the case back on calendar within thirty (30) calendar days of receiving such information and seek appointment of a different decision maker.

(bb) If a patient's health condition materially declines, or if additional factors develop that were not originally pleaded, the Department may file a motion to modify the original petition to include the new information.

(cc) If operational needs dictate, and there is no suitable family member to serve, the Department may elect to have a panel of clinicians serve as decision maker for the patient.

(dd) Once a CDCR MH-7702 or CDCR MH-7703 has been filed with the Office of Administrative Hearings, except in the instance of a medical or psychiatric emergency, the MCA at the patient's institution shall ensure that a medical hold is placed pending the completion of the hearing.

(ee) Upon good cause, such as the patient's clinical condition or the availability of a needed witness, the Department may seek to advance a hearing, or may ask appointed counsel to stipulate to an accelerated hearing date.

(ff) Upon issuance of an order pursuant to PC 2604 by an ALJ, the Chief Executive Officer of the institution where the patient is located shall ensure that the following occur:

(1) Within three business days of the ALJ order designating a family member as a surrogate decision maker, assign a registered nurse or licensed clinical social worker to prepare a summary of the patient's current and eligible medical and psychiatric condition, as described in Health and Safety Code sections 123100 through 123149.5, to be completed by the tenth calendar day after the ALJ hearing.

(2) On the day of the hearing, a physician familiar with the case shall make a note in the chart setting forth the results of the hearing and routing the matter back to the Interdisciplinary Treatment Team to have the patient's treatment plan updated to reflect both the ALJ ruling and plan for implantation of the ruling.

(3) Within one business days of the ALJ order, ensure that the patient's medical chart is updated to reflect the appointment of a surrogate decision maker with the person's contact information, and ensure that clinicians caring for the patient are aware that a surrogate has been appointed. ALJ orders pursuant to this section shall be scanned and placed in the "Legal" section of the patient's electronic medical record with a notation in the "Alerts" section that there is an existing court order.

(4) Within one business days of the ALJ order, provide a copy of the order to any outside facility caring for the patient.

(5) Direct a clinician familiar with the patient's condition and care to review the summary for accuracy and completeness before it is to be disclosed to the appointed family member.

(6) No later than 14 calendar days after the ALJ hearing, have the assigned registered nurse or licensed clinical social worker provide the initial summary of the patient's status report to the appointed family member either by phone, or by sending the report to the appointed family

member through secure electronic mail.

(7) The patient summary shall be updated quarterly by the patient's clinician or designee, or more frequently if emergent care issues arise.

(8) No later than 14 calendar days after the ALJ hearing, establish a protocol with the appointed surrogate to ensure utilization of the institution's release of information phone line. Clinicians shall have five business days to respond to any inquiry from an appointed surrogate received through the release of information phone line. If the patient requires emergent care for a serious or life-threatening issue, the institution shall contact the appointed surrogate to obtain consent.

(gg) Pursuant to a valid ALJ order under PC 2604 and within the meaning of 45 CFR 164.512, subdivision (e), the institution shall timely disclose relevant protected health information for the patient to the appointed family member, where that information is directly relevant to the patient's care, and needed to allow the appointed family member to give or withhold informed consent on behalf of the patient.

(hh) In the event the Department files both a PC 2602 and a PC 2604 petition on the same patient to be heard the same day, and if the ALJ consolidates the two cases and conducts only one hearing, the ALJ shall fill out a judicial order for each case to indicate how each case was resolved.

(ii) Nothing in this section creates an entitlement or exception in favor of a surrogate decision maker to circumvent an institution's standard security screening, visitation procedures and protocols.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054.

PENAL CODE 2604 RIGHTS

Your Rights Regarding a Hearing to Determine Capacity

Competent adults housed in California prisons have a fundamental right to control decisions related to their own healthcare, which requires informed consent. Questions have been raised whether you currently have the capacity to give informed consent for a healthcare decision, electroconvulsive therapy, or your affairs as a general matter. For this reason, healthcare staff at this institution have requested that an administrative law judge review your case, and if you are found to lack capacity, a surrogate decision-maker may be appointed on your behalf. **You have the following statutory rights:**

- ☐ The right to be present at any hearing regarding your ability to understand what clinicians are saying to you, and to show that you are able to understand information being given to you.
- ☐ The right to a court-appointed attorney, or you may hire your own attorney.
- ☐ The right to present evidence.
- ☐ The right to cross-examine any witness.
- ☐ The right to seek reconsideration once per year if a judge makes a decision with which you do not agree.
- ☐ The right to have a superior court review any ruling by a judge who makes a finding that you lack capacity.
- ☐ Your attorney is entitled to review any documents needed to prepare for your hearing, but is not allowed to see the confidential section of your central file.
- ☐ The right to a hearing before an administrative law judge within 30 days of being given notice that the California Department of Corrections and Rehabilitation is seeking a capacity hearing.
- ☐ The right to 10 days' notice of a renewal hearing if the Department of Corrections and Rehabilitation seeks to renew a PC2604 order.
- ☐ Your immediate family, if any, will be notified about this proceeding.
- ☐ You, or your attorney, have 14 days from receipt of any petition to file a response or objection with the Office of Administrative Hearings.
- ☐ The right to be given a copy of any petition (CDCR MH-7702 or CDCR MH-7703) that pertains to your medical or mental health condition, so that you can review the course of treatment that the State of California is proposing on your behalf.

Person Explaining These Rights to Patient:

Name and Title (print): _____ Signature: _____ Date: _____

Patient Name (print): _____ Signature: _____ Date: _____

1. Disability Code:
☐ TABE score ≤ 4.0
☐ DPH ☐ DPV ☐ LD
☐ DPS ☐ DNH
☐ DNS ☐ DDP
☐ Not Applicable

2. Accommodations:
☐ Additional Time
☐ Equipment ☐ SLI
☐ Louder ☐ Slower
☐ Basic ☐ Transcribe
☐ Other*

3. Effective Communication:
☐ Patient asked questions
☐ Patient summed information

Please check one:
☐ Not Reached* ☐ Reached
*See chrono/notes

4. Comments:

CDCR #:
Last Name: MI:
First Name:
DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

PENAL CODE 2604 RIGHTS

CDCR MH-7701 (06/16)

Instructions

Purpose of CDCR MH-7701 (06/16) Penal Code 2604 Rights: This form provides an advisement of rights to a patient who is named in a PC 2604 initial petition case (CDCR MH-7702), or a patient who is named in a PC 2604 renewal petition case (CDCR MH-7703). The patient must be given this advisement of rights when served with any PC 2604 petition, and the person explaining must note their own name, title, signature, and the date.

1. This document may be served by any CDCR employee who normally interacts with patients in the scope of their daily routine.
2. This form should be used any time a patient is served with either a Petition for Capacity Determination (CDCR MH-7702) or a Renewal for Capacity Determination (CDCR MH-7703).
3. The person serving documents on the patient should attempt to contact and communicate with the patient, explain generally what a PC 2604 proceeding is about, relate introductory information found on the CDCR MH-7701, and then advise the patient of the rights shown on the CDCR MH-7701, checking off the boxes as each is explained.
4. If the patient is unable to communicate or appears to have difficulty processing the information being given, or if the patient has a documented need for any type of accommodation, the person serving the form must complete the accommodation and effective communication section.
5. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
6. The person effecting service of documents on the patient should fill in their name, sign their name, and date the form.
7. Provide one copy to the patient along with a copy of any CDCR MH-7702 or CDCR MH-7703 being served, one copy to be returned to the Office of Administrative Hearings, and one copy to be returned to the Office of Legal Affairs.
8. Scan the CDCR MH-7701 into a single PDF with either CDCR MH-7702 or CDCR MH-7703 to be filed. File with the Office of Administrative Hearings by sending to keyheafilings@dgs.ca.gov on the same day the patient was served.
9. Transmit a copy of the documents (CDCR MH-7701 and any CDCR MH-7702 or CDCR MH-7703 being served) to the Office of Legal Affairs by uploading to their secure document repository, and then send an e-mail, with no attachment, to PC 2604 Intake (m_OLA_PC_2604_Intake_Mailbox@cdcr.ca.gov), to the assigned institution's Medication Court Administrator, and to the assigned attorney.

Effective Communication: The Effective Communication section must be completed any time there is a clinically relevant encounter in which meaningful information is exchanged between the licensed clinician and the patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: TABE score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

PETITION FOR CAPACITY DETERMINATION

Date: _____ Institution: _____ Interpreter: ☐Yes ☐No Language: _____ Interpreter Name: _____

Bed/Cell/Dorm: _____ Age: _____ Gender: ☐Male ☐Female DOB: _____

Patient Name (Last, First): _____ CDCR#: _____ PID: _____

VERIFIED PETITION FOR CAPACITY DETERMINATION

The licensed physician whose name or signature appears at the end of this verified petition alleges that:

1. You are an adult housed under the custody of the California Department of Corrections and Rehabilitation;
2. You appear to be unable to understand and rationally process information given to you about your situation or condition; and
3. The California Department of Corrections and Rehabilitation has been unable to find any document or record showing what your wishes are or who you would want to make decisions for you in the event you cannot make decisions for yourself.

For these reasons, you have been provided with an attorney whose name is listed below. You have been scheduled for a hearing in front of an Administrative Law Judge (ALJ) to review the facts and allegations in this document. The ALJ will decide if you are able to make sound decisions, or if you should have a person appointed to act on your behalf.

Medication Court Administrator: Please write in a hearing date, time, and location no later than 30 days from the date you serve the patient with this petition.

HEARING DATE: _____ HEARING TIME: _____ HEARING INSTITUTION: _____

YOUR ATTORNEY IS: Attorney Name: _____ Contact Phone: _____

Attorney Address: _____

_____

_____

(For the individual serving the patient)
I declare under penalty of perjury that this document was served on the patient on the date shown below:
Served and signed this _____ day of _____, 20___ at _____, California.

Name and Title (print) _____ Signature _____

Please identify the basis for the verified petition being submitted (mark all that apply):

☐Lack of capacity for informed consent. (Complete Sections I and IV)

☐Serious or emergent health care issue for which patient lacks capacity to consent. (Complete Section I, II, and IV)

☐Electroconvulsive Therapy (ECT) (Complete Sections I, II, III, and IV)

If the primary condition is psychiatric, does the patient also have a medical condition?	☐Yes	☐No	☐N/A
If the primary condition is medical, does the patient also have a psychiatric condition?	☐Yes	☐No	☐N/A
Is the patient medically and psychiatrically cleared to be transported and attend the hearing?	☐Yes	☐No	
Is there a valid advance directive or POLST in the patient's chart?	☐Yes	☐No	

1. Disability Code:
☐TABE score ≤ 4.0
☐DPH ☐DPV ☐LD
☐DPS ☐DNH
☐DNS ☐DDP
☐Not Applicable

2. Accommodations:
☐Additional Time
☐Equipment ☐SLI
☐Louder ☐Slower
☐Basic ☐Transcribe
☐Other*

3. Effective Communication:
☐Patient asked questions
☐Patient summed information

Please check one:
☐Not Reached* ☐Reached
*See chrono/notes

4. Comments:

CDCR #:
Last Name: MI:
First Name:
DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Verified Petition for Capacity Determination

1. Describe the patient's current physical condition, and health care conditions, if any:

2. Describe the patient's current mental health condition to the extent it may affect his or her capacity to give informed consent or to make a health care decision:

3. Does this patient have any record of relevant prior court proceedings, either in the community or while in a prison setting, in which there has been a finding of lack of capacity? If so, provide details and dates:

List the deficit(s) that you have observed in the patient's mental functions within the meaning of Probate Code section 811:

4. Alertness and attention, including, but not limited to:

   A) Level of arousal or consciousness:

   B) Orientation as to time, place, person, and situation:

   C) Ability to attend and concentrate:

5. Information processing, including, but not limited to:

   A) Short and long-term memory, including immediate recall:

   B) Ability to understand or communicate with others, either verbally or otherwise:

I. Verified Petition for Capacity Determination (continued)
C) Recognition of familiar objects and familiar persons:
D) Ability to understand and appreciate quantities:
E) Ability to reason using abstract concepts:
F) Ability to plan, organize, and carry out actions in one's own rational self-interest:
G) Ability to reason logically:
6. Thought processes/content/perception. Deficits in these functions may be demonstrated by the presence of the following:
A) Severely disorganized thinking:
B) Hallucinations:
C) Delusions:
D) Uncontrollable, repetitive, or intrusive thoughts:

I. Verified Petition for Capacity Determination (continued)

7. Deficits in the ability to modulate mood and affect may be indicated if a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness, despair, helplessness, apathy, or indifference is present that is inappropriate to the individual's circumstances. Describe any observations here:

8. If you identified any deficits in your responses to questions 4-7, please state whether any deficit, either alone or in conjunction with other deficits noted, significantly impairs the patient's ability to understand and appreciate the consequences of his or her actions:

9. Indicate whether the patient's periods of impairment are transient, fixed, or likely to change during the one-year period of the proposed court order, and explain on what basis you have this opinion:

10. Is there other background information that would provide a basis for the symptomology or deficit(s) listed above?

11. Provide the logical connection(s) between the deficits you have identified and the patient's ability to make decisions using a rational and informed thought process.

12. Detail what efforts have been made to obtain informed consent from the patient, including dates, relevant events, and the patient's response:

Petition for Capacity Determination CDCR MH-7702 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Verified Petition for Capacity Determination (continued)

13. Describe the efforts made to locate family members of the patient who could act as a surrogate decision-maker, and if located, provide additional details below:

A) Efforts made:

B) Name, address, and phone number of known relatives:	Information suggests this person would not act in the patient's best interest.	Information suggests this person may be suitable as a surrogate.
i.	☐	☐
ii.	☐	☐
iii.	☐	☐
iv.	☐	☐
v.	☐	☐
vi.	☐	☐

14. Detail the probable impact to the patient with the recommended intervention or course of treatment:

Petition for Capacity Determination
CDCR MH-7702 (06/16)

CDCR #:

Last Name: MI:

First Name:

DOB:

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eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Verified Petition for Capacity Determination (continued)

15. Detail the probable impact to the patient without the recommended intervention or course of treatment:

16. Describe what is known about the patient's desires and personal values, to the extent known. This would include discussion about whether there exists any advance directive or POLST that may have been executed while the patient had capacity, or any other document or anecdote evidencing the patient's desires and personal values.

17. As the Petitioner, based on a review of the documentation submitted in support of this Petition for Capacity Determination, who are you recommending as a qualified and willing surrogate decision-maker, and the reason(s) supporting the recommendation?

II. Serious or Emergent Health Care Issue(s)

18. Describe the patient's current physical condition, including any serious or life-threatening conditions for which the patient needs treatment and, in your opinion, lacks capacity to give informed consent:

19. List the recommended course of care for each of the conditions set forth in your response to question 17 and state why that is the accepted practice:

CDCR #:

Last Name: MI:

First Name:

DOB:

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EHRS LOCATION: Legal > Court Ordered Care > PC 2604

II. Serious or Emergent Health Care Issue(s) (continued)

20. For each recommended procedure or course of care specified in your response to question 18, please list the possible ancillary procedures that may likely be necessary to ensure success. (For example, a surgical amputation may not be successful without frequent dressing changes, antibiotics, and washing. An MRI may not be successful without anesthesia. You are requested to predict or list the supporting procedures needed to make the recommended procedure successful.)(Use CDCR MH-7702-1 to add pages as needed.)

Was a CDCR MH-7702-1 used? ☐ Yes ☐ No

21. What are both the short-term and long-term risks or detriments to the patient if the health care conditions set forth in the response to question 17 are allowed to continue without medical intervention?

CDCR #:

Last Name: MI:

First Name:

DOB:

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EHRS LOCATION: Legal > Court Ordered Care > PC 2604

II. Serious or Emergent Healthcare Issue(s) (continued)

22. Set forth the likely outcome or benefits to the patient if the health care matters listed in question 17 are addressed:

III. Electroconvulsive Therapy (ECT)

23.
- ☐ The patient, with capacity, is consenting to ECT and it is medically necessary. A copy of the consent is attached to this petition.
- ☐ The patient lacks capacity to consent to ECT and it is medically necessary.

24. This petition is being filed for the purpose of:
- ☐ Validating the written consent of the patient to ECT and determining that such treatment is medically appropriate.
- ☐ Determining that the patient lacks the capacity to give informed consent, that ECT is an appropriate course of treatment, and that such treatment is medically appropriate.

25. ☐ The patient was given a copy of Penal Code sections 2670-2680 on the following date: _____

26. Describe why ECT would be beneficial to the patient, including a discussion of what mental illness or medical condition justifies the administration of such therapy:

CDCR #:
Last Name: MI:
First Name:
DOB:
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EHRS LOCATION: Legal > Court Ordered Care > PC 2604

III. Electroconvulsive Therapy (ECT) (continued)

27. Describe all facts showing that there is a compelling interest to treat the patient with ECT:

28. Describe other treatment modalities available, state which other modalities were considered, and state why there are no less-restrictive alternatives to ECT in the current case for this patient:

29. Describe the recommended course of treatment with ECT for this patient (duration, approximate number of sessions), and clinical basis for this specific course of treatment:

30. Describe the expected benefits if this patient is treated with ECT:

31. Describe the expected results if this patient is not treated with ECT:

CDCR #:

Last Name: MI:

First Name:

DOB:

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EHRS LOCATION: Legal > Court Ordered Care > PC 2604

IV. Verification	
Based on the information above, it is my opinion that the patient who is the subject of this petition:	
☐	Lacks the capacity to give informed consent, because based upon deficits identified in this petition, he/she is either unable to participate in decisions either knowingly and intelligently or by means of a rational thought process.
☐	Has the capacity to give informed consent.
☐	Requires ECT because it is medically necessary, and the least intrusive alternative, based on the patient's medical condition and history.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date _____ Institution _____

Name and Title (print) _____ Signature of Declarant _____

Instructions

Purpose of CDCR MH-7702 (06/16) Petition for Capacity Determination: This form summarizes and gathers medical and mental health information regarding patients who are believed to lack capacity to give informed consent, or who are believed to require certain medical or mental health procedures for which judicial authorization is required. This form, when filed with the Office of Administrative Hearings, initiates the PC 2604 process.

1. This document may be served by any CDCR employee who normally interacts with patients in the scope of their daily routine.
2. The Petition for Capacity Determination (CDCR MH-7702) should be used to initiate a process to obtain either an administrative determination of the patient's lack of capacity to give informed consent, or to initiate a request for judicial approval to administer Electroconvulsive Therapy (ECT).
3. The treating clinician requesting a hearing or the patient's treatment team may fill out the CDCR MH-7702. Sections of the form are completed by the discipline who has clinical expertise and knowledge of the patient. The treatment team includes staff from the following disciplines: psychology, nursing, psychiatry, medical, and social work.
4. The CDCR MH-7702 shall be signed under penalty of perjury by the physician who plans to present the case at hearing. The signatory shall have some treatment time and clinical relationship with the patient, and must be a licensed physician or licensed dentist.
5. Page 1 of the CDCR MH-7702 is used to summarize the contents of the document to allow the Administrative Law Judge (ALJ) to quickly assess the reason for the petition.
6. The person(s) filling out the CDCR MH-7702 should enter data into every relevant box. If a specific section or box does not apply, fill in "N/A."
7. If a patient is clinically compromised and cannot provide the requested information, do not write "N/A" but instead specify what objective facts, specific behaviors, and conditions the clinician observed that did not allow information to be collected. For example, if asked to opine on a catatonic patient's ability to reason logically, the writer would not write "unable to assess," but should write something like "patient is catatonic and cannot respond."
8. The person(s) completing the CDCR MH-7702 should always complete Sections I (Verified Petition) and IV (Verification). If there are medical procedures for which informed consent is desirable, complete Section II (Serious or Emergent Health care Issues). If the treatment team believes the patient requires ECT, complete Section III (ECT).
9. If the patient has a variety of emergent or ongoing health conditions for which informed consent is needed, document each separate condition on the Add-a-Page (CDCR MH-7702-1), using one CDCR MH-7702-1 for each separate matter for judicial evaluation.
10. Do not reference documentation contained in the health record. You must specify the condition and treatment being requested in this document. For example, you must not write "see note dated 6/13/2015" or "see oncology note." If you fail to include relevant information within the formed petition, the ALJ cannot properly evaluate the petition.
11. If the patient is unable to communicate or appears to have difficulty processing the information being given, or if the patient has a documented need for any type of accommodation, complete the sections regarding accommodation and effective communication.
12. Once the CDCR MH-7702 is completed and signed under penalty of perjury by the physician who will present the case, it shall be delivered to the institution's Medication Court Administrator (MCA).
13. The MCA shall identify a hearing date no later than 30 days from the anticipated date the patient will be served, using the available statewide PC 2602 master calendar when possible. Cases should be set on the same day as PC 2602 hearings when possible. Contact the Office of Legal Affairs, Health Care Team, if your institution is not listed on the master rotation document.
14. The MCA shall identify an attorney to be assigned to the patient, using the available statewide PC 2602 master list of attorney rotation assignment, when possible.
15. The MCA shall fill in the name and contact information for the assigned attorney, and the proposed hearing date, location, and time.
16. Do not set hearings on days when your presenting witness is unavailable.
17. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
18. The person effecting service of documents on the patient, generally the MCA, should fill in his/her name, sign his/her name, and date the form.
19. Provide one copy of the petition to the patient, along with a notification of rights (CDCR MH-7701), one copy to be returned to the Office of Administrative Hearings, and one copy to be returned to the Office of Legal Affairs.
20. Scan the CDCR MH-7702, coupled with a CDCR MH-7701, and any CDCR MH-7702-1 additions, into a single PDF for court filing. File with the Office of Administrative Hearings by sending to keyheafilings@dgs.ca.gov on the same day the patient was served.
21. Transmit a copy of the documents (CDCR MH-7701 and any CDCR MH-7702 or CDCR MH-7703 being served) to the Office of Legal Affairs by uploading the PDF to their secure document repository, and then send an e-mail, with no attachment, to PC 2604 Intake (m_OLA_PC_2604_Intake_Mailbox@cdcr.ca.gov), to the institution's MCA as a record of the filing, and to the assigned attorney.

Effective Communication: The Effective Communication section must be completed any time there is a clinically relevant encounter in which meaningful information is exchanged between the licensed clinician and the patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: TABE score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

STATE OF CALIFORNIA

PETITION FOR CAPACITY DETERMINATION-
ADD-A-PAGE

CDCR MH-7702-1 (06/16)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: _____ Institution: _____ Interpreter: ☐Yes ☐No Language: _____ Interpreter Name: _____

Bed/Cell/Dorm: _____ Age: _____ Gender: ☐Male ☐Female DOB: _____

Patient Name (Last, First): _____ CDCR#: _____ PID: _____

VERIFIED PETITION FOR CAPACITY DETERMINATION - Add-A-Page

☐ Include as additional information Addendum to CDCR MH-7702/7703 dated: Add as: ☐ Update ☐ Correction

1. Disability Code:

☐ TABE score ≤ 4.0
☐ DPH ☐ DPV ☐ LD
☐ DPS ☐ DNH
☐ DNS ☐ DDP
☐ Not Applicable

2. Accommodations:

☐ Additional Time
☐ Equipment ☐ SLI
☐ Louder ☐ Slower
☐ Basic ☐ Transcribe
☐ Other*

3. Effective Communication:

☐ Patient asked questions
☐ Patient summed information

Please check one:
☐ Not Reached* ☐ Reached
*See chrono/notes

4. Comments:

CDCR #:

Last Name: MI:

First Name:

DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

PETITION FOR CAPACITY DETERMINATION – ADD-A-PAGE

CDCR MH-7702-1 (06/16)

Instructions

Purpose of CDCR MH-7702-1 (06/16) Petition for Capacity Determination – Add-A-Page: This form is to be used when there is more information than will fit on a Petition for Capacity Determination (CDCR MH-7702) or a Renewal Petition for Capacity Determination (CDCR MH-7703). This form becomes an attachment to any CDCR MH-7702 or CDCR MH-7703 being filed with the Office of Administrative Hearings.

1. If the patient has a variety of emergent or ongoing health conditions for which informed consent is needed, document each separate condition on the CDCR MH-7702-1.
2. Use one CDCR MH-7702-1 for each separate matter for judicial evaluation.
3. Ensure that all CDCR MH-7702-1 Add-a-Pages are scanned and included for court filing with any CDCR MH-7702 or CDCR MH-7703 to which they relate.

Effective Communication: The Effective Communication section must be completed any time there is a clinically relevant encounter in which meaningful information is exchanged between the licensed clinician and the patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: TABE score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

RENEWAL PETITION FOR CAPACITY DETERMINATION

CDCR MH-7703 (06/16)

Date: _____ Institution: _____ Interpreter: ☐Yes ☐No Language: _____ Interpreter Name: _____

Bed/Cell/Dorm: _____ Age: _____ Gender: ☐Male ☐Female DOB: _____

Patient Name (Last, First): _____ CDCR#: _____ PID: _____

VERIFIED RENEWAL PETITION FOR CAPACITY DETERMINATION

The licensed physician whose name or signature appears at the end of this verified petition alleges that:

1. You are an adult housed under the custody of the California Department of Corrections and Rehabilitation;
2. You appear to be unable to understand and rationally process information given to you about your situation or condition; and
3. The California Department of Corrections and Rehabilitation has been unable to find any document or record showing what your wishes are or who you would want to make decisions for you in the event you cannot make decisions for yourself.

For these reasons, you have been provided with an attorney whose name is listed below. You have been rescheduled for a hearing in front of an Administrative Law Judge (ALJ) to review the facts and allegations in this document. The ALJ will decide if you are able to make sound decisions, or if you should have a person appointed to act on your behalf.

Medication Court Administrator: Please write in a hearing date, time, and location no later than 30 days from the date you serve the patient with this petition.

HEARING DATE: _____ HEARING TIME: _____ HEARING INSTITUTION: _____

YOUR ATTORNEY IS: Attorney Name: _____ Contact Phone: _____

Attorney Address: _____

_____

_____

(For the individual serving the patient)
I declare under penalty of perjury that this document was served on the patient on the date shown below:
Served and signed this _____ day of _____, 20___ at _____, California.

Name and Title (print) _____ Signature _____

I. Renewal Petition for Capacity Determination

1. Provide the status of the patient's current physical condition, and health care conditions, if any:

2. Provide the status of the patient's current mental health condition to the extent it may affect his or her capacity to give informed consent or to make a health care decision:

3. Briefly recite the facts or circumstances that were the basis for the initial PC 2604 petition:

1. Disability Code:
☐ TABE score ≤ 4.0
☐ DPH ☐ DPV ☐ LD
☐ DPS ☐ DNH
☐ DNS ☐ DDP
☐ Not Applicable

2. Accommodations:
☐ Additional Time
☐ Equipment ☐ SLI
☐ Louder ☐ Slower
☐ Basic ☐ Transcribe
☐ Other*

3. Effective Communication:
☐ Patient asked questions
☐ Patient summed information

Please check one:
☐ Not Reached* ☐ Reached
*See chrono/notes

4. Comments:

CDCR #:
Last Name: MI:
First Name:
DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)
What is the current status of any deficit(s) that you have observed in the patient's mental functions within the meaning of Probate Code section 811:
4. Alertness and attention, including, but not limited to:
A) Level of arousal or consciousness:
B) Orientation as to time, place, person, and situation:
C) Ability to attend and concentrate:
5. Information processing, including, but not limited to:
A) Short and long-term memory, including immediate recall:
B) Ability to understand or communicate with others, either verbally or otherwise:
C) Recognition of familiar objects and familiar persons:
D) Ability to understand and appreciate quantities:
E) Ability to reason using abstract concepts:
F) Ability to plan, organize, and carry out actions in one's own rational self-interest:

Renewal Petition for Capacity Determination CDCR MH-7703 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)
G) Ability to reason logically:
6. Thought processes/content/perception. Deficits in these functions may be demonstrated by the presence of the following:
A) Severely disorganized thinking:
B) Hallucinations:
C) Delusions:
D) Uncontrollable, repetitive, or intrusive thoughts:
7. Deficits in the ability to modulate mood and affect may be indicated if the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness, despair, helplessness, apathy, or indifference is present that is inappropriate to the individual's circumstances. Describe any observations here:
8. If you identified any deficits in your responses to questions 4-7, please state whether any deficit, either alone or in conjunction with other deficits noted, significantly impairs the patient's ability to understand and appreciate the consequences of his or her actions:

Renewal Petition for Capacity Determination CDCR MH-7703 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)

9. Indicate whether the patient's periods of impairment are transient, fixed, or likely to change during the one-year period of the proposed court order, and explain on what basis you have this opinion:

10. Is there other background information, or an optional diagnosis providing a basis for the symptomology or deficit(s) listed above?

11. Are you able to identify a link, if any, between the deficits identified in your responses to questions 3-6 and the patient's ability to participate in decisions either knowingly and intelligently or by means of a rational thought process?

12. Detail what efforts have been made to obtain informed consent from the patient, including dates, relevant events, and the patient's response:

13. Describe the efforts made to locate family members of the patient who could act as a surrogate decision-maker, and if located, provide additional details below:

A) Efforts made:

CDCR #:

Last Name: MI:

First Name:

DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)		
B) Name, address, and phone number of known relatives:	Information suggests this person would not act in the patient's best interest.	Information suggests this person may be suitable as a surrogate.
i.	☐	☐
ii.	☐	☐
iii.	☐	☐
iv.	☐	☐
v.	☐	☐
vi.	☐	☐

14. Detail the probable impact on the patient with, or without, the continued appointment of a decision-maker:

15. In your opinion, does the patient continue to lack capacity to give informed consent? If yes, state recent facts.

Renewal Petition for Capacity Determination CDCR MH-7703 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)	
16.	(If applicable) In your opinion, does the patient still require the appointment of a surrogate decision-maker? If yes, state recent facts and current state of patient's medical condition.
17.	(If applicable) In your opinion, does the patient still require electroconvulsive therapy (ECT)? If yes, state recent facts and medically sound basis for continued treatment.

II. Verification	
Based on the information above, it is my opinion that the patient who is the subject of this petition:	
☐	Continues to lack the capacity to give informed consent, because based upon deficits identified in this petition, he/she is either unable to participate in decisions either knowingly and intelligently or by means of a rational thought process.
☐	Has regained the capacity to give informed consent.
☐	Is clinically indicated for continued ECT for up to one more year.
☐	☐ There is no less restrictive treatment alternatives to ECT at this time.
	☐ The treatment is in accordance with sound medical-psychiatric practice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date _____ Institution _____

Name and Title (print) _____ Signature of Declarant _____

Renewal Petition for Capacity Determination CDCR MH-7703 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

RENEWAL PETITION FOR CAPACITY DETERMINATION

CDCR MH-7703 (06/16)

Instructions

Purpose of CDCR MH-7703 (06/16) Renewal Petition for Capacity Determination: This form summarizes and gathers medical and mental health information to renew an existing order pertaining to patients who have been found to lack capacity to give informed consent, or who have been found to require certain medical or mental health procedures for which continuing judicial authorization is required. This form, when filed with the Office of Administrative Hearings, renews the PC 2604 process.

1. The CDCR MH-7703 is used to seek extension of an existing order for treatment, to extend an order appointing a surrogate decision maker, or to extend a judicial order allowing administration of electroconvulsive therapy (ECT).
2. The CDCR MH-7703 may be filled out by the treating clinician requesting a hearing, or by the patient's treatment team, who would each fill out appropriate sections of the form relating to their clinical expertise and knowledge of the patient. The treatment team includes staff from the following disciplines: psychology, nursing, psychiatry, medical, and social work.
3. The CDCR MH-7703 shall be signed under penalty of perjury by the physician who plans to present the case at hearing. The signatory shall have some treatment time and clinical relationship with the patient, and must be a licensed physician or licensed dentist.
4. The person(s) filling out the CDCR MH-7703 should enter data into every relevant box. If a specific section or box does not apply, fill in "N/A."
5. If a patient is clinically compromised and cannot provide the requested information, do not write "N/A" but instead specify what objective facts, specific behaviors, and conditions the clinician observed that did not allow information to be collected. For example, if asked to opine on a catatonic patient's ability to reason logically, the writer shall not write "unable to assess," but shall write something like "patient is catatonic and cannot respond."
6. The person(s) completing the CDCR MH-7703 should always fill out Sections I (Verified Petition) and II (Verification).
7. If the patient has a variety of emergent or ongoing health conditions for which informed consent is needed, document each separate condition on the Petition for Capacity Determination-Add-A-Page (CDCR MH-7702-1), using one CDCR MH-7702-1 for each separate matter for judicial evaluation.
8. Do not reference documentation contained in the health record. You must specify the condition and treatment being requested in this document. You must not write "see note dated 6/13/2015" or "see oncology note." If you fail to include relevant information within the formed petition, the Administrative Law Judge (ALJ) cannot properly evaluate the petition.
9. If the patient is unable to communicate or appears to have difficulty processing the information being given, or if the patient has a documented need for any type of accommodation, the person serving the form must complete the sections regarding accommodation and effective communication.
10. Once the CDCR MH-7703 is completed and signed under penalty of perjury by the physician or dentist who will present the case, it should be delivered to the institution's Medication Court Administrator (MCA).
11. The MCA shall identify a hearing date no sooner than 10 days from the anticipated date of service upon the patient, using the available statewide PC 2602 master calendar where possible. Cases should be set on the same day as PC 2602 hearings where possible. Contact the Office of Legal Affairs, Healthcare Team, if your institution is not listed on the master rotation document.
12. The MCA shall identify an attorney to be assigned to the patient, using the available statewide PC 2602 master list of attorney rotation assignment, where possible. Cases should be set on the same day as PC 2602 hearings where possible. Contact the Office of Legal Affairs, Health Care Team, if your institution is not listed on the master rotation document.
13. The MCA shall fill in the name and contact information for the assigned attorney, and the proposed hearing date, location, and time. The attorney for the inmate may agree to a shorter notice period than the default of 10 days.
14. Do not set hearings on days when your presenting witness is unavailable.
15. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
16. The person effecting service of documents on the patient, generally the MCA, should fill in their name, title, sign their name, and date the form.
17. Provide one copy of the petition to the patient, along with a notification of rights (CDCR MH-7701), one copy to be returned to the Office of Administrative Hearings, and one copy to be returned to the Office of Legal Affairs.
18. Scan the CDCR MH-7703, coupled with a CDCR MH-7701, and any CDCR MH-7702-1 additions, into a single PDF for court filing. File with the Office of Administrative Hearings by sending to keyheafilings@dgs.ca.gov on the same day the patient was served.
19. Transmit a copy of the documents (CDCR MH-7701 and any CDCR MH-7702 or CDCR MH-7703 being served) to the Office of Legal Affairs by uploading the PDF to their secure document repository, and then send an e-mail, with no attachment, to PC 2604 Intake (m_OLA_PC_2604_Intake_Mailbox@cdcr.ca.gov), to the institution's MCA as a record of the filing, and to the assigned attorney.

Effective Communication: The Effective Communication section must be completed any time there is a clinically relevant encounter in which meaningful information is exchanged between the licensed clinician and the patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: TABE score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

PENAL CODE 2604 RECONSIDERATION

Penal Code 2604 Reconsideration		
Patient Name (Last, First):	CDCR#:	DOB:
Today's Date:	Date of Hearing:	Hearing Institution:
Patient Home Institution:	Office of Administrative Hearings Case# (if known):	
Patient Attorney (if known):		
Outline facts and circumstances that you believe show good cause for a judge to reconsider your Penal Code section 2604 case. If you have new evidence, state what that is and why that was not previously presented. (Use additional pages as necessary.):		
Patient Address:		

I certify that I am aware that I can file only one reconsideration per 12-month period from the date of my hearing, as stated in Penal Code section 2604, subdivision (j).

Print Name: _____ Signature: _____

Once complete, mail the CDCR MH-7704 (06/16) Penal Code 2604 Reconsideration, to the following address:

Penal Code 2604 Filings
Office of Administrative Hearings
2349 Gateway Oaks, Suite 200
Sacramento, CA 95833

This section is for official use only.

The above facts and circumstances have been considered. It is ordered that:

☐ Reconsideration granted, new hearing on: _____ ☐ Reconsideration denied

Administrative Law Judge (print name): _____

Administrative Law Judge (signature): _____

Date: _____

Penal Code 2604 Reconsideration CDCR MH-7704 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

PENAL CODE 2604 RECONSIDERATION

CDCR MH-7704 (06/16)

Instructions

Purpose of CDCR MH-7704 (06/16) Penal Code 2604 Reconsideration: This form can be given to a patient who has been taken to hearing for either an initial or renewal PC 2604 proceeding and who believes that the Administrative Law Judge (ALJ) misunderstood the case or failed to consider key evidence. This form is handed directly to the patient, who is then responsible for completing it with assistance from staff, and sending it via inmate legal mail to the Office of Administrative Hearings.

A patient is entitled to file one motion for reconsideration per year following a determination that he or she lacks capacity for informed consent, and may seek a hearing to present new evidence upon a showing of good cause. As a general rule, `good cause' includes reasons that are fair, honest, in good faith, not trivial, arbitrary, capricious, or pretextual, and reasonably related to legitimate needs, goals, and purposes. (Cotran v. Rollins Hudig Hall Intern., Inc. (1998) 17 Cal.4th 93, 107-108.)

In determining the meaning of `good cause' in a particular context, courts utilize common sense based upon the totality of the circumstances. If you believe that you have information or circumstances that shows `good cause' to have a new hearing, fill out this form with as much information as you can supply to support your position.

1. Fill in the information sections at the top of the form.
2. Briefly describe the facts and circumstances that you believe show good cause for a judge to reconsider your case. If you need additional space to describe the facts and circumstances for good cause, you may use extra sheets of paper. Please label these additional sheets as PC2604 Reconsideration.
3. Fill in your address where you can be reached to receive notice if the application has been granted or denied.
4. Print and sign your name.
5. Once you have filled out the form, and printed and signed your name, obtain a #10 standard envelope from the institution and write “Legal Mail” on the front of the envelope.
6. On the top left corner of the envelope, write your full return address where you can be reached.
7. Address the envelope to the address listed on the form.
8. Follow your institution's protocol for sending legal mail and ask that the reconsideration form be mailed on your behalf.
9. If you have any issues with this process or having this item mailed, contact the Medication Court Administrator.

CONFIDENTIAL SURROGATE DECISION MAKER SCREENING

CONFIDENTIAL (*DO NOT ATTACH TO PETITION*)

Patient Name (Last, First): _____ Case Number: _____

Proposed Decision Maker Name: _____ CDCR Number: _____

If selected, the surrogate decision maker must sign Consent to Act.

THIS FORM MUST REMAIN CONFIDENTIAL AND MUST NOT BE MADE PART OF THE ADMINISTRATIVE RECORD.

How this form will be used:

This form is **confidential** and will not be a part of the public administrative file in this case. Each proposed surrogate decision maker must complete and sign a separate copy of this form. The information provided in this form will be used by the court and by the persons and agencies designated by the court to assist the court in determining whether to appoint the proposed surrogate decision maker as decision maker. The proposed surrogate decision maker **must** respond to each item.

1. a. Proposed Surrogate Decision Maker (name): _____
   b. Date of Birth: _____
   c. Social Security Number: _____
   d. Driver's Licence Number: _____ State: _____
   e. Telephone Numbers: Home: _____ Work: _____ Other: _____
   f. Physical Address: Street: _____
   City: _____ State: _____ Zip: _____

2. a. I am related to the proposed Respondent-patient as (specify relationship): _____
   b. I have personally known the proposed patient for _____ years, and _____ months.

3. ☐ I am the spouse of the proposed Respondent-patient, and I *have* filed for legal separation, dissolution of marriage, annulment, or adjudication of nullity of the marriage.
   ☐ I am the spouse of the proposed Respondent-patient, and I *have not* filed for legal separation, dissolution of marriage, annulment, or adjudication of nullity of the marriage.
   ☐ I am not the spouse of the proposed Respondent-patient.
   ☐ I am a former spouse of the proposed Respondent-patient. My marriage with the proposed Respondent-patient was terminated on: _____

4. a. Do you owe money or have financial obligation to the proposed Respondent-patient? ☐ No ☐ Yes
   b. Does the proposed Respondent-patient owe you money or have financial obligations to you? ☐ No ☐ Yes
   c. Are you an agent for a creditor of the proposed Respondent-patient? ☐ No ☐ Yes

5. Have you been convicted of a felony, or had a felony expunged from your record? ☐ No ☐ Yes (please specify):

CDCR #:
Last Name: MI:
First Name:
DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Health Records, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

CONFIDENTIAL (*DO NOT ATTACH TO PETITION*)	
6. Have you been charged with, arrested for, or convicted of a crime involving embezzlement, theft, or any other crime involving the taking of property? (if yes, include dates, charges, and circumstances)	☐No ☐Yes
7. Have you been charged with, arrested for, or convicted of a crime involving fraud, conspiracy, or misrepresentation of information? (if yes, include dates, charges, and circumstances)	☐No ☐Yes
8. Have you been charged with, arrested for, or convicted of a crime involving elderly abuse or neglect? (if yes, include dates, charges, and circumstances)	☐No ☐Yes
9. Have you had a restraining order or protective order filed against you by the proposed Respondent-patient in the last 10 years?	☐No ☐Yes
10. Have you previously been appointed conservator, executor, or fiduciary in another proceeding?	☐No ☐Yes
11. Have you been removed or resigned as a conservator, guardian, executor, or fiduciary in any other case?	☐No ☐Yes
12. Are you currently receiving services from a psychiatrist, psychologist, or therapist for a mental health related issue?	☐No ☐Yes (please specify):
13. Have you received services from a psychiatrist, psychologist, or therapist for a mental health related issue in the past?	☐No ☐Yes (please specify):
14. Have you ever been diagnosed with a mental illness?	☐No ☐Yes (please specify):
15. Do you have a social worker, or probation or parole officer assigned to you?	☐No ☐Yes

Confidential Surrogate Decision Maker Screening CDCR MH-7705 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Health Records, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

CONFIDENTIAL (*DO NOT ATTACH TO PETITION*)	
16. Are you now, or have you been in contact with the proposed Respondent-patient's medical doctor(s)?	☐ No ☐ Yes
17. Are you familiar with the proposed Respondent-patient's condition and need for a surrogate decision maker?	☐ No ☐ Yes
18. I live within _____ miles of the facility where the proposed Respondent-patient is housed.	
19. I am in contact with the proposed Respondent-patient on a ☐ weekly, or ☐ monthly basis. Please specify when you last had contact (in person, by phone, or mail) with the proposed Respondent-patient:	
20. I am regularly out of the state of California for ____ months per year.	
21. Do you have a cellular phone with active service?	☐ No ☐ Yes
22. Do you hold any personal beliefs that would cause you to differ with commonly-accepted clinical treatment based on scientific research?	☐ No ☐ Yes (please specify):
23. Do you hold any religious beliefs that would cause you to differ with commonly-accepted clinical treatment based on scientific research?	☐ No ☐ Yes (please specify):
24. Is there any reason you would be unable to make a decision on behalf of the proposed Respondent-patient?	☐ No ☐ Yes (please specify):
25. ☐ I do not have an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of surrogate decision maker. ☐ I have, or may have, an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of surrogate decision maker (please specify below).	
26. Are you willing to serve as a surrogate decision maker?	☐ No ☐ Yes

Confidential Surrogate Decision Maker Screening CDCR MH-7705 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Health Records, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

CONFIDENTIAL (*DO NOT ATTACH TO PETITION*)

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date

County

Type or Print Name of Proposed Surrogate Decision Maker

Signature of Proposed Surrogate Decision Maker

Relationship to Respondent-patient

**Each proposed surrogate decision maker must fill out and file a separate screening form.*

Confidential Surrogate Decision Maker Screening CDCR MH-7705 (06/16)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Health Records, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

Instructions

Purpose of CDCR MH-7705 (06/16) Confidential Surrogate Decision Maker Screening: This form must be filled out and returned to the CDCR Office of Legal Affairs by any individual who wishes to be considered as a possible decision maker for a patient being considered for lack of capacity to give informed consent, known as PC 2604.

This is a confidential form and will not be provided to the court. Information from this form will be used to generate a recommendation to the judge as to who should be considered.

1. Each person willing to act as a surrogate decision maker for a patient should fill out their own copy of the Confidential Surrogate Decision Maker Screening form, filling out all four pages.
2. Sign and date the form on Page 4, under penalty of perjury.
3. Indicate your relationship to the patient.
4. If you are unwilling to act as a decision maker, you may write "unwilling to act" on page 1, provide your contact information, and return the form.
5. Once you have filled out the form and printed and signed your name, you may either scan the form to PDF and email to CDCR PC 2604 Intake (m_OLA_PC_2604_Intake_Mailbox@cdcr.ca.gov), or send the completed form by mail to the Department of Corrections and Rehabilitation. Address the envelope as follows:

   Penal Code 2604 Intake
   CONFIDENTIAL
   Department of Corrections and Rehabilitation
   Office of Legal Affairs
   1515 S Street, Suite 314S
   P.O. Box 942883
   Sacramento, CA 94823-0001

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF NON-RENEWAL OF PENAL CODE 2604 ORDER

CDCR MH-7706 (06/16)

ORDER EXPIRATION: _____

PATIENT NAME: _____

PHYSICIAN NAME: _____

INSTITUTION: _____

TODAY'S DATE: _____

1. Who reviewed the current case and evaluated the need for a non-renewal of the PC 2604 order?

2. The justification for not seeking renewal of the current order is as follows:

3. Has this non-renewal been reviewed by an Interdisciplinary Treatment Team or your management team?

☐ Yes ☐ No (If not reviewed by an IDTT, please specify why below.)

4. Clinical staff have decided that this order should be terminated:

☐ Immediately ☐ Upon natural expiration of the current order, unless a subsequent provider determines a renewal is, in fact, warranted

The patient was informed that the evaluating physician does not intend to seek renewal of the current court order. The patient was advised that this non-renewal order form is revocable up through and including the last day of the current capacity determination court order for the following reasons: if the patient does not cooperate with his/her treatment; if another physician disagrees with the opinions in this document; or if the patient transfers to another facility or institution and an evaluating or reviewing physician believes the patient should continue on a court order. A copy of this form shall be submitted for scanning to the electronic chart and electronic file upon the date specified below.

This conversation took place on: A copy of this advisement was given to the patient on:

_____
Date

_____ _____
Name and Title (print) Signature

1. Disability Code:

☐ TABE score ≤ 4.0
☐ DPH ☐ DPV ☐ LD
☐ DPS ☐ DNH
☐ DNS ☐ DDP
☐ Not Applicable

2. Accommodations:

☐ Additional Time
☐ Equipment ☐ SLI
☐ Louder ☐ Slower
☐ Basic ☐ Transcribe
☐ Other*

3. Effective Communication:

☐ Patient asked questions
☐ Patient summed information

Please check one:
☐ Not Reached* ☐ Reached
*See chrono/notes

4. Comments:

CDCR #:

Last Name: MI:

First Name:

DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION:Patient, Health Records, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

NOTICE OF NON-RENEWAL OF PENAL CODE 2604 ORDER

CDCR MH-7706 (06/16)

Instructions

Purpose of CDCR MH-7706 (06/16) Notice of Non-Renewal of Penal Code 2604 Order: This form provides a method to indicate that a patient has regained capacity and no longer requires the PC 2604 process.

1. The CDCR MH-7706 (Notice of Non-Renewal of PC 2604 Order) should be used when the patient's clinical team has formed the opinion that the patient has capacity to give informed consent, and that a court order is no longer required.
2. The current treating clinician should fill out the CDCR MH-7706.
3. Fill in the name of the reviewer and the justification for not renewing the PC 2604 order.
4. The provider or Medication Court Administrator (MCA) must complete Box 3 indicating whether the decision to terminate a PC 2604 order has been reviewed either by an Interdisciplinary Treatment Team or by the clinician's supervisor.
5. Document that the clinician had a conversation about termination of the order with the patient, and the date of the conversation.
6. If the patient is unable to communicate or appears to have difficulty processing the information being given, or if the patient has a documented need for any type of accommodation, the person serving the form must complete all sections regarding accommodation and effective communication.
7. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
8. If the surrogate is a family member, the institution shall send a copy of this form to the appointed surrogate decision maker to advise the surrogate of the decision to terminate the order.
9. Provide one copy of the Notice of Non-Renewal of PC 2604 Order to the patient, and one copy to be returned to the Office of Legal Affairs.
10. Do not send this form to the Office of Administrative Hearings.
11. Scan the CDCR MH-7706 to PDF for electronic transmission. File with only the Office of Legal Affairs by sending an e-mail, with the non-renewal attached, to PC 2604 Intake (m_OLA_PC_2604_Intake_Mailbox@cdcr.ca.gov), to the institution's MCA as a record of the filing, and to the previously assigned attorney.

Effective Communication: The Effective Communication section must be completed any time there is a clinically relevant encounter in which meaningful information is exchanged between the licensed clinician and the patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: TABE score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3353 and 3353.1 and to adopt new section 3353.2 of the California Code of Regulations (CCR), Title 15, Division 3, governing the process for appointment of a surrogate decision maker via an administrative determination regarding the patient's lack of capacity to give or withhold informed consent.

In 2015, the Legislature passed and the Governor signed into law Assembly Bill (AB) 1423 (Stone), which created an administrative hearing process for determination of a patient's capacity to provide informed consent. This legislation created Penal Code section 2604.

These proposed regulations are necessary to implement, interpret, and make specific the general provisions of PC Section 2604. While PC 2604 contains a fair amount of detail as to substantive elements for establishing a case, regulations are required to incorporate this new procedure into existing regulations, to specify the forms to be used, and to delineate uniform procedures for institutions and Administrative Law Judges (ALJ), and to provide procedural due process to affected inmates.

This regulatory action provides authority and direction to CDCR staff for proper identification of inmates who meet the criteria for a determination of capacity for informed consent in a correctional setting. This action is necessary so that all institutions follow the same standardized set of procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of the involuntary medication process. In addition, this regulatory action is required to ensure that every inmate receives the same procedural and substantive due process, regardless of housing assignment or institution.

Consideration of Alternatives:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives Considered:

1. Use of PC 2602 Process

The Department considered whether affected inmates could be adjudicated within the existing PC 2602 administrative process. They cannot. PC 2602 is for involuntary psychiatric medication, whereas the class of inmates who may fall under PC 2604 will be alleged to lack capacity for informed consent, who may not meet criteria for involuntary medication on the basis of being a danger to self, danger to others, or gravely disabled. For these reasons, the Department rejected this alternative.

ECONOMIC IMPACT ASSESSMENT:

In accordance with GC Section 11346.3(b), CDCR has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs and Expansion of Business within the State of California

The Department has determined that the proposed regulations will have no impact on the creation of new, or the elimination of existing jobs or business within California or affect the expansion of businesses currently

doing business in California because the proposed regulations affect the internal management of prisons only.

Creation of New or Elimination of Existing Businesses within the State of California

The proposed regulations for administrative determinations of an inmate's capacity to give informed consent have no effect on the creation of new or elimination of existing business within the State of California because those businesses are not affected by the internal management of prisons.

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed language for administrative determinations of an inmate's capacity to give informed consent will not have a significant adverse impact on business in the State of California because those businesses are not affected by the internal management of prisons.

Local Mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (section 17561) of Division 4.

Benefits of the Regulations

The proposed regulatory action will protect public health and safety and worker safety, and benefit CDCR staff and inmates by providing direction to CDCR staff for proper identification of patients who lack capacity to give informed consent. A standardized set of due process procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of an inmate's lack of capacity to give informed consent will be put in place by all institutions. Appointment of a surrogate decision maker provides an ethically and legally appropriate method to ensure timely care is provided within the scope of the patient's known wishes. The proposed regulation will have no effect on the State's environment because the proposed regulations relate strictly to the internal management of CDCR institutions.

Materials Relied Upon:

1. Probate Code Sections 810, 811, 812, 813
2. Health and Safety Code Section 1418.8
3. California Code of Regulations, Title 15, Section 3364.1

Copies of these documents are available for review as a part of the rulemaking file.

Specific Purpose of Each Section Adoption/Amendment

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

3353 Informed Consent Requirement

Subsection 3353 is amended to reference new section 3353.2. The word "inmate" was changed to "patient" throughout. The wording changes are stylistic and reflect current practices when referring to persons subject

to these procedures. These changes are necessary to link the informed consent requirement to the new section dealing with procedures to determine capacity for informed consent.

3353.1. Capacity for Informed Consent

Subsection 3353.1 is amended to provide a more comprehensive definition of capacity for informed consent and to highlight the relationship between capacity and the ability to give informed consent**.** The word "inmate" was changed to "patient" throughout. Legacy phrasing that could be construed as demeaning to those with mental illness was removed. These changes are necessary to create a baseline definition for "capacity" and "informed consent" more in line with Probate Code section 813. The section establishes the meaning of these two phrases, and then provides a jumping off point to new section 3353.2 where staff may seek an administrative determination as to whether an inmate has capacity for informed consent. These changes are necessary to track existing law, and to create a reference to the new administrative process.

3353.2. Procedure for Capacity Determination and Selection of Surrogate

New subsection 3353.2 is adopted to create the statewide procedural framework for the new process. This section clarifies which forms to use for initiation, renewal, reconsideration, non-renewal, and surrogate screening. This section details applicable service and filing procedures. This section details the amount of supporting documentation and legal assistance to be provided to the inmate patient. This section details the procedures for ensuring that any waivers of appearance or refusals to attend are properly handled in the context of the patient's alleged lack of capacity. This section details who contacts family members, and how that information is collected. This section is necessary to create a uniform, procedural due process framework to be used in these new cases.

New subsection 3353.2(a) is adopted to mirror the language in PC 2604 stating which category of clinicians may initiate a case.

New subsection 3353.2(b) is adopted to clarify that the hearing for a PC 2604 matter will be conducted at the institution where the patient is located. One of the key differentiating factors between PC 2604 and other non-correctional schemes for capacity determinations is that PC 2604 matters will allow inmates to attend.

New subsection 3353.2(c) is adopted to specify that hearings pursuant to this section shall be recorded.

New subsection 3353.2(d) is adopted to specify that the primary findings of statutory elements by an ALJ must be established by clear and convincing evidence. For other secondary ALJ findings not directly tied to a statutory element, the standard of proof is by preponderance.

New subsection 3353.2(e) is adopted to specify the new form numbers for an initial petition, additional pages, and for the patient rights form. Service and filing requirements for the Office of Administrative Hearing are also detailed. Mirroring customary practice in civil cases, the Department is electing to require a verified petition.

New subsection 3353.2(f) is adopted to specify the new form numbers for a renewal petition, additional pages, and for the patient rights form. Service and filing requirements for the Office of Administrative Hearing are also detailed. Mirroring customary practice in civil cases, the Department is electing to require a verified petition.

New subsection 3353.2(g) is adopted to specify who may sign an initial or renewal petition, and to clarify that these documents may be prepared by digitally-authenticated dictation. This section also states that while

subordinate staff may help document and build a case, the petition must be signed by a licensed physician or dentist.

New subsection 3353.2(h) is adopted to specify the personnel, timelines and expectations for getting discovery to the patient's attorney.

New subsection 3353.2(i) is adopted to specify the procedure to be used by the ALJ if an independent expert is requested by counsel for the patient.

New subsection 3353.2(j) is adopted to specify that where a condemned patient is the Respondent, the Department will utilize a procedure similar to PC 2602 and notify capital counsel through a central notification address.

New subsection 3353.2(k) is adopted to specify that the attorney for the patient shall be provided a space to meet with the patient on the day of hearing.

New subsection 3353.2(l) is adopted to specify that the institution shall attempt to identify potential family members to act as surrogate decision makers, after which the Office of Legal Affairs will take over with the screening process using a standardized screening form. Further, this section specifies that the Medication Court Administrator will arrange to have any potential surrogates who are family members available to appear by phone at the hearing.

New subsection 3353.2(m) is adopted to establish that the Office of Legal Affairs shall file a supplemental petition setting forth the Department's recommendations as to a surrogate decision maker, summarizing information from the standardized confidential screening forms.

New subsection 3353.2(n) is adopted to require the Department to establish that a proposed surrogate is in fact willing to act on behalf of the patient.

New subsection 3353.2(o) is adopted to specify that any disputes, objections, or disagreements known to the Office of Legal Affairs between a patient, or a patient's family members, shall be disclosed.

New subsection 3353.2(p) is adopted to specify that the patient shall be re-advised of their rights in PC 2604 on the day of hearing, and identifies certain situations where the attorney for the patient should be brought to the patient's cell.

New subsection 3353.2(q) is adopted to specify that absent certain contingencies that shall be documented, the patient shall attend the hearing unless a knowing and intelligent waiver indicating refusal to attend can be taken. The subsection specifies who should go to the cell block to obtain any waivers, and details what advisements be given to the inmate patient.

New subsection 3353.2(r) is adopted to clarify that if any waiver(s) of attendance are taken, the ALJ shall take sworn testimony on the record to establish the basis of any waiver(s), and to establish that the waiver(s) were knowing and voluntary. And to clarify the ALJ's duty to make a specific finding about why the patient is not present at a hearing, and specifies the needed steps if the ALJ cannot make such a finding.

New subsection 3353.2(s) is adopted to provide a mechanism to continue a case if the patient is unable to attend due to a medical condition.

New subsection 3353.2(t) is adopted to specify the Department's preference for renewal interviews to be conducted in person, but to allow for use of videoconference technology if an in-person interview cannot be scheduled.

New subsection 3353.2(u) is adopted to specify the Department's preference to have the clinician with the most knowledge of the patient present the case, and to sanction presentation of cases via videoconference technology if an offsite clinician is in fact the more appropriate person to present a case.

New subsection 3353.2(v) is adopted to outline the procedure and forms necessary for a patient to seek reconsideration of an ALJ order under PC 2604.

New subsection 3353.2(w) is adopted to establish that the Department may also seek reconsideration of an ALJ order, using a standard pleading format.

New subsection 3353.2(x) is adopted to establish that in the event a given petition is denied, the Department may re-file the case if material new facts are discovered.

New subsection 3353.2(y) is adopted to specify the form and procedures to be used by the Department when electing to not renew a case.

New section 3353.2(z) is adopted to establish that the ALJ, when presented with multiple alternatives to serve as surrogate, may review the supporting documentation in camera and shall select based on a preponderance.

New section 3353.2(aa) is adopted to establish a requirement that if a surrogate becomes incapacitated, disappears, or can no longer serve, that the Department re-calendar the case within 30 calendar days.

New section 3353.2(bb) is adopted to establish that the Department may modify a pending petition if the patient's condition materially declines or if new information becomes available.

New section 3353.2(cc) is adopted to establish that if the Department can find no suitable family member to serve, the Department may elect to form a panel of clinicians to serve.

New section 3353.2(dd) is adopted to establish that institutional staff shall place a hold on any patient pending a hearing pursuant to Penal Code 2604, subject to necessary movement for medical or psychiatric emergencies.

New section 3353.2(ee) is adopted to establish that if conditions arise that would warrant an expedited hearing, the attorneys may agree to advance a hearing date.

New section 3353.2(ff) is adopted to create a standardized communication protocol between healthcare staff and any family member appointed as surrogate, to be used by the institution when a PC 2604 order is granted.

New section 3353.2(gg) is adopted to establish that institutions with a PC 2604 patient shall disclose sufficient patient information to the surrogate to allow the surrogate to effectively represent the patient.

New section 3353.2(hh) is adopted to establish a uniform requirement that, in the event a given patient has both a PC 2602 and a PC 2604 hearing on the same day, the ALJ shall fill out a separate order for each matter.

New section 3353.2(ii) is adopted to establish that the granting of a PC 2604 order for a given patient does not allow the surrogate to circumvent established institutional procedures for security clearances and visiting procedures.