



Department of Corrections and
Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

**Sections: 3351, 3364, 3364.1
and 3364.2**

Number:

14-07

Publication Date:

July 18, 2014

Effective Date:

To be announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This notice announces the amendment to Sections 3351 and 3364, and adoption of Sections 3364.1 and 3364.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, in order to update current regulatory text and incorporate new text into the CCR, related to Involuntary Psychiatric Medication.

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, California 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, September 8, 2014 at 5:00 p.m.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on September 8, 2014 from 9:00 a.m. to 10:00 a.m. in the Kern Room, located at 1515 S Street, North Building, Sacramento, California 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 have the same significance and influence 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. 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. Certification should be provided by the institution's rules coordinator and returned to RPMB on a CDCR 621-A form by email or fax. See Department Operations Manual Sections 12010.5.7 and 12010.5.8 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 94283-0001, by telephone (916) 445-2269 or e-mail RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to: Bill Davies (916) 324-1849.

Original signed by:

DIANA TOCHE

Undersecretary, Health Care Services

Undersecretary (A), Administration and Offender Services

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, in order to implement, interpret and make specific PC Section 2602, proposes to amend sections 3351 and 3364 and to adopt new sections 3364.1 and 3364.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Involuntary Psychiatric Medication.

PUBLIC HEARING:

Date and Time: **September 8, 2014 – 9:00 a.m. to 10:00 a.m.**

Place: Department of Corrections and Rehabilitation
Kern 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 September 8, 2014 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:

D. Hawkins
Regulation and Policy Management Branch
Telephone (916) 445-2314

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

Bill Davies
Department of Corrections and Rehabilitation
(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:

- Amends Chapter 1, Subchapter 4, Articles 8 and 9 of the CCR, Title 15, Division 3 to implement, interpret and make specific PC Section 2602. Enactment of PC Section 2602 terminated the permanent injunction stemming from the *Keyhea v. Rushen* decision and replaced it with a statutory scheme governing the administration of involuntary psychiatric medication upon individuals housed in CDCR facilities.
- Amends sections 3351 and 3364 of the CCR, Title 15, Division 3 concerning Involuntary Psychiatric Medication.
- Adopts sections 3364.1 and 3364.2 into CCR, under Chapter 1, Subchapter 4, Articles 8 and 9 concerning Medical and Dental Services/Mental Health Services.
- Provides definitions for terms used in PC Section 2602 and specifies standardized statewide criteria for evaluation of an inmate's mental condition.
- Provides authority and direction to CDCR staff for proper identification of inmates who meet criteria for psychiatric intervention in a correctional setting, so that all institutions follow the same standardized set of procedures.
- Establishes that:
 - A new timeline between the start of medication and the hearing in front of an Administrative Law Judge (ALJ) has been revised from 47 days to 21 days. Emergency initial hearings may be heard on an expedited basis if patient care would benefit;
 - Inmates will have the right to be given notice when CDCR is seeking to renew a court order, as well as the right to file an objection to an institution's request to medicate the inmate prior to an initial ALJ hearing; and,
 - The Department gained the right to add a basis for a court order if the inmate's serious illness began to manifest in new ways.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The proposed regulatory action will benefit CDCR staff and inmates by providing direction to staff for proper identification of inmates who meet the criteria for psychiatric intervention in a correctional setting, and using the least restrictive alternative. A standardized set of procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of the involuntary medication process will be followed by all institutions. This will ensure consistent and fair treatment on a statewide basis concerning Involuntary Psychiatric Medication.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion because these proposed regulations supplement existing regulations in order to comply with the statutes under PC Section 2602.

FORMS INCORPORATED BY REFERENCE

- CDCR MH-7363 (Rev. 03/14), Involuntary Medication Notice
- CDCR MH-7366 (Rev. 03/14), Inmate Rights Notice - Involuntary Medication
- CDCR MH-7368 (Rev. 03/14), Renewal of Involuntary Medication Notice

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings 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. As stated under the “Specific Benefits Anticipated by the Proposed Regulations” above (under the “INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW”), the regulations will benefit the health and welfare of California residents, as well as worker safety, specifically for inmates and CDCR staff, by allowing for earlier psychiatric intervention for those needing medication, which will result in a safer environment for employees as well as other inmates. Additionally, the proposed regulations set uniform standards for inmates meeting the criteria for psychiatric intervention and providing direction to correctional staff in dealing with these inmates’ needs.”

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 proposed regulatory action. 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.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the 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

3351. Inmate Refusal of Treatment.

Subsection 3351(a) is amended to read:

(a) ~~Health care treatment, including medication, shall not be forced over the objections of: a mentally competent inmate; the guardian of a mentally incompetent inmate; or a responsible relative of a minor inmate, except in an emergency, or as required to complete the examination or tests for tuberculosis infection, or to implement the treatment for tuberculosis disease, or unless the provisions of Probate Code sections 3200 et seq. or the procedures set forth in Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986, hereby incorporated by reference, are followed. Healthcare treatment may be given without the inmate's consent when an emergency exists. An emergency exists when there is a sudden, marked change in an inmate's condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impracticable to first obtain consent. When an inmate has executed an advance directive, pursuant to Probate Code sections 4600-4779 relating to the Durable Power of Attorney for Health Care, and Health and Safety Code sections 7185-7194.5 relating to the Natural Death Act, health care staff shall act in accordance with the provisions of that advance directive, as provided by law.~~

Subsection 3351(b) is unchanged.

New subsections 3351(c) through 3351(e) are adopted to read:

(c) When an inmate has a valid advance health care directive or a valid executed Physicians Orders for Life Sustaining Treatment (POLST), health care staff shall act in accordance with the provisions of the advance health care directive, or POLST, as provided by law.

(d) Each institution shall establish procedures to implement the provisions of the Health Care Decisions Law, codified in the Probate Code at Division 4.7, Section 4600 et seq.

(e) Health care treatment, including medication, shall not be forced over the objections of a mentally competent inmate; the guardian of a mentally incompetent inmate; or a responsible relative of a minor inmate, except in an emergency, or as required to complete the examination or tests for tuberculosis infection, or to implement the treatment for tuberculosis disease, or unless the provisions of Probate Code Sections 3200 et seq. or the procedures set forth in PC Section 2602 are followed.

Note: Authority cited: Sections 2602(h) and 5058, Penal Code. Reference: Sections 2600, 2602, 5054, and 7570 et seq., Penal Code; Sections 3200 et seq., Probate Code; Thor v. Superior Court (Andrews) (1993) 21 Cal. Rptr.2d 357; ~~Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction,~~

~~filed October 31, 1986; Sections 4600 et seq and 4779 4781.2, Probate Code, Division 4.7; and Sections 7185 7194.5, Health and Safety Code.~~

Article 9. Mental Health Services

3364. Involuntary Medication.

Subsections 3364(a) through 3364(d) are amended to read:

(a) If medication used in the treatment of mental disease, disorder or defect is administered in an emergency, as that term is defined in section 3351, such medication shall only be that which is required to treat the emergency condition ~~and shall be provided in ways that are least restrictive of the personal liberty of the inmate.~~ If a psychiatrist determines it is determined that further administration of such medication involuntarily is necessary for a period of longer than 72 hours and the inmate does not consent to take the medication voluntarily, the following provisions set forth in sections 3364.1 and 3364.2 shall be followed:

~~(1) The administration of involuntary medication to inmates in excess of three days shall be in compliance with those procedures required in Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986.~~

~~(2) The administration of involuntary medication to inmates in excess of ten days shall be in compliance with those procedures required in Keyhea v. Rushen, supra.~~

~~(3) The administration of involuntary medication to inmates in excess of 24 days shall be in compliance with those procedures required in Keyhea v. Rushen, supra. The judicial hearing for the authorization for the involuntary administration of psychotropic medication provided for in part III of Keyhea v. Rushen, supra, shall be conducted by an administrative law judge. The hearing may, at the direction of the director, be conducted at the facility where the inmate is located.~~

(b) ~~Involuntary antipsychotic~~ Psychiatric medication shall not normally be involuntarily administered to an inmate in his or her housing unit. An inmate shall normally be transferred to the hospital, clinic, medically-suitable triage area, emergency room, or infirmary room at the institution prior to the administration of the medication. If a psychiatrist determines that the prior transfer of the inmate to such a setting would pose a greater risk to the inmate and staff than the risk involved to the inmate in receiving the medication in a non-medical setting, the ~~involuntary~~ medication may be involuntarily administered in the inmate's cell, provided that:

(1) Medical and/or mental health staff shall alert custody security staff, orally and in writing, of the fact that such medication has been administered, of the date and time of administration, of possible side-effects, ~~if any,~~ which could develop, and shall provide custody security staff with instructions for contacting medical and/or mental health staff immediately upon the development of ~~any such~~ side effects. ~~On-call m~~Medical and/or mental health staff shall make periodic observations of the inmate and shall respond to any emergency request for medical aid.

(2) In all cases where it is both feasible and medically desirable, a fast-acting medication shall be utilized to facilitate the inmate's rapid transfer to a medical setting.

~~(3) The inmate shall be considered for transfer from his or her cell to a medical setting at least once a day after the injection by a staff psychiatrist, or if a psychiatrist is not available by a staff physician, for the effective duration of the medication. After being given involuntary psychiatric medication, and if the inmate is not already housed in a medical setting such as a Triage and Treatment Area (TTA),~~

Correctional Treatment Center (CTC), Acute Psychiatric Program (APP), Intermediate Care Facility (ICF), Outpatient Housing Unit (OHU), or General Acute Care Hospital (GACH), the inmate shall be observed at least twice per day by mental health clinicians. If a significant adverse reaction to the medication is apparent, the inmate shall be transferred from his or her cell to a licensed medical or mental health setting for the effective duration of the medication. The staff psychiatrist or physician shall note his or her observations and decision in writing. The inmate shall be transferred to a licensed medical or mental health setting no later than 72 hours after the injection involuntary medication if the effective duration of the drug medication administered exceeds that time period.

(c) Each institution's eChief pPsychiatrist, or in his or her absence, eChief mMedical officer Executive or designee, shall ensure that a log is maintained in which is recorded each occasion of involuntary treatment medication of given to any inmate. The log entries shall identify the inmate by name and number, and shall include the name of the ordering physician, the reason for medication, and the time and date of medication. This information shall be maintained as part of an electronic medical record system. In institutions with a designated psychiatric treatment unit, a separate log shall be maintained for recording involuntary treatment and medication administered to inmates in that unit. The log shall be reviewed by the institution's chief psychiatrist, or in his or her absence, the chief medical officer at least monthly. Such logs shall be made available for review by the departmental mMedical dDirector, Mental Health Director, and/or statewide Chief Nurse Executive, upon request.

(d) When deemed necessary and clinically indicated by the treating psychiatrist, inmates subject to an involuntary medication order are also subject to monitoring of his or her medication levels to ensure presence in the bloodstream. Inmates who are subject to involuntary medication may also be required, when clinically indicated, to provide blood or electrocardiogram for side-effect monitoring. Laboratory tests may include, but are not limited to electrolytes, liver functions, white blood cell count, cholesterol and glucose monitoring. Each institution shall maintain a local operating procedure that logs inmates who are involuntarily required to provide blood for these purposes.

Note: Authority cited: Sections 2602(h) and 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code; Whitaker v. Rushen, et al., USDC No. C 81 3284 SAW (N.D. Cal.); and Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986.

3364.1 Involuntary Medication Definitions and Criteria

New section 3364.1 is adopted to read:

(a) Definitions:

(1) **Serious Mental Disorder** means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely.

(2) **Danger to Others** means the inmate has inflicted, attempted to inflict, or made a credible threat of inflicting substantial physical harm upon the person of another, and as a result of a serious mental disorder, the inmate presents a demonstrated danger of inflicting substantial physical harm upon others. Demonstrated danger may be based on an assessment of the inmate's present mental condition, including consideration of the inmate's historical course of serious mental disorder, to determine if the inmate currently presents an elevated chronic risk or an imminent risk of harming another person.

(3) **Danger to Self** means the inmate has made a credible threat or has attempted to engage in an act of self-harm and the threat is ongoing; or has threatened, attempted, or inflicted serious physical injury to

self, and, as a result of a serious mental disorder, the inmate presents as a demonstrated danger to self. Demonstrated danger to self may be based on an assessment of the inmate's present mental condition, including consideration of the inmate's historical course of serious mental disorder to determine if the inmate currently presents an elevated chronic risk or an imminent risk to his or her own safety.

(4) **Gravely Disabled** means that there is a substantial probability, due to a serious mental disorder and incapacity to accept or refuse psychiatric medication, that serious harm to the physical or mental health of the inmate will result. Serious harm means significant psychiatric deterioration, debilitation or serious illness as a consequence of his or her inability to function in a correctional setting without the supervision or assistance of others, inability to satisfy his or her need for nourishment, and/or inability to attend to needed personal or medical care, seek shelter, and/or attend to self-protection or personal safety. The probability of harm to the physical or mental health of the inmate requires evidence that the inmate is presently suffering adverse effects to his or her physical or mental health, or evidence that the inmate has previously suffered these effects in the historical course of his or her mental disorder and that his or her psychiatric condition is again deteriorating. The fact that an inmate has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the inmate.

(5) **Informed Consent** means that the inmate, without duress or coercion, is able to clearly give consent for the proposed psychiatric medication to the treating psychiatrist. In order to demonstrate that an inmate has given informed consent, the following criteria shall apply:

A. The inmate has been advised by the psychiatrist or a psychologist regarding the nature and seriousness of his or her mental illness or disorder, and, by means of a rational thought process, the inmate has communicated a willingness to pursue a recommended course of treatment.

B. A psychiatrist has explained the nature of the medication to be used in the proposed treatment, including its probable frequency and duration, and the inmate, using a rational thought process, has communicated his or her understanding of the fundamental meaning of the information provided.

C. The psychiatrist has stated the probable degree and duration (temporary or permanent) of improvement or remission of the inmate's condition to be expected, with, or without medication and the inmate has communicated a choice.

D. The inmate has been advised by a psychiatrist of how the medication is thought to work and the nature, degree, duration, and probability of risk and/or side effects commonly associated with the medication. In addition, this would include advising the inmate of how the medication acts to prevent, reduce, or address a particular mental health condition. The inmate has communicated a basic understanding of the information provided.

E. The inmate has been advised by a psychiatrist if there is a difference of opinion within community standards as to the effectiveness of the proposed medication and the inmate has utilized a rational thought process to communicate a basic understanding of the information.

F. The inmate has been advised of reasonable alternative treatments, if any, and why the psychiatrist is recommending a particular medication, and the inmate has communicated a basic understanding of the information.

G. The inmate has been advised by a psychiatrist of his or her right to accept or refuse the proposed medication, and of their right to revoke consent for any reason, at any time, prior to or between medications, and is able to articulate by means of a rational thought process the basis for accepting or rejecting the recommended course of treatment.

H. The inmate exhibits a reasonable understanding of his or her current condition and symptoms, and demonstrates consistency of choice with regards to following a recommended course of treatment to address psychiatric symptoms.

(6) **Informed Refusal** occurs when an inmate who has documented capacity to give informed consent and elects to knowingly refuse to consent to a given medication or recommended course of treatment.

(7) **Incapacity to Refuse Medication** means an inmate: (a) is unable to clearly communicate a consistent choice over time, or (b) is unable to understand facts and the risks or benefits of the situation as well as the proposed treatment options and alternatives, or (c) is unable to appreciate the situation and its consequences, or (d) is determined to be incapable of making a rational decision about his or her mental health treatment.

(8) **Involuntary Medication** means the administration of any psychiatric medication or drug to an inmate by the use of force, discipline, or restraint, including administration upon an inmate who is incompetent to accept or refuse medication or lacks the capacity to accept or refuse medication as defined herein.

(9) **Psychiatric Medication** means drugs or medications used in the treatment of a serious mental disorder, mental disease, or mental defect, or utilized to treat side effects caused by these medications or any medications used to augment or temper the effects of psychiatric medications. The drugs include, but are not limited to, antipsychotics, antidepressants, sedatives, or mood stabilizers, in both their short-acting and long-acting formulations.

Note: Authority cited: Sections 2602(h) and 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code.

3364.2 Involuntary Medication Hearing Procedures

New section 3364.2 is adopted to read:

(a) Initial involuntary medication proceedings shall be legibly documented and noticed by CDCR MH-7363 (Rev. 03/14), Involuntary Medication Notice and CDCR MH-7366 (Rev. 03/14), Inmate Rights Notice-Involuntary Medication, which are incorporated by reference. These forms may be either dictated, filled out by hand or by computer, and served to the inmate, the inmate's appointed or retained attorney, and the State's attorney. The inmate shall be personally served. A copy shall be filed with the Office of Administrative Hearings the same day the inmate is served with CDCR MH-7363 and CDCR MH-7366.

(b) Renewal involuntary medication proceedings shall be legibly documented and noticed by CDCR MH-7368 (Rev. 03/14), Renewal of Involuntary Medication Notice, which is incorporated by reference, and CDCR MH-7366. These forms may be either dictated, filled out by hand or by computer, and served on the inmate, the inmate's appointed or retained attorney, and the State's attorney. The inmate shall be personally served. A copy shall be filed with the Office of Administrative Hearings the same day the inmate is served with CDCR MH-7366 and CDCR MH-7368.

(c) The CDCR MH-7363 and CDCR MH-7368 forms shall be reviewed and signed under penalty of perjury by a psychiatrist prior to filing with the Office of Administrative Hearings. Declarations signed under penalty of perjury may utilize digital authentication and verification by a psychiatrist to facilitate electronic transmission. Staff such as psychologists, nurses, psychiatric technicians, and licensed clinical social workers who work with a psychiatrist may be used to record observations or help gather necessary data to complete portions of the CDCR MH-7363 or CDCR MH-7368.

(d) Pleadings that affect the substantial rights of the inmate, such as the addition of a new factual basis, or the dismissal of a case, shall be served on the inmate and the inmate's attorney. Supplemental petitions, notices from the Office of Administrative Hearings, and orders setting a matter for hearing do not need to be served on the inmate, but must be served on the inmate's attorney.

(e) Next-of-kin are not notified unless the inmate requests they be notified.

(f) The institution's Medication Court Administrator shall collect and securely transmit appropriate supporting documentation of any filed petition by electronic means to both State and inmate attorneys within three (3) business days. In the unlikely event this is not possible, the institution should attempt to allow the inmate's attorney access to view the pertinent records on site prior to the hearing.

(g) In any proceeding involving a condemned inmate, a digital version of any petition initiating or renewing the involuntary medication order shall be sent by the institution's Medication Court Administrator to the California Appellate Project via email to keyhea@capsf.org, who will act as a distribution point for involved capital attorneys, and to the Department of Justice, Capital Unit.

(h) On or before the day of hearing, the institution shall provide a space for inmate counsel and each inmate-client to meet confidentially.

(i) On the day of the hearing, the inmate shall again be given the advisements listed in PC Section 2602(c)(7)(B) and further advised that he or she may attend the hearing and, if mentally capable, may elect to personally agree to the petition in the presence of the Administrative Law Judge (ALJ), or may contest the petition with the assistance of counsel.

(j) The judicial hearing for an order authorizing the involuntary administration of psychiatric medication to an inmate shall be conducted by an ALJ. The hearing shall be conducted at the institution where the inmate is located.

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

(1) Where the inmate is unable to attend the hearing by reason of a medical inability. CDCR shall establish the inmate's medical inability by declaration or testimony of a psychiatrist or psychologist. Emotional or psychological instability is not good cause for the absence of the inmate from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the inmate. 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.

(2) If a correctional officer or other impartial CDCR employee indicates that the inmate is not willing to attend the hearing or that the inmate expressly chooses not to attend the hearing, or that the inmate does not wish to contest the petition, the ALJ presiding over the hearing shall appoint the Medication Court Administrator, the inmate's attorney, or other neutral person to do the following:

(A) Interview the inmate personally and provide enough facts to allow the judge to determine whether the inmate is competent to knowingly and intelligently waive his or her attendance at the hearing;

(B) Inform inmate of the contents of the petition, of the nature, purpose and effect of the proceeding, the right of the inmate to attend the hearing, to oppose the request for involuntary medication, 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 inmate is able to attend and participate in the hearing and, if able to attend, whether the inmate wishes to attend the hearing;

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

(E) Determine whether the inmate wishes to speak to his or her appointed attorney or if the inmate 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 Medication Court Administrator on privately retained counsel and a new hearing date can be set within a reasonable time for the appearance of private counsel.

(F) After receiving this information, the ALJ must make an express finding that the inmate's presence at the hearing is excused and/or find that the inmate has made a knowing and intelligent waiver of his or her right to be present at the hearing. If any party raises a question as to the inmate's competency to waive presence at the hearing, the judge should order the inmate brought to the hearing, or conduct the hearing at the inmate's cell.

(G) If the inmate is unable to attend the hearing due to a medical condition, the ALJ may continue the hearing if it appears that the inmate will be able to attend the hearing within a reasonable time, order that involuntary medication of the inmate may be administered until the new hearing date, or proceed with the hearing in the absence of the inmate if it appears that the inmate's medical condition will preclude his or her appearance within a reasonable time period.

(I) Termination of Psychiatric Medication and Re-Initiation, if Warranted: In any situation where the prescribing physician or an ALJ orders termination of psychiatric medication, regardless of the reason, the inmate shall be withdrawn from the medication in a medically appropriate manner consistent with standards of professional practice. In the event the inmate then begins to show signs or symptoms that would warrant re-initiation of involuntary medication, clinicians must allow 72 hours between the termination of the earlier medication event before starting a new medication event. Under no circumstances does this section prohibit a physician from acting in a medical emergency.

Note: Authority cited: Section 2602(h), Section 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3351 and 3364 and to adopt new sections 3364.1 and 3364.2 of the California Code of Regulations (CCR), Title 15, Division 3, governing the administration of Involuntary Psychiatric Medication.

In 2011, the Legislature passed and the Governor signed into law Assembly Bill (AB) 1114 (Lowenthal), which codified the process that CDCR was to utilize for the administration of involuntary medication for inmates housed in a State prison. This legislation became Penal Code (PC) Section 2602 and took effect January 1, 2012. Nine months later, on September 30, 2012, the Legislature passed, and the Governor signed into law AB 1907 (Lowenthal), which corrected minor drafting errors in the first bill, and did two other key things. AB 1907 created PC Section 2602(h), directing CDCR to adopt regulations to fully implement the new statutory scheme for involuntary medication of prison inmates. Additionally, Section 1 of AB 1907 contained the following Legislative declaration: “It is the intent of the Legislature, in amending Section 2600 and enacting Section 2602 in AB 1114 of the 2011–12 Regular Session, to terminate the permanent injunction stemming from the decision in *Keyhea v. Rushen*, 178 Cal.App.3d 536, and to replace the provisions of the injunction with the provisions contained within Section 2602 of the PC.”

These proposed regulations are necessary to implement, interpret, and make specific the general provisions of PC Section 2602. AB 1114 and AB 1907 completely replaced the *Keyhea* process and required the CDCR to create new procedures and updated forms to manage involuntary mental health treatment for inmates. The timeline between the start of medication and the hearing in front of an Administrative Law Judge (ALJ) dropped from 47 days to 21 days. The inpatient requirement was eliminated, certification review hearing officers were eliminated, and inmates gained the right to be given notice when the CDCR is seeking to renew a court order, as well as the right to file an objection to an institution’s request to medicate the inmate prior to the ALJ hearing. The Department gained the right to add a basis for the court order if the inmate’s serious illness began to manifest in new ways.

This regulatory action provides authority and direction to CDCR staff for proper identification of inmates who meet the criteria for psychiatric intervention in a correctional setting, using the least restrictive alternative. 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.

The Department recognizes that a portion of the proposed language duplicates PC Section 2602(c)(5), which states that an inmate shall be provided a hearing before an ALJ. This duplication of language under subsection 3364.2(j) of the proposed regulations is necessary to clarify that not only shall an ALJ be used, but also that the hearing shall be conducted at the institution where the inmate is located.

Consideration of Alternatives:

The Department must determine that no reasonable alternatives 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 Mentally-Disordered Offender Model

The Department considered some of the PC Section 2962 procedures used in the model for mentally disordered offenders (MDO), PC Sections 2960 et seq. In fact, the primary definition of “serious mental disorder” in this regulatory action is taken from PC Section 2962(a)(2). However, in other respects, the MDO scheme is not an appropriate model because it is too narrow and does not address inmates who are a danger to self. The MDO scheme is targeted at inmates for whom the serious mental illness was a factor in either sentencing or an aggravating factor, and who present a danger to society at the time of their parole or termination of parole. This scheme references a different population, and makes only a passing reference to what might be gravely disabled or danger to self by mentioning that it would apply to an inmate who has intentionally caused property damage. Additionally, this statutory scheme does not address the quick timelines for administrative hearings that PC Section 2602 presents. For these reasons, the Department rejected this alternative.

2. Use of Incompetent-to-Stand-Trial Model

The Department considered modeling current regulatory process on PC Section 1370(a)(2)(B), which also allows administration of psychiatric medication, and is the process used after a court has found a defendant mentally incompetent. There are parts of the PC Section 1370 scheme that are acceptable, specifically the parts relating to the inmate’s mental disorder resulting in adverse effects to his physical or mental health. Some other portions are directly contrary to legislative history of PC Section 2602, such as the six-year limit on referencing the defendant’s past bad behavior, which was specifically omitted when PC Section 2602 was drafted. Additionally, this statutory scheme does not address the quick timelines for administrative hearings that PC Section 2602 presents. For these reasons, the Department rejected this alternative.

3. Use of Civil Commitment Framework from *Keyhea v. Rushen* Injunction

The Department considered wholesale adoption of terms and procedures set forth in the injunction that resulted from the *Keyhea v. Rushen* decision (1986) 178 Cal.App.3d 526 (review den. July 10, 1986). This option was rejected for multiple reasons. As noted above, Section 1 of AB 1907 contained the following Legislative declaration: “It is the intent of the Legislature, in amending Section 2600 and enacting Section 2602 in AB 1114 of the 2011–12 Regular Session, to terminate the permanent injunction stemming from the decision in *Keyhea v. Rushen*, 178 Cal.App.3d 536, and to replace the provisions of the injunction with the provisions contained within PC Section 2602.”

The Department was directed to create new procedures and adopt regulations with enabling language as set forth in PC Section 2602(h). Therefore, the Department has put forth a regulatory proposal that addresses best practices, inmate rights, and the Department’s penological interests, and it should be noted that the procedural due process portions of the *Keyhea* injunction were retained and/or updated to correspond to the shorter timeframes. The use of legacy definitions from the *Keyhea* injunction was determined to be a poor choice because PC Section 2602 did away with the inpatient requirement and probable cause hearings, and shortened the timeline for hearings from 47 days to 21 days. As noted in a study published in 2012 by Lanterman-Petris-Short Act (LPS) Reform Task Force II, Separate and Not Equal: The Care for Updating California’s Mental Health Treatment Law, “a person with severe mental illness is now four times more likely to be in jail than in a hospital bed.” The LPS Act is 45 years old and has not changed in response to an evolving mental health delivery system.

The Department is choosing not to utilize the above alternatives because the Department has a duty to provide constitutionally-adequate mental health care, which equates to timely intervention before an inmate with serious mental illness deteriorates to the point of uncontrollable mania, delusions, paranoia, catatonia, or extreme depression. The Department has a duty to craft a regulatory scheme that protects staff and other inmates from an inmate who is manic or psychotic, and a duty to attempt protection for

an extremely depressed or catatonic inmate from harming himself/herself. Intervention should not be tied to an inpatient setting (as in *Keyhea*), nor should intervention be delayed until actual harm to self or others occurs.

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. The proposed regulations will positively impact the mental health and welfare of persons housed in State-run California correctional institutions. The proposed regulations will have no effect on non-incarcerated California residents, worker safety, or the State's environment.

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

The proposed regulations for administration of Involuntary Psychiatric Medication have no effect on the creation of new or elimination of existing business with 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 administration of Involuntary Psychiatric Medication 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 benefit CDCR staff and inmates by providing direction to staff for proper identification of inmates who meet the criteria for psychiatric intervention in a correctional setting, and using the least restrictive alternative. A standardized set of procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of the involuntary medication process will be followed by all institutions. This will ensure consistent and fair treatment on a statewide basis concerning Involuntary Psychiatric Medication.

Materials Relied Upon:

1. Lanterman-Petris-Short Reform Task Force Study: "Separate and Not Equal: The Case for Updating California's Mental Health Treatment Law, March 2012" (<http://www.lpsreform.org/LPSTF2.pdf>)
2. Probate Code Sections 811, 812, 813
3. Penal Code Section 1370
4. Centers for Disease Control, Adults and Older Adult Adverse Drug Events, Medication Safety Program, October 2012 - (http://www.cdc.gov/medicationsafety/adult_adversedrugevents.html)

5. More Mentally Ill Persons are in Jails and Prisons than Hospitals: A Survey of the States (<http://www.tacreports.org/storage/documents/2010-jail-study.pdf>)
6. No Room at the Inn: Trends and Consequences of Closing Public Psychiatric Hospitals (<http://www.tacreports.org/bed-study>)
7. Treatment of Persons with Mental Illness in Jails: A State Survey (April 2014) (<http://www.tacreports.org/treatment-behind-bars>)
8. Mental Health Commitment Laws: A Survey of States (February 2014) (<http://www.tacreports.org/state-survey>)
9. Elements of an Ideal Statutory Scheme for Mental Health Civil Commitment (Stetin, Lamb, Frese) (<http://www.healio.com/psychiatry/journals>)

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

Subsection 3351(a) is amended to renumber and relocate regulation language, which is moved and split up throughout existing subsection 3351(a) and new subsections 3351(c) and 3351(e) to improve clarity in the proposed language. In addition, subsection 3351(a) retains the existing statement that healthcare treatment may be given in the event of an emergency and without consent. The language from this subsection which references *Keyhea* has been stricken. New language regarding healthcare treatment given in the event of an emergency has been added. Reference to the Natural Death Act (Health and Safety Code Section 7185-7194.5) was removed because the legislation was repealed. This is necessary to clarify and highlight those portions of subsection 3351(a) that deal with medical emergencies and to remove references to the Legislatively-repealed Natural Death Act.

Subsection 3351(b) is unchanged.

New subsection 3351(c) is adopted to add reference to the California Healthcare Decisions Law and to note that inmates may execute both advance directives, as well as Physicians Orders for Life Sustaining Treatment forms in compliance with State law. Reference to durable powers of attorney is removed. This is necessary in order to clarify and highlight those portions of section 3351 that deal with medical decision-making.

New subsection 3351(d) is adopted to establish that California has adopted the Health Care Decisions Law in lieu of the Natural Death Act. This language is necessary because institutions are directed to implement local procedures to comply with Healthcare Decisions Law per Probate Code, Division 4.7, Section 4600 et seq.

New subsection 3351(e) is adopted. This language was previously the first sentence of existing subsection 3351(a). It has been moved to new subsection 3351(e), with references to *Keyhea v. Rushen* removed, and references to PC Section 2602 added. This is necessary to more appropriately organize and update language in this section.

At the end of section 3351 in the authority and reference sections, PC Section 2602(h) is added as an authority; PC Section 2602 and Probate Code Section 4781.2 are added as references, as well as the addition of et seq after Section 4600 of the Probate Code in order to be consistent with text language. In

addition, reference to *Keyhea v. Rushen* (filed October 31, 1986) and the Health and Welfare Code Sections 7185-7194.5 are removed from the reference section.

Subsection 3364(a) is amended to clarify PC Section 2602 information regarding psychiatric medication, and to specify that a psychiatrist is the person who should determine whether an inmate needs psychiatric medication longer than 72 hours.

Subsections 3364(a)(1) through 3364(a)(3) are deleted to remove all references to *Keyhea v. Rushen*. This is necessary because this language is no longer applicable.

Subsection 3364(b) is amended to update language and align the medical terminology with that used in AB 1164 and AB 1907 ('psychiatric medication' in lieu of 'psychotropic medication'). The word "involuntarily" has been added before the word "administered" to explain that under normal conditions, psychiatric medication would not involuntarily be administered. In addition, the words "medically-suitable triage area," are added in front of the words "emergency room." This has been done to acknowledge that all prisons have Triage and Treatment areas, but not all prisons have hospitals. This language has been broadened to make it more properly reflect the actual facilities in the field where an inmate could be transferred prior to administration of medication.

Subsection 3364(b)(1) is amended to add the words "and/or mental health" after the word "medical." This is necessary in order to include mental health staff in the process to be done after medication has been administered. In addition, language is updated to correct grammatical sentence structure errors.

Subsection 3364(b)(2) is unchanged.

Subsection 3364(b)(3) is amended to specify that an inmate shall be observed at least twice per day after being given involuntary medication if not already in a setting offering 24-hour nursing. For clarity, the term "injection" is changed to "involuntary medication" because not all medication is given by injection, yet these procedures should be followed regardless of how the medication is delivered. This is necessary for purposes of clear understanding by staff and inmates. Since the time when original language was written 25 years ago, prisons have seen a variety of improvements in clinical infrastructure including licensed hospitals with 24-hour nursing, triage, and treatment areas. The inmate may already be in a medical setting where he or she is observed 24 hours per day and may be offered oral medication. This proposed language creates a more stringent standard of care, and is necessary to eliminate the uncertainty from prior language that an inmate "shall be considered for transfer" and instead states clearly that an inmate shall be observed twice per day if not already in a 24-hour nursing setting.

Subsection 3364(c) is amended to make grammatical changes, updates to position titles, as well as replacing the term involuntary "treatment" with involuntary "medication." This is necessary in order for the language to be consistent with the heading of the section. In addition, legacy language from the *Keyhea* injunction related to logging each instance of involuntary medication at each institution, and using a physical log book, is deleted. New language updates the process to reflect that the involuntary medication information will now be logged and maintained using the Department's recent conversion to electronic medical record systems.

New subsection 3364(d) is adopted to establish a standardized baseline for acceptable clinical practice with psychiatric drugs in order to protect patients. This language is necessary to set parameters for regularly-monitoring inmate blood levels and procedures for monitoring overall health issues that might occur from involuntary medication, including electrocardiogram (EKG). Institutions shall create a local operating procedure to ensure compliance. As noted by the Center for Disease Control's 2012 report, (http://www.cdc.gov/medicationsafety/adult_adversedrugsafety.html), "adverse drug events are a large

public health problem.” Blood tests and routine EKGs, when clinically indicated, are reasonable measures to allow clinical staff to monitor the effects of one or multiple psychiatric medications upon a patient’s physiology.

At the end of section 3364 in the authority and reference sections, PC Section 2602(h) is added as an authority and PC Section 2602 is added as reference. In addition, references to *Whitaker v. Rushen* and *Keyhea v. Rushen* are removed from the reference section.

New subsection 3364.1 is adopted to provide definitions for the terms used in PC Section 2602, and to specify standardized statewide criteria for evaluating whether an inmate is danger to others, danger to self, or gravely disabled, based on current clinical practice. The definitions for danger to others, danger to self, or gravely disabled were updated to reflect that AB 1114 eliminated the inpatient requirement and to reflect current clinical and correctional practice, which encourages intervention before a patient develops mental psychosis or harms someone. The definitions also take into account that prior definitions were largely based on the Lanterman-Petris-Short Act, a civil commitment scheme, which experience has shown do not apply across the board in a correctional setting, especially since LPS has not seen a material amendment since 1972 (<http://www.lpsreform.org/LPSTF2.pdf>). This language adds a new definition for ‘informed refusal,’ consistent with California law.

New subsection 3364.1(a)(1) is adopted to define the term ‘serious mental disorder’ for consistency with language in PC Section 2962(a)(2). This is necessary for clarity and to ensure that inmates who do not have a serious mental illness are not brought under the involuntary medication scheme.

New subsection 3364.1(a)(2) is adopted to define the term ‘danger to others,’ taking into account that AB 1114 eliminated the inpatient requirement and allowed the Department to introduce evidence of the historical course of an inmate’s mental disorder. This is necessary to establish uniform criteria for mental health staff to apply when evaluating a seriously mentally ill inmate as a danger to others, and to give adequate notice to inmates and interested parties about what type of conduct will qualify for a referral under PC Section 2602 uses. In addition, this is necessary to specify what type of conduct will qualify for a referral under PC Section 2602.

New subsection 3364.1(a)(3) is adopted to define the term ‘danger to self,’ taking into account that AB 1114 eliminated the inpatient requirement and allowed the Department to introduce evidence of the historical course of an inmate’s mental disorder. This is necessary to establish standardized criteria for mental health staff to apply when evaluating a seriously mentally ill inmate as a danger to self, and give adequate notice to inmates and interested parties about what type of conduct will qualify for a referral under PC Section 2602 uses. In addition, this is necessary to specify what type of conduct will qualify for a referral under PC Section 2602.

New subsection 3364.1(a)(4) is adopted to define ‘gravely disabled’ in the context of a correctional setting, where the State provides food, shelter, and clothing to inmates that are capable of appropriately using them. Under the 1986 *Keyhea* definition, inmates who were psychotic would not get psychiatric intervention in some instances. Because data now shows that “a person with severe mental illness is now four times more likely to be in jail than in a hospital bed,” the new definition moves more towards a need-for-treatment model where serious mental illness is shown and the inmate is unable to function or is unsafe in a correctional setting. This is necessary to establish that there is a substantial probability, due to a serious mental disorder and lack of capacity to accept or refuse psychiatric medication, an inmate not treated with psychiatric medication may suffer some type of serious mental or physical harm as a result.

New subsection 3364.1(a)(5) is adopted to define ‘informed consent’ in the context of psychiatric medication. It consists of a restatement of Probate Code Section 813(a), modified for use in a

correctional setting. This is necessary to establish standardized criteria for mental health staff to apply when evaluating a seriously mentally ill inmate because PC Section 2602 prohibits administration of involuntary medication without an inmate's informed consent. In addition, this is necessary to specify what type of conduct will qualify for a referral under PC Section 2602.

New subsections 3364.1(a)(5)(A) through 3364.1(a)(5)(H) are adopted to establish and clarify a set of standardized criteria for mental health staff to follow. This language is necessary as a directive to staff on the process to follow and also to specify the information that needs to be documented.

New subsection 3364.1(a)(6) is adopted to define 'informed refusal' in the context of psychiatric medication. It consists of a modified restatement of Probate Code Section 813(b), which is modified for use in a correctional setting. This is necessary to clarify that an inmate who has been informed of all aspects of the proposed medical treatment and has the capacity to make an informed decision may elect to knowingly refuse treatment.

New subsection 3364.1(a)(7) is adopted to define 'incapacity to refuse medication.' Included in the PC Section 2602 definition of gravely disabled, is the phrase 'incapacity to refuse medication.' This is commonly referred to as a lack of capacity to consent to a healthcare decision, in this case, as a result of serious mental illness. This new language is necessary to incorporate the concepts of capacity as set forth in Probate Code Sections 811 and 812.

New subsection 3364.1(a)(8) is adopted to define 'involuntary medication.' This language is brought forward from the *Keyhea* injunction and is necessary to clarify that medication shall be considered involuntary, and a hearing required, either when an inmate will not consent, or cannot consent due to mental psychosis.

New subsection 3364.1(a)(9) is adopted. This new language is necessary to bring the list of psychiatric medications in line with newer third and fourth-generation antipsychotics. These newer antipsychotic medications were not on the market when the *Keyhea* injunction was written. The term "psychotropic" is replaced with "psychiatric" throughout the text, in order to be consistent with the terms "psychiatric" as used in PC Section 2602.

New subsection 3364.2 is adopted.

New subsection 3364.2(a) is adopted to create a standardized statewide procedure and establish forms to initiate involuntary medication proceedings, and to ensure procedural due process for inmates by requiring that the inmate be served and advised of his/her rights, which changed with implementation of PC Section 2602. This is necessary so that all institutions are looking at the same factors when evaluating a seriously mentally ill inmate. In addition, all of the requirements for establishing elements of a case for initial medication are set forth in a declaration prior to submission of appropriate paperwork to the Office of Administrative Hearings. The following forms are established in this proposed regulation and incorporated by reference: CDCR MH-7363 (Rev. 03/14), Involuntary Medication Notice; CDCR MH-7366 (Rev. 03/14), Inmate Rights Notice-Involuntary Medication. These forms are included in the regulation package and copies are available for public review. The CDCR MH-7363 had to be completely redeveloped with the passage of Penal Code Section 2602 due to shorter timeframes for getting inmates to hearing and filing things with the Office of Administrative Hearings. The form that previously had this number was retired and replaced with an entirely new form that is now filled out by the psychiatrist at the prison and submitted by the Medication Court Administrator directly to the Office of Administrative Hearings and sent to inmate counsel.

New subsection 3364.2(b) is adopted to create standardized statewide procedures and establish a form to renew involuntary medication proceedings. This is necessary to ensure procedural due process for the

inmate by requiring that the inmate be served and advised of his/her rights, which changed with the implementation of PC Section 2602. The following form is established in this proposed regulation and incorporated by reference: CDCR MH-7368 (Rev. 03/14), Renewal of Involuntary Medication Notice. This form is included in the regulation package and copies are available for public review. The CDCR MH-7368 is a completely new form that was created with the passage of Penal Code Section 2602. Although it was customary to file renewal petitions prior to January 1, 2012, the procedure was not memorialized in statute. With the passage of Penal Code Section 2602, the Legislature codified the elements needed for renewal of an order as well as the applicable notice timelines. This new form was created, similar to the CDCR MH-7363, so that it could be filled out by the psychiatrists at the prison, served on the inmate and inmate counsel, and sent directly to the Office of Administrative Hearings as part of an entirely new paper flow.

New subsection 3364.2(c) is adopted to establish that ultimately a psychiatrist must review and sign either a CDCR MH-7363 or a CDCR MH-7368. In addition, it is established that a multidisciplinary treatment team may contribute information to both of those forms. This is necessary to acknowledge that information that would normally be typed or handwritten onto an official CDCR form can also be dictated through central dictation and authenticated by the psychiatrist electronically because fax and courier services have been replaced with electronic communication.

New subsection 3364.2(d) is adopted to memorialize the inmate's procedural due process rights to service of documents, which was expressly set out in *Keyhea v. Rushen* but it does not exist in PC Section 2602. This is necessary to clarify which documents are sent to the inmate and which documents are sent to the inmate's attorney, and to ensure that the process is handled the same way regardless of institution. The CDCR MH-7366 had to be completely redeveloped with the passage of Penal Code Section 2602 which created new substantive and procedural due process rights for inmates that did not exist prior to January 1, 2012. The form that previously had this number was retired and replaced with an entirely new form that is now filled out at the prison, handed to the inmate with every petition (both renewal and initial), and submitted by the Medication Court Administrator directly to the Office of Administrative Hearings.

New subsection 3364.2(e) is adopted to establish that PC Section 2602 proceedings are held in conformity with the California Medical Information Act ('CMIA') and the federal Health Insurance Portability and Accountability Act ('HIPAA'). This is necessary as a directive to CDCR staff that they should not send PC Section 2602 pleadings to the inmate's next-of-kin unless the inmate directs that the confidential documents be sent.

New subsection 3364.2(f) is adopted to memorialize the inmate's procedural due process rights to have his or her attorney receive the same packet of information that the State is relying upon to prove the case. This is necessary to establish a deadline for the institution to supply supporting documentation to the inmate's attorney, and to provide a remedy to allow the inmate's attorney to prepare for the hearing in the event discovery cannot be sent due to a hearing on short notice.

New subsection 3364.2(g) is adopted to establish that under the California Rule of Professional Conduct 2-100, the expectation that if an inmate already has an attorney, the appointed PC Section 2602 attorney should make contact. Procedurally this new language creates a way for that to happen uniformly. This section is necessary because cases involving condemned inmates frequently involve other, different attorneys, who have a need to know that an involuntary medication proceeding has been initiated or is being renewed.

New subsection 3364.2(h) is adopted to create a requirement that institutions provide a space for the inmate and attorney to meet confidentially to discuss or prepare for the PC Section 2602 proceeding. This new language is necessary to allow appointed counsel to effectively represent the inmate.

New subsection 3364.2(i) is adopted to ensure that inmates know what their rights are on the day of their hearing. Depending on what type of hearing they are having, they may have been given their rights five to twenty-five days before the hearing. This is necessary because, in order for an inmate to make an informed decision on the day of the hearing, he or she should be re-advised of their rights regarding the right to counsel, right to attend the hearing, right to discovery, and right to confront witnesses.

New subsection 3364.2(j) is adopted to specify that the involuntary medication hearing is to be conducted in front of an ALJ, as PC Section 2602(c)(5) does not specify where the hearing is to be conducted. This is necessary to provide information that the statewide practice is to hold the hearing at the institution where the inmate is located.

New subsection 3364.2(k) is adopted to establish the expectation that inmates will personally attend their hearings unless certain exceptions are documented. This is necessary to ensure that fundamental due process protections are in place and uniformly applied at all institutions.

New subsection 3364.2(k)(l) is adopted to establish a uniform statewide procedure to demonstrate to the ALJ that an inmate is medically unable to be brought to the hearing room, either because the inmate is too fragile to be moved or is at an outside hospital. This language and information is necessary in order to allow the ALJ to determine whether to continue the hearing, or to conduct the hearing at the inmate's cell location.

New subsection 3364.2(k)(2) is adopted to establish a uniform statewide procedure that will be used to convey an inmate's attempt to execute a knowing and intelligent waiver of hearing to the ALJ without coming to the hearing room. This is necessary in order to provide specific guidelines as to how and when an inmate's presence at the hearing may be excused, with the primary focus being on having inmates attend their hearings.

New subsections 3364.2(k)(2)(A) through 3364.2(k)(2)(G) are adopted to establish a uniform statewide procedure that will be used to convey an inmate's attempt to execute a knowing and intelligent waiver of hearing to the ALJ without coming to the hearing room. This is necessary in order to provide specific guidelines as to how and when an inmate's presence at the hearing may be excused, with the primary focus being on having inmates attend their hearings.

New subsection 3364.2(l) is adopted to establish a standardized statewide procedure defining the period of time an institution must wait to start a PC Section 2602 proceeding if an ALJ has just denied a request for involuntary medication. This 72-hour break also applies if a clinician, for any reason, drops involuntary medication proceedings and then decides to re-initiate. Clinicians may always intervene in the event of an emergency. This is necessary because in order to provide standardized procedures regarding how an institution should proceed if an order is denied at hearing or if at some point during the filing period an institution decides to drop the case.

Date: _____ Institution: _____ Age: _____ Gender: Male Female Interpreter: Yes No
 Bed/Cell/Dorm: _____ Language: _____

INMATE NAME (print Last, First): _____	CDCR#: _____	PID#: _____
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SECTION I - METHOD OF INITIATION (Choose only one):

<input type="checkbox"/>	EMERGENCY MEDICATION - 72 HOUR NOTICE INVOLUNTARY MEDICATION STARTED								
<p>NOTICE: Clinical staff at the institution above alleges that you suffer from a serious mental illness or disorder that requires continuation of psychiatric medication beyond an initial 72-hour emergency period. As set forth in the attached declaration, your behaviors and symptoms appear to meet the legal criteria for danger to self, danger to others, or grave disability and, as specified in the attachments, you have refused to take medication for that condition. You will be brought in front of an Administrative Law Judge who will decide if you can be given psychiatric medication on an involuntary basis. A request will be filed to allow CDCR to administer psychiatric medication on an interim basis pending the full hearing in front of a judge.</p>									
<p>Select a hearing date that is within 21 days of the day you serve this notice on the inmate.</p>									
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<p>The inmate has been informed of this evaluation and has been advised of the need for, but has not been able or willing to accept medication on a voluntary basis. Involuntary medication began on:</p>									
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Evaluating Psychiatrist (Print):	Psychiatrist's Signature:	Date:							
<input type="checkbox"/>	NON-EMERGENCY - NO INVOLUNTARY MEDICATION UNTIL FULL HEARING								
<p>NOTICE: Clinical staff of the institution above alleges that you suffer from a serious mental illness or disorder. As set forth in the attached declaration, your behaviors and symptoms appear to meet the legal criteria for danger to self, danger to others, or grave disability and, as specified in the attachments, you have refused to take medication for that condition. You will be brought in front of an Administrative Law Judge who will decide if you can be given psychiatric medication on an involuntary basis.</p>									
<p>Select a hearing date that is at least 21 days from the date that this is served on the inmate, but no more than 30 days from the date that this is served on the inmate.</p>									
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<p>4. Comments: _____</p>									

DECLARATION IN SUPPORT OF INVOLUNTARY MEDICATION

IN RE THE MATTER OF (LAST, FIRST):

CDCR Number:

1. I am a psychiatrist employed by California Department of Corrections & Rehabilitation
 California Department of State Hospitals

2. I have made a provisional psychiatric diagnosis on the above-entitled inmate as follows:

[Empty box for provisional psychiatric diagnosis]

DSM TR:

3. In my professional opinion, the above diagnosis constitutes a serious mental disorder, and is causing the inmate to behave in such a way that he or she meets one or more of the following criteria (mark all that apply):

- Danger to Self Danger to Others Gravely Disabled and Lacks Capacity to Refuse Treatment

4. The specific factual underpinnings for my opinion(s) follow:

5(a). If you marked **Danger to Self**, give facts setting forth the approximate dates, times, signs, symptoms, and behaviors that you observed or that were reported to you that would suggest the inmate is a Danger to Self:

[Large empty box for facts setting forth the inmate's danger to self, overlaid with a large 'SAMPLE' watermark]

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Confidential Inmate-Patient Information

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MI:

First Name:

DOB:

5(b). Summarize in your clinical opinion how the above **Danger to Self** behavior is a direct consequence of the inmate's untreated, serious mental illness:

6(a). If you marked **Danger to Others**, provide facts setting forth the approximate dates, times, signs, symptoms, and behaviors that you observed or that were reported to you that would suggest the inmate is a **Danger to Others**:

6(b). Summarize in your clinical opinion how the above **Danger to Others** behavior is a direct consequence of the inmate's untreated, serious mental illness:

<p>Involuntary Medication Notice CDCR MH-7363 (Rev. 03/14)</p> <p>Confidential Inmate-Patient Information</p>	<p>CDCR #:</p> <p>Last Name: MI:</p> <p>First Name:</p> <p>DOB:</p>
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7(a). If you marked **Gravely Disabled**, provide facts setting forth the approximate dates, times, signs, symptoms, and behaviors that you observed or that were reported to you that would suggest the inmate is **Gravely Disabled**:

7(b). Summarize in your clinical opinion how the above **Gravely Disabled** behavior is a direct consequence of the inmate's untreated, serious mental illness:

8. If you are aware of any prior involuntary commitments or hospitalizations in California, or in any other state, or at the county level, provide that information:

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MI:

First Name:

DOB:

9. If you are aware of any prior court orders (*Keyhea*, MDO, etc.) authorizing involuntary medication of this inmate, please specify and give approximate dates, bases, etc.:

10. Did you rely upon any background, trend, or historical information about this inmate that led to your decision to petition for involuntary medication? This could include relevant criminal convictions, institutional behavior as an adult or minor, or observed patterns of decompensation as charted by medical staff. If so, please set forth the information you relied upon that documents the historical course of the inmate's mental disorder that would have direct bearing on your opinion that the inmate is now, or about to become, a danger to self, a danger to others, or gravely disabled, if not given medication:

SAMPLE

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CDCR MH-7363 (Rev. 03/14)

Confidential Inmate-Patient Information

CDCR #:

Last Name:

MI:

First Name:

DOB:

11. In your professional opinion, what benefits would the inmate likely experience when placed on psychiatric medication, based on your knowledge of the inmate and your review of the inmate's medical history?

12. In your professional opinion, what would the likely harm or detriment to the inmate be if not placed on psychiatric medication, based on your knowledge of the inmate and your review of the inmate's medical history?

SAMPLE

Involuntary Medication Notice
CDCR MH-7363 (Rev. 03/14)

Confidential Inmate-Patient Information

CDCR #:

Last Name:

MI:

First Name:

DOB:

13. Discuss your clinical opinion vis a vis the following three factors:

I believe the inmate named in this petition should take psychiatric medications for the treatment of a serious mental disorder
[1] considering the risks, benefits, and alternatives to treatment of the above-entitled inmate with psychiatric medication, *and*
[2] the efficacy of utilizing those alternatives, *and*
[3] your reasons for not utilizing those alternatives

SAMPLE

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CDCR #:

Last Name:

MI:

First Name:

DOB:

14. I consulted with the above-entitled inmate, or attempted to consult with the above-entitled inmate, to discuss treatment alternatives, risks and benefits of medication, but the inmate would not consent to take the medication on a voluntary basis, or lacked capacity to consent. My specific efforts to advise the inmate of the risks and benefits of the prescribed course of treatment with psychiatric medication, are set forth below:

15. I advised, or attempted to advise, the inmate named in this petition of the side effects and risks from the proposed course of treatment with psychiatric medication on (date): _____

16. If you believe that the inmate lacked capacity to consent to the proposed course of treatment at the time you met with him or her, please set forth the basis for that conclusion here:

SAMPLE

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CDCR #:

Last Name:

MI:

First Name:

DOB:

17. The primary potential side effects and risks to the inmate from the proposed course of treatment with psychiatric medication, based on clinically appropriate information as well as upon my knowledge of this inmate's medical history, are as follows:

Based on the foregoing, it is my professional opinion that the above-entitled inmate requires court-ordered involuntary psychiatric medication for the reasons stated above. I declare under penalty of perjury that the foregoing is true and correct.

Dated _____ at _____, California, in the County of _____

Name of Signator (print Last, First): _____ Signature: _____

SAMPLE

Involuntary Medication Notice
CDCR MH-7363 (Rev. 03/14)

Confidential Inmate-Patient Information

CDCR #:

Last Name:

MI:

First Name:

DOB:

**EX-PARTE REQUEST FOR AUTHORITY TO CONTINUE EMERGENCY
MEDICATION UNTIL MENTAL HEALTH HEARING DATE**

IN RE THE MATTER OF (print Last Name, First Name):		CDCR Number:	
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I am a psychiatrist employed by: California Department of Corrections & Rehabilitation
 California Department of State Hospitals

1. Psychiatric medication has been administered to the above-entitled inmate based upon a clinical finding that an emergency existed.
2. In my professional opinion, unless the clinical staff at this institution is authorized to continue to administer psychiatric medication to the above-entitled inmate, the emergency conditions that were previously observed are likely to recur.
3. The specific facts causing clinical staff at this institution to believe that the emergency conditions would recur absent continuing medication are as follows:

SAMPLE

4. Without ongoing intervention through psychiatric medications, it is my professional opinion that the above-entitled inmate will decline psychiatrically and become more dangerous to self, others, or more gravely disabled due to his or her serious and untreated mental illness. Furthermore, I do not believe that it is in the best interest of the inmate to allow these psychiatric conditions to go untreated until this matter can be brought before an Administrative Law Judge.

Based on the foregoing, it is my professional opinion that emergency psychiatric medications should be administered for the reasons stated above, and that these medications should be continued on an interim basis until the inmate can be given his or her full mental health hearing.

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

Dated _____ at _____, California, in the County of _____

Print Name: _____ Signature: _____

Involuntary Medication Notice CDCR MH-7363 (Rev. 03/14) Confidential Inmate-Patient Information	CDCR #: Last Name: _____ MI: _____ First Name: _____ DOB: _____
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Instructions:

Purpose of Involuntary Medication Notice: The Involuntary Medication Notice is used by clinical staff to document and notify the inmate that California Department of Corrections and Rehabilitation (CDCR) is seeking to begin involuntary medication. **This can be accomplished in either of two ways:**

- (1) **One: EMERGENCY MEDICATION.** If staff identifies a medical emergency, they may administer psychiatric medication for up to 72 hours. If staff wishes to continue to use forced medication beyond 72 hours against the inmate's wishes, choose the section of the form for "Emergency Medication" and set a hearing date within 21 days from when this notice is served on the inmate. Inmate must be served within 72 hours of the initiation of medication. Most institutions have an established hearing schedule, such as "every two weeks," and the inmate should have as much time to prepare as possible, while still having the hearing within 21 days of the notice being served on the inmate.
- (2) **Two: NON-EMERGENCY MEDICATION.** If staff wishes to administer psychiatric medication to the inmate but can wait until the matter is heard by a judge, then choose the section of the form for "Non-Emergency" and set a hearing date that is at least 21 days from when you serve this notice on the inmate, but no more than 30 days from when you serve this notice on the inmate. Do not forcibly medicate the inmate.
- (3) Enter the inmate's identifying information at the top of the form as well as interpreter information. **If an interpreter is required**, be sure to specify the language, and contact the proper institutional resource to obtain the approved/certified interpreter. If that interpreter type is unavailable, contact the assigned attorney and arrange one through Office of Administrative Hearings.
- (4) The medication court administrator (MCA) is responsible for calculating the days properly per the instructions above, depending on which type of involuntary medication is selected. For an emergency hearing, the MCA must calendar a hearing within 21 days after the inmate is served with the notice. For a non-emergency hearing, the MCA must calendar a hearing giving the inmate at least 21 days notice but the hearing must occur within 30 days after notice is given, i.e., between 21 and 30 days after the notice is served. Count all days, including weekends and holidays.
- (5) After calculating the days, the MCA will be able to determine a hearing date at the requestor's institution that will be the date the case will appear in front of an administrative law judge. Fill in the hearing date, time, and institution abbreviation on the form. Please try to group hearings as close to each other as possible, i.e., do not schedule hearings every week if it is possible to schedule groups of hearings every two weeks.
- (6) The MCA is responsible for indicating the name, address, and phone number of the attorney appointed to represent the inmate on the hearing date selected. This section may be completed using an address label if necessary. The Office of Legal Affairs (OLA) sends out a quarterly schedule showing which attorney to use on any given date.
- (7) Enter the inmate-patient's CDCR number, name, and date of birth in the bottom right. Forms filled out electronically will automatically populate all pages when one instance is completed. If filling out the form by hand, include all requested inmate information on all pages of the form.
- (8) The entire packet of materials must be scanned and sent to the Office of Administrative Hearings (OAH) at keyheafilings@dgs.ca.gov, uploaded to the OLA Sharepoint, and sent to the assigned Inmate Counsel by encrypted email as soon as it is completed and scanned, i.e., ideally within 60 minutes.
- (9) Complete the Effective Communication label at the bottom of page 1 of the form according to the directions on page 2 of the instructions.
- (10) Provide a copy of the entire packet to the inmate, *without the instruction pages*, along with a CDCR 7366 Inmate Rights Form.
- (11) Send the applicable medical records to the inmate attorney and to the Office of Legal Affairs within two business days after you serve the inmate. Do not send medical records to Office of Administrative Hearings.
- (12) When court hearings conclude, the entire packet of materials shall be scanned and placed in the eUHR as soon as it is assembled, within 60 minutes of the end of the court hearing, by the evaluating psychiatrist. Follow the OLA policy for properly documenting Involuntary Medication Orders in eUHR.
- (13) Additional resources are available at:

<http://intranet/team/Admin/DSS/OLA/HeathCareLegalTeam/Involuntary%20Medication/default.aspx>

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 inmate-patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

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

SAMPLE

YOUR RIGHTS REGARDING INVOLUNTARY PSYCHIATRIC MEDICATIONS WHILE IN PRISON

- Emergency Medication Procedure: Hearing Within 21 Days of being served.** If a psychiatrist has determined that you require psychiatric medication on an emergency basis and you will not or cannot consent to take that medication on a voluntary basis, your clinician must sign and file with the Office of Administrative Hearings a form 7363 "Inmate Rights Notice - Involuntary medication" no later than 72 hours after the initial medication, advising that you have been given medication on an involuntary basis.
- Emergency Medication Procedure: Right To Attorney.** At the time you receive this form, the law requires that an attorney be appointed. The name of your appointed attorney is written on Form 7363, which is the form used to initiate involuntary medication. The law requires that you be given a copy of this paperwork.
- Emergency Medication Procedure: 2 Business Days To Object To Being Medicated Pending Your Full Hearing.** At the time involuntary medication is initiated, you, or your appointed attorney, have two business days to file a written objection to being medicated on an interim basis pending your full hearing in front of a judge. You may send your written objections to the Office of Administrative Hearings, 2349 Gateway Oaks, Suite 200, Sacramento, CA 95833, or via email to: keyheafilings@dgs.ca.gov.
- Inmate Rights Under Penal Code Section 2602 – Administration of Psychiatric Medication – All Hearings.**
 - If a psychiatrist determines that you should be required to take psychiatric medications to address a serious mental illness and you either will not consent or lack the capacity to consent, you have the right to a timely hearing in front of an administrative law judge, conducted in an impartial and informal manner;
 - You have the right to an attorney to represent you in the mental health hearing, and, assuming you cannot afford an attorney, by default, an attorney has been appointed to represent you;
 - You must be physically present at your hearing unless you waive your presence either in person, through your attorney, or through an agent of the court (such as the Medication Court Administrator). Your waiver of your right to appear at the hearing will only be granted if the judge finds that you have knowingly, intelligently, and voluntarily waived your right to appear at the hearing;
 - You have the right to present evidence, call witnesses, and testify on your own behalf;
 - Your attorney shall have access to your medical records and files, but not the confidential portion of your C-file;
 - You have the right to have your attorney cross-examine the psychiatrist and other persons who allege that you have a serious mental illness and need to be involuntarily medicated;
 - You have the right to 21-days-notice of a non-emergency hearing, unless your attorney agrees to a different time period;
 - Non-emergency hearings must be held within 30 days after the filing of notice with the Office of Administrative Hearings, unless a different time period is agreed to by your attorney.
- Post-Hearing Remedies.** If you disagree with the ruling of the administrative law judge, you may file *in propria persona* a petition for writ of administrative mandamus pursuant to California Code of Civil Procedure 1094.5, or you may file a petition for writ of habeas corpus with the superior court in the county in which you are confined or in the county in which the case was heard.
- Reconsideration.** You have a right to file one motion for reconsideration over the course of a year if a judge has determined that you should receive involuntary medication, and may seek to present new evidence, upon good cause shown.
- Privacy.** Your relatives are not notified of this proceeding. If you want them notified, advise the Medication Court Administrator and provide contact instructions.
- Renewal of the Order.** Medication orders last for one year. You are entitled to at least 21 days written notice if the Department of Corrections and Rehabilitation intends to renew your involuntary medication order.

Person Explaining These Rights To Inmate:

Printed Name	Signature	Date Signed
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1. Disability Code: <input type="checkbox"/> TABE score ≤ 4.0 <input type="checkbox"/> DPH <input type="checkbox"/> DPV <input type="checkbox"/> LD <input type="checkbox"/> DPS <input type="checkbox"/> DNH <input type="checkbox"/> DNS <input type="checkbox"/> DDP <input type="checkbox"/> Not Applicable	2. Accommodations: <input type="checkbox"/> Additional Time <input type="checkbox"/> Equipment <input type="checkbox"/> SLI <input type="checkbox"/> Louder <input type="checkbox"/> Slower <input type="checkbox"/> Basic <input type="checkbox"/> Transcribe <input type="checkbox"/> Other*	3. Effective Communication: <input type="checkbox"/> P/I asked questions <input type="checkbox"/> P/I summed information Please check one: <input type="checkbox"/> Not Reached* <input type="checkbox"/> Reached *See chrono/notes	CDCR #: Last Name: First Name: MI: DOB:
4. Comments:			

Instructions:

Purpose of Inmate Rights Notice: The “Inmate Rights Notice – Involuntary Medication” notice is for the Medication Court Administrator or designee to document the rights that were explained to the inmate.

1. Enter the inmate-patient’s CDCR number, name, and date of birth in the bottom right.
2. Complete the Effective Communication label at the bottom of the page according to directions below.
3. Inform the inmate of his/her rights. Check off each item as it is discussed with the inmate.
4. **Only mark the top three boxes “Emergency Medication” if seeking an interim ex-parte medication order, which apply only to initial cases (new PC2602 cases). DO NOT check first 3 boxes for renewals.**
5. Provide this form to the inmate in both Initial and Renewal cases.
6. Print the name and title of the person explaining the notification or use a rubber stamp and sign the notice. **The name of the author must be legible.**
7. **Additional resources are available at:**
<http://intranet/team/Admin/DSS/OLA/HeathCareLegalTeam/Involuntary%20Medication/default.aspx>

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 inmate-patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

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

Date: _____ Institution: _____ Age: _____ Gender: Male Female Interpreter: Yes No
 Bed/Cell/Dorm: _____ Language: _____

INMATE NAME (print Last, First):	CDCR#:	PID#:	
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NOTICE OF INTENT TO RENEW COURT-ORDERED MEDICATION: The clinical staff of the institution shown above allege that you continue to have a serious mental illness or disorder. As set forth in the attached declaration, your behaviors and symptoms appear to meet the legal criteria for danger to self, danger to others, or grave disability. These symptoms are currently being moderated by psychiatric medication, which you have not knowingly, intelligently, and competently consented to take. A judge has previously ordered you to take psychiatric medication for these condition(s). The clinical staff of this institution alleges that, but for said medication, you would revert to your previously qualifying condition and, as specified in the attachments, you have by either your statements or behaviors shown a lack of sufficient insight to manage your illness without a court order. You will therefore be brought in front of an Administrative Law Judge, who will decide whether you should continue to be given psychiatric medication on an involuntary basis.

SECTION I - COURT-ORDERED MEDICATION STATUS:

Your current court order for involuntary psychiatric medication expires on: _____

SECTION II - YOUR DOCTORS BELIEVE YOUR COURT ORDER SHOULD BE RENEWED, YOUR HEARING WILL BE:

HEARING DATE:	HEARING TIME:	HEARING INSTITUTION:
Name, Address, and Phone Number of Your Attorney:		
By:		
(print name of renewing psychiatrist)		(date)

SECTION III - BASIS BEING RENEWED:

Identify the basis for involuntary medication in the prior court order and mark them below. Based on clinical judgment and observation, *but for medication as a result of the current court order*, it is alleged that the above-entitled inmate would be: (mark all that apply):

- Danger to Self Danger to Others Gravely Disabled and Lacks Capacity to Refuse Treatment

SECTION IV - SERVICE

I declare under penalty of perjury that I delivered a copy of this notice, a copy of the form "CDCR MH-7366 Inmate Rights Notice - Involuntary Medication," and any related paperwork such as exhibits or attachments, to the attorney listed in Section II above, and to the inmate on the date shown below.

Name of person delivering	Signature of person delivering	Date delivered

1. Disability Code: <input type="checkbox"/> TABE score ≤ 4.0 <input type="checkbox"/> DPH <input type="checkbox"/> DPV <input type="checkbox"/> LD <input type="checkbox"/> DPS <input type="checkbox"/> DNH <input type="checkbox"/> DNS <input type="checkbox"/> DDP <input type="checkbox"/> Not Applicable 4. Comments:	2. Accommodations: <input type="checkbox"/> Additional Time <input type="checkbox"/> Equipment <input type="checkbox"/> SLI <input type="checkbox"/> Louder <input type="checkbox"/> Slower <input type="checkbox"/> Basic <input type="checkbox"/> Transcribe <input type="checkbox"/> Other*	3. Effective Communication: <input type="checkbox"/> P/I asked questions <input type="checkbox"/> P/I summed information Please check one: <input type="checkbox"/> Not Reached* <input type="checkbox"/> Reached *See chrono/notes
		CDCR #: Last Name: _____ MI: First Name: _____ DOB: _____

DECLARATION IN SUPPORT OF RENEWAL OF INVOLUNTARY MEDICATION

IN RE THE MATTER OF (LAST, FIRST):

CDCR Number:

I am a psychiatrist employed by California Department of Corrections & Rehabilitation
 California Department of State Hospitals

Based on my contacts with the inmate, as well as my review of the medical chart, in my professional opinion, the current psychiatric diagnosis for the above-entitled inmate is as follows:

DSM TR:

In my professional opinion, the above diagnosis constitutes a serious mental disorder. In my opinion the inmate lacks the requisite insight into his or her mental illness, and, but for court-ordered medication, the inmate would revert to the type of behavior that triggered the original court order in this case. The inmate requires a court order to ensure medication compliance. The prior court order in this case is based on the grounds marked below. (Mark all that apply):

Danger to Self Danger to Others Gravely Disabled and Lacks Capacity to Refuse Treatment

The specific factual basis for my psychiatric diagnosis, and the reason I believe the medication order should be renewed, is based upon the following components:

1. Based on the inmate's current behavior and symptoms, in my professional opinion, the basis(es) for involuntary medication of the inmate alleged in this petition are as follows (Note: if the reasons provided here do not match the reasons provided in the section directly above, the institution must supply documentation of fresh acts to support the new behavior):

Danger to Self Danger to Others Gravely Disabled and Lacks Capacity to Refuse Treatment

<p>Renewal of Involuntary Medication Notice CDCR MH-7368 (Rev. 03/14) Confidential Inmate-Patient Information</p>	<p>CDCR #:</p> <p>Last Name: MI:</p> <p>First Name:</p> <p>DOB:</p>
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2. In my professional opinion, if not given court-ordered medication, the inmate would revert to the behavior that caused him/her to be placed on involuntary medication in the initial order. The factual basis for my opinion is as follows:

Describe the inmate's behavior when not on medication:

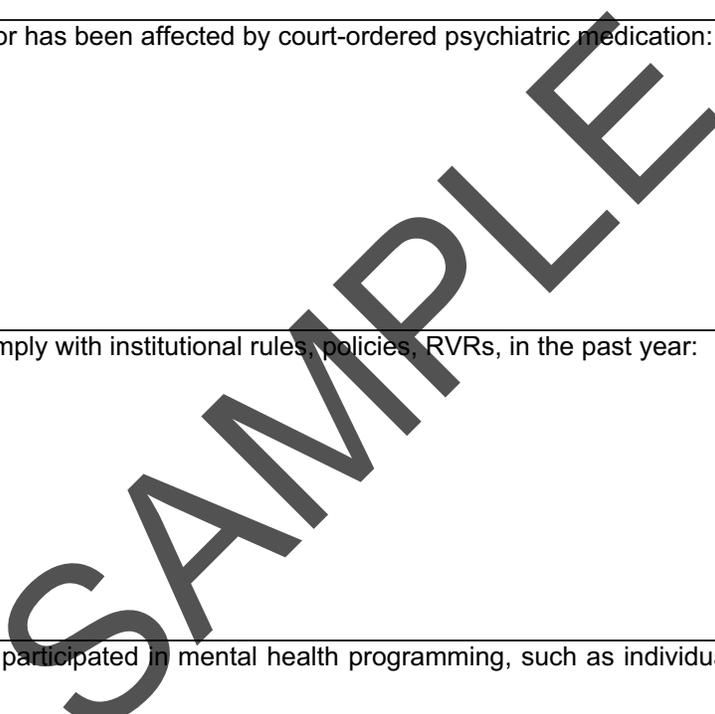
How, in your opinion, is the inmate's unmedicated behavior, described above, a direct consequence of the inmate's mental illness?

Describe how the inmate's behavior has been affected by court-ordered psychiatric medication:

Describe the inmate's ability to comply with institutional rules, policies, RVRs, in the past year:

Describe whether the inmate has participated in mental health programming, such as individual or group therapy, and what his/her attendance has been:

<p align="center">Renewal of Involuntary Medication Notice CDCR MH-7368 (Rev. 03/14)</p> <p align="center">Confidential Inmate-Patient Information</p>	<p>CDCR #:</p> <p>Last Name: MI:</p> <p>First Name:</p> <p>DOB:</p>
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List whether the inmate has previously been ordered by a court to take psychiatric medication (i.e. list prior *Keyhea* orders or similar):

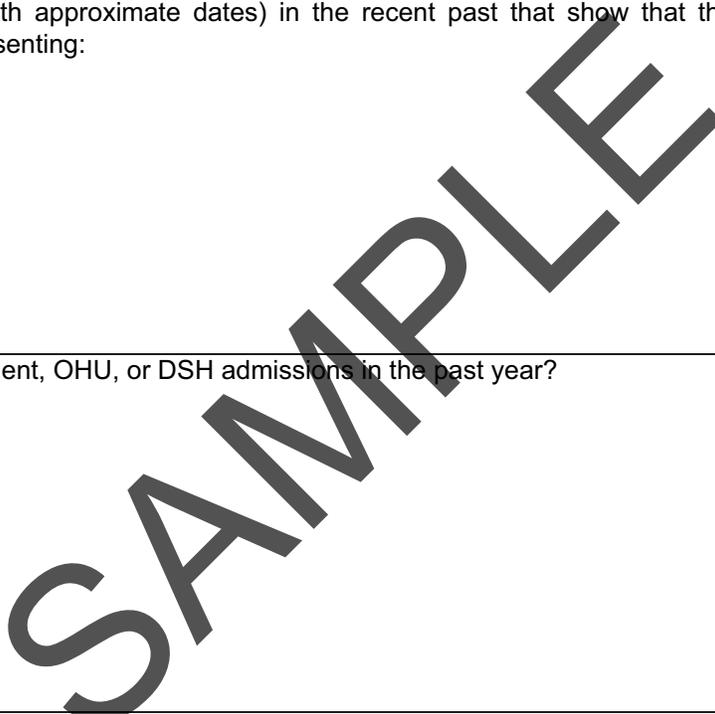
List whether the inmate has previously been to a state mental hospital or county mental hospital:

Please set forth specific acts (with approximate dates) in the recent past that show that the inmate is actively psychotic or delusional and not capable of consenting:

Has the inmate required any inpatient, OHU, or DSH admissions in the past year?

Detail any significant medication changes in the past year:

<p align="center">Renewal of Involuntary Medication Notice CDCR MH-7368 (Rev. 03/14)</p> <p align="center">Confidential Inmate-Patient Information</p>	<p>CDCR #:</p> <p>Last Name: MI:</p> <p>First Name:</p> <p>DOB:</p>
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Renewal of Involuntary Medication Notice
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3. I interviewed, or attempted to interview, the above-entitled inmate regarding renewal of this court-ordered medication on _____ (date). A summary of what the inmate said on that date follows:

What did the inmate say when asked whether he/she thought he/she had a serious mental illness?

What did the inmate say when asked to describe the conduct or behaviors that led to the initial placement of involuntary court-ordered medication?

What did the inmate say when asked to describe the hallmark signs/symptoms of his/her serious mental illness when not in remission or moderated by medication?

What did the inmate say when asked whether or not he/she was willing to take psychiatric medications without a court order?

<p align="center">Renewal of Involuntary Medication Notice CDCR MH-7368 (Rev. 03/14)</p> <p align="center">Confidential Inmate-Patient Information</p>	<p>CDCR #:</p> <p>Last Name: MI:</p> <p>First Name:</p> <p>DOB:</p>
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What did the inmate say when asked to summarize what his/her various medications are and what the medications do in layperson's terms?

What did the inmate say when asked what would occur if he/she were to stop taking medications?

What did the inmate say when asked what his/her psychiatric triggers are?

What did the inmate say when asked what his/her treatment needs are?

SAMPLE

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4. In my professional opinion, this inmate lacks insight that he/she has a serious mental illness that requires regular and consistent dosing of psychiatric medication. My opinion is based upon the following (mark all that apply):

- The inmate's responses to the interview questions in section 3
- The inmate's significant past psychiatric history (specify in box below)
- The inmate's level of participation in the mental health treatment program (specify in box below)
- The inmate's refusal of psychiatric medication while on court-ordered medication

Please provide details, dates, and any other additional information about your answer:

SAMPLE

5. If you believe that the inmate lacked capacity to give informed consent at the time you met with him or her, summarize the basis for that conclusion here:

SAMPLE

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6. List the potential side effects and risks to the inmate from the proposed course of treatment with psychiatric medication, based on clinically appropriate information as well as upon your knowledge of this inmate's medical history:

7. List potential alternatives to treatment of the above-entitled inmate with psychiatric medication, *and* the efficacy of utilizing those alternatives, *and* your reasons for not using those alternatives:

SAMPLE

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8. In your opinion, would this inmate continue taking medications without an involuntary medication order in place? Please state "yes" or "no," and then explain why or why not:

9. Explain what the patient's prognosis will be if he or she is required to continue taking medication:

10. Explain what the patient's prognosis will be if court-ordered medication is discontinued:

11. In my professional opinion, if not given court-ordered medication, the inmate would revert to the behavior that caused him/her to be placed on involuntary medication in the first place.

Based on the foregoing, it is my professional opinion that the above-entitled inmate requires renewal of court-ordered involuntary psychiatric medication for the reasons stated above. I declare under penalty of perjury that the foregoing is true and correct.

Dated _____ at _____, California, in the County of _____.

Name of Signator (print Last, First): _____ Signature: _____

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Confidential Inmate-Patient Information

CDCR #:

Last Name:

MI:

First Name:

DOB:

Instructions:

Purpose of Renewal of Involuntary Medication Notice: The Renewal of Involuntary Medication Notice is used by clinical staff to give the inmate notice that California Department of Corrections and Rehabilitation (CDCR) is seeking to renew an existing involuntary medication order.

- (1) A psychiatrist shall review the form and begin reviewing the case file **at least 60 days** before the current involuntary medication order expires to determine whether renewal is warranted. The psychiatrist must completely fill out the declaration, as well as sign and date it under penalty of perjury. Allow enough time for the inmate interview and chart review.
- (2) If the treating psychiatrist determines that the court order will not be renewed, the psychiatrist should fill out the Office of Legal Affairs (OLA) Non-Renewal form to document the reasons for non-renewal. Completion of the Non-Renewal form ensures that the medical decision has been documented for the inmate's file, communicated to the inmate, and communicated to the Office of Legal Affairs, so that the statewide list of current involuntary orders will properly reflect the inmate's pending status. Inform the inmate that the order is enforceable until its expiration.
- (3) If the psychiatrist is going to proceed with renewal, enter the inmate's identifying information at the top of page one. Indicate whether an interpreter is required. **If an interpreter is required**, be sure to specify the language, and contact the proper institutional resource to obtain the approved/certified interpreter. If that interpreter type is unavailable, contact your assigned attorney and arrange one through Office of Administrative Hearings.
- (4) Once the Renewal of Involuntary Medication Notice is completely filled out and signed by the psychiatrist, the Medication Court Administrator (MCA) is responsible for selecting a hearing date, time, and institution. Fill in these items on page one. (Suggested hearing dates/attorneys are contained in a quarterly schedule covering most institutions sent out by OLA. If your institution is not listed, call OLA.)
- (5) The MCA is responsible for indicating the name, address, and phone number of the attorney appointed to represent the inmate on the hearing date selected. This section may be completed using an address label if necessary. OLA sends out a quarterly schedule showing which attorney to use on any given date.
- (6) Enter the inmate-patient's CDCR number, name, and date of birth in the bottom right. Forms filled out electronically will automatically populate all pages when one instance is completed. If filling out the form by hand, include all requested inmate information on all pages of the form.
- (7) Complete the Effective Communication label at the bottom of page 1 of the form according to the directions on page 2 of the instructions.
- (8) Serve the entire 7368 on the inmate, including the full psychiatrist declaration, minus the instruction pages. Serve the inmate with the Renewal of Involuntary Medication Notice **at least 30 days** before the current involuntary medication expires. Also provide the inmate with a CDCR 7366 Inmate Rights Form. It is anticipated that the MCA or designee will perform this task.
- (9) The entire packet of materials must be scanned and sent to the Office of Administrative Hearings (OAH) at keyheafilings@dgs.ca.gov, to the Office of Legal Affairs (OLA) at keyheaintake@cdcr.ca.gov, and to the assigned Inmate Counsel by email as soon as it is completed and scanned, i.e., ideally within 60 minutes.
- (10) When court hearings conclude, the entire packet of materials shall be scanned and placed in the eUHR as soon as it is assembled, within 60 minutes of the end of the court hearing, by the evaluating psychiatrist. Follow the OLA policy for properly documenting Involuntary Medication Orders in eUHR.
- (11) Send the applicable medical records to the inmate attorney and to the Office of Legal Affairs within two business days after you serve the inmate. Do not send medical records to Office of Administrative Hearings.
- (12) Additional resources are available at:
<http://teamsite/team/Admin/DSS/OLA/HeathCareLegalTeam/Involuntary%20Medication/Shared%20Documents/Forms/AllItems.aspx>

Renewal of Involuntary Medication Notice

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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 inmate-patient. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

<p>1. Disability: a. Check all boxes that apply regarding the inmate-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</p>	<p>2. Accommodation: a. Check all boxes that apply to the special accommodations made to facilitate effective communication: <u>Additional time</u> – P/I (inmate-patient) was given additional time to respond or complete a task. <u>Equipment</u> – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. <u>SLI</u> – Sign Language Interpreter. <u>Louder</u> – The provider spoke louder. <u>Slower</u> – The provider spoke slower. <u>Basic</u> – The provider used basic language. <u>Transcribe</u> – Communication was written down. <u>Other</u> – Any other tool that was used to facilitate effective communication.</p>	<p>3. Effective Communication: a. Check all boxes that apply that summarize how it was verified that effective communication was reached. <u>P/I asked questions</u> – The inmate-patient asked questions regarding the interaction. <u>P/I summed information</u> – The inmate-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.</p>
<p>4. Comments: Provide any additional information regarding effective communication.</p>		

SAMPLE