

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

2008 OAL DETERMINATION NO. 32 (OAL FILE # CTU 2008-0606-02)

REQUESTED BY: Jeff Griffin, Executive Director of Citizens Commission on Human Rights of Los Angeles

CONCERNING: California Department of Mental Health Special Order Number 339, titled Involuntary Administration of Antipsychotic Medication to Mentally Disordered Offender Individuals (Penal Code 2962 and 2972) and Not Guilty by Reason of Insanity Individuals (Penal Code 1026)

Determination Issued Pursuant to Government Code Section 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a "regulation" as defined in Government Code section 11342.600¹ and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations, title 1, section 250.² OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

¹ Government Code section 11342.600 states:

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² California Code of Regulations, title 1, section 250, subdivision (a) defines "underground regulation:"
"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

CHALLENGED RULE

On June 6, 2008, Mr. Griffin, Executive Director of Citizens Commission on Human Rights of Los Angeles (Petitioner) submitted a petition to OAL challenging Special Order Number 339, titled "Involuntary Administration of Antipsychotic Medication to Mentally Disordered Offender Individuals (Penal Code 2962 and 2972) and Not Guilty by Reason of Insanity Individuals (Penal Code 1026)" (Special Order No. 339). Special Order No. 339 was issued by the Department of Mental Health (Department) and was effective on October 22, 2007. The Petitioner alleges that Special Order No. 339 meets the definition of a "regulation" that should have been adopted pursuant to the APA. A copy of Special Order No. 339 is included with this determination as Attachment #1.

Individuals committed to a state hospital as a mentally disordered offender pursuant to Penal Code Sections 2962 and 2972, are referred to as MDOs. Individuals committed to a state hospital as not guilty by reason of insanity pursuant to Penal Code Section 1026 are referred to as NGIs.

DETERMINATION

OAL determines that Special Order No. 339 meets the definition of a "regulation" as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

On October 22, 2007, the Deputy Director of Long Term Care Services of the Department issued Special Order No. 339. Special Order No. 339 states that the purpose of the special order is:

...to provide the State Hospitals with uniform direction in the process of seeking authority for involuntary administration of antipsychotic medication for individuals committed to a State Hospital as MDOs (Penal Code Sections 2962 and 2972), and for individuals committed as NGIs (Penal Code Section 1026), who refuse to give consent to take prescribed antipsychotic medication.

Special Order No. 339 directs state hospitals to establish procedures and policies consistent with the Supreme Court decision in *In re Qawi*³ (*Qawi*). Special Order No. 339 requires:

...all treating psychiatrists and physicians to provide individuals with education and information they need as to the overall benefits and risks of taking prescribed antipsychotic medication. This education is focused not only on medication, but to encourage an individual's participation in all aspects of his/her treatment plan.

³ *In re Kanuri Surgury Qawi* (2004) 32 Cal.4th 1 [81 P.3d 224]

If the individual refuses antipsychotic medication, Special Order No. 339 requires that state hospitals are required to adhere to the following procedures:

- In a “psychiatric emergency situation,” the state hospital can legally prescribe antipsychotic medication to individuals. “Emergency” is defined in Welfare and Institutions Code section 5008(m).⁴
- The state hospital’s procedures must be consistent with the following principles:
 - An emergency situation is defined as when an individual is considered or becomes an imminent danger to self and/or others as a result of mental disease, defect, or disorder.
 - Emergency medication administration is considered to be an emergency as long as, but only as long as the psychiatric emergency continues to exist. Once the emergency is over medication should cease unless the individual voluntarily consents to treatment.
 - It is not necessary for harm to take place or become unavoidable prior to the administration of antipsychotic medication or treatment.
 - Antipsychotic medication shall be provided in the manner least restrictive to personal liberty of the individual.
- Individuals who are mentally ill and dangerous to self and/or others may be referred to a medical Antipsychotic Medication Review panel to determine the necessity for antipsychotic medication.
 - The panel must consist of specified persons who are not directly involved with the individual’s treatment.
 - A social worker or nurse will act as the individual’s advocate.
 - At least two of the three members of the panel must find that the individual meets criteria for involuntary antipsychotic medication.
 - Involuntary antipsychotic medication may be ordered for 14 days.
 - After 14 days, the treatment will be reviewed and may be continued for up to 180 days.
 - After 180 days a new hearing is required to consider the need for continued treatment.
- In non-emergency circumstances, long term authority for involuntary medication must meet the following requirements:
 - If an individual has been referred to the Antipsychotic Medication Review panel for the administration of antipsychotic medication, the state hospital is directed to file a petition with the court requesting an order for involuntary antipsychotic medication.
 - For convenience and efficiency, the need for involuntary antipsychotic medication should be addressed to the court when commitment or recommitment or other court proceedings are already scheduled. However the filing of a petition with the

⁴ Welfare and Institutions Code section 5008(m) defines “emergency” to mean:

...a situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment.

court should not be delayed to wait for the rest of the court proceedings to be held when this would result in risk of harm to the individual and/or others.

On September 29, 2008, OAL received a response from the Department. The response argues that Special Order No. 339 does not meet the definition of a regulation for the following reasons:

1. Special Order No. 339 restates *Qawi* and therefore is exempt from the APA because it falls under the “only legally tenable interpretation” exemption. As part of this argument, the Department states that the Special Order is seeking to protect and enforce the rights of MDOs and NGIs by ensuring that the hospitals’ staff is aware of the rights set forth in the Penal Code and *Qawi*.
2. Special Order No. 339 is exempt from the APA because it falls under the “internal management” exception.

OAL received no comments from the public.

OAL received the Petitioner’s rebuttal to the Department’s response on October 27, 2008. The rebuttal countered the Department’s response by arguing that Special Order No. 339 is neither a restatement nor does it fall under the internal management exemption from the APA.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a "regulation" as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA.⁵ An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

⁵ Government Code section 11340.5(b).

To determine if an agency issued, utilized, enforced, or attempted to enforce an underground regulation in violation of Government Code section 11340.5, it must be demonstrated that the agency rule is a “regulation” and not exempt from the APA.

ANALYSIS

A determination of whether the challenged rule is a “regulation” subject to the APA depends on (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The Department is charged with the responsibility of governing all state mental hospitals. Welfare and Institutions Code section 4101 provides that:

... all of the institutions under the jurisdiction of the State Department of Mental Health shall be governed by uniform rule and regulation of the State Department of Mental Health....

There are five state hospitals under the jurisdiction of the Department: Atascadero, Metropolitan, Napa, Coalinga and Patton State Hospitals.⁶ State hospitals provide inpatient treatment services for Californians with serious mental illnesses. These services include treatment for individuals found to have a severe mental disorder for whom the Department

⁶ Welfare and Institutions Code section 4100.

provides inpatient treatment⁷ and for individuals committed to the Department as a result of pleading not guilty by reason of insanity.⁸

The right of MDOs to refuse antipsychotic medications is established in *Qawi*. A similar right for NGIs is discussed in *In re Locks* (2000) 79 Cal.App.4th 890. Special Order No. 339 requires all state hospitals to establish specific procedures when limiting this right to refuse antipsychotic medications and administering the medications involuntarily. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. MDOs and NGIs are committed to the Department for treatment and can be distinguished from other patients of the hospitals. MDOs and NGIs are clearly identified classes of persons. Additionally, Special Order No. 339 requires state hospital staff to develop and enforce the procedures for the involuntary administration of antipsychotic medication. State hospital staff is also a clearly defined class of persons. The first element is, therefore, met.

The second element established in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure.

As noted above, Welfare and Institutions Code section 4100 states that the Department has jurisdiction over all state hospitals. Welfare and Institutions Code section 4101 requires all of the institutions under the jurisdiction of the Department to be governed by uniform rule and regulation of the Department. In addition Penal Code sections 2960 through 2980 require the Department to provide treatment services to MDOs and Penal Code sections 1026 through 1027 require the Department to provide treatment services to NGIs.

Special Order No. 339 requires each state hospital that provides treatment to MDOs and NGIs to adopt specific requirements and procedures. These specific requirements and procedures include the procedures for determining when to administer antipsychotic medication without the individual's consent, the review process for this determination and the referral of an individual to a court if necessary. By establishing these requirements and procedures, Special Order No. 339 implements, interprets and makes specific Welfare and Institutions Code sections 4100 and 4101 and Penal Code sections 2960 and following and 1026 and following.

The second element in *Tidewater* is, therefore, met.

Having met both elements of *Tidewater*, OAL determines that Special Order No. 339 meets the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether Special Order No. 339 falls within an exemption from the APA. Government Code section 11346 requires that an exemption from the APA must be an express statutory exemption. We can find no express APA exemptions that would apply to Special Order No. 339.

⁷ Penal Code sections 2960 through 2980.

⁸ Penal Code sections 1026 through 1027.

AGENCY RESPONSE

In its response, the Department argues that Special Order No. 339 is not subject to the requirements of the APA because:

1. Special Order No. 339 restates *Qawi* and therefore is exempt from the APA because it falls under the “only legally tenable interpretation” exemption. As part of this argument, the Department states that the Special Order is seeking to protect and enforce the rights of MDOs and NGIs by ensuring that the hospitals’ staff is aware of the rights set forth in the Penal Code and *Qawi*.
2. Special Order No. 339 is exempt from the APA because it falls under the “internal management” exemption.

Restatement of Law

In its response, the Department first argues that Special Order No. 399 **restates** *Qawi* and is therefore exempt from the APA because it falls under the “only legally tenable interpretation” exemption from the APA. Before we discuss the “only legally tenable interpretation” exemption, we must address this common misunderstanding of the difference between a “restatement” and the “only legally tenable interpretation” of a provision of law. A restatement of law is not an exemption from the APA; rather, it merely repeats the law and does not further implement, interpret or make specific any provision of law. It does not meet the second element of *Tidewater*, and therefore, does not meet the definition of “regulation” in Government Code section 11342.600. Thus, a rule that restates the law does not need to be adopted pursuant to the APA.

In our review of Special Order No. 339, we note that some of the provisions are restatements of existing provisions of law. Special Order No. 339 correctly states that the *Qawi* decision addresses the rights of MDOs to refuse antipsychotic medications. It also restates Welfare and Institutions Code section 5008(m) giving state hospitals the right to prescribe antipsychotic medication in emergency situations.

We can identify no other provisions of Special Order No. 339 that restate other provisions of existing law.

Only Legally Tenable Interpretation Exception

The only legally tenable interpretation exemption is established in Government Code section 11340.9(f). A rule that falls within this exemption is not a mere restatement, but rather the rule interprets a statute in the only way legally possible. The California Supreme Court discussed the “only legally tenable interpretation” exception in *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 328, 132 P.3d 249. The court stated:

...the exception for the lone “legally tenable” reading of the law applies only in situations where the law “can reasonably be read only one way” (1989 Off. Admin. Law Determination No. 15, Cal. Reg. Notice Register 89, No. 44-Z, pp. 3122, 3124), such that the agency's actions or decisions in applying the law are essentially rote, ministerial, or otherwise patently compelled by, or repetitive of, the statute's plain language. (See Cal. Law Revision Com. com., 32D West's Ann. Gov.Code (2005 ed.) foll. § 11340.9, p. 94; 1989 Off. Admin. Law Determination No. 15, Cal. Reg. Notice Register 89, No. 44-Z, pp. 3124-3131 [reviewing an agency interpretation of the law for compliance with the APA and concluding that although the agency had a “well-supported” rationale for its view, its was not the only legally tenable interpretation of the pertinent statute].)

Qawi establishes that MDOs have the right to refuse antipsychotic medications. *Qawi* states at pages 27-28:

We therefore hold that an MDO can be compelled to be treated with antipsychotic medication under the following nonemergency circumstances: (1) he is determined by a court to be incompetent to refuse medical treatment; (2) the MDO is determined by a court to be a danger to others within the meaning of Welfare and Institutions Code section 5300. [Footnote omitted] *An MDO's right to refuse such medication may also be limited pursuant to State Department of Mental Health regulations modifying the MDO's rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held.* [Footnote omitted] A determination that a patient is incompetent to refuse medical treatment, or is dangerous within the meaning of section 5300, may be adjudicated at the time at which he or she is committed or recommitted as an MDO, or within the commitment period. (Emphasis added.)⁹

Qawi does not require any specific procedures to be used to safeguard the MDOs right to refuse antipsychotic medication. It only establishes the right to make the refusal. *Qawi* specifically states that the right to refuse antipsychotic medication may be limited by the Department in regulation. By adopting the specific procedures to be used to protect the right of the MDO to refuse antipsychotic medication, Special Order No. 339 interprets, implements and makes specific the holding of *Qawi* and is not a mere restatement.

Special Order No. 339 is not a Departmental action that is “essentially rote, ministerial,

⁹ Welfare and Institutions Code section 5300 is found in the Lanterman-Petris-Short (LPS) Act. (Welfare and Institutions Code section 5000 and following.) The LPS Act provides for the prompt evaluation and treatment of mentally disordered persons, developmentally disabled persons and persons impaired by chronic alcoholism, while protecting public safety and safeguarding individual rights through judicial review. Section 5300 establishes the time frames for making determinations that a person committed pursuant to the LPS Act is dangerous and must continue to be treated intensively. Section 5300 provides that, after an initial 14-day period of intensive treatment, the person may be confined for an additional 180 days if the person is found to be dangerous.

or otherwise patently compelled by, or repetitive of, the statute's plain language." The Department could have protected the MDO's rights established in *Qawi* in many different ways. In Special Order No. 339, the Department has used its discretion to make choices about how to implement *Qawi*. As noted above, the court in *Qawi* specifically recognized that "[a]n MDO's right to refuse such medication may also be limited pursuant to State Department of Mental Health regulations modifying the MDO's rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held."¹⁰ The requirements and procedures established by Special Order No. 339 are not the only legally tenable interpretation of existing provisions of law.

Special Order No. 339, therefore, is neither a restatement nor the only legally tenable interpretation of *Qawi*.

We also note that *Qawi* concerned only MDOs. By expanding *Qawi* to NGIs, the Department is further implementing, interpreting and making specific *Qawi*, not merely restating it.

Internal Management Exception

In its second argument, the Department states that Special Order No. 339 is exempt from the APA because it falls under the "internal management" exception.

Government Code section 11340.9(d) exempts from compliance with the APA any rule that "relates only to the internal management of the state agency." This exemption from the APA has been construed very narrowly. The California Court of Appeal in *Grier v. Kizer* summarizes case law on internal management, stating:

Armistead v. State Personnel Board [citation] determined that an agency rule relating to an employee's withdrawal of his resignation did not fall within the internal management exception. The Supreme Court reasoned the rule was 'designed for use by personnel officers and their colleagues in the various state agencies throughout the state. It interprets and implements [a board rule]. It concerns termination of employment, a matter of import to all state civil service employees. It is not a rule governing the board's internal affairs. [Citation.] "Respondents have confused the internal rules which may govern the department's procedure . . . and the rules necessary to properly consider the interests of all . . . under the . . . statutes" [Fn. omitted.] . . . [Citation; emphasis added by *Grier* court.]

Armistead cited *Poschman v. Dumke* [citation], which similarly rejected a contention that a regulation related only to internal management. The *Poschman* court held: "Tenure within any school system is a matter of serious consequence involving an important public interest. The

¹⁰ *Qawi*, *supra* at page 28.

consequences are not solely confined to school administration or affect only the academic community.” . . . [Citation.]

Relying on *Armistead*, and consistent therewith, *Stoneham v. Rushen* [citation] held the Department of Corrections’ adoption of a numerical classification system to determine an inmate’s proper level of security and place of confinement ‘extend[ed] well beyond matters relating solely to the management of the internal affairs of the agency itself [,]’ and embodied ‘a rule of general application significantly affecting the male prison population’ in its custody.

By way of examples, the above mentioned cases disclose that the scope of the internal management exception is narrow indeed. This is underscored by *Armistead’s* holding that an agency’s personnel policy was a regulation because it affected employee interests. Accordingly, even internal administrative matters do not per se fall within the internal management exception¹¹

The internal management exemption has been judicially determined to be narrow in scope.¹² The courts apply the internal management exemption if the “regulation” at issue (1) affects only the employees of the issuing agency,¹³ and (2) does not address a matter of serious consequence involving an important public interest.¹⁴ In order for a rule or procedure to fall within the internal management exemption, it must meet both of these two prongs.

Special Order No. 339 fails to meet the first prong because its effect is not limited to the employees of the Department; it also affects MDOs or NGIs who refuse antipsychotic medications. Because Special Order No. 339 does not meet the first prong of the “internal management” exemption, there is no need to discuss or analyze the second prong. Therefore, Special Order No. 339 does not fall within the internal management exemption.

¹¹ *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 436, 268 Cal.Rptr. 244, 252-253.

¹² *Id.*

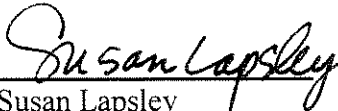
¹³ See *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 149 Cal.Rptr. 1; *Stoneham v. Rushen (Stoneham I)* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130; *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596.

¹⁴ See *Poschman, supra*, 31 Cal.App.3d at 943, 107 Cal.Rptr. at 603; and *Armistead, supra*, 22 Cal.3d at 203-204, 149 Cal.Rptr. at 3-4.

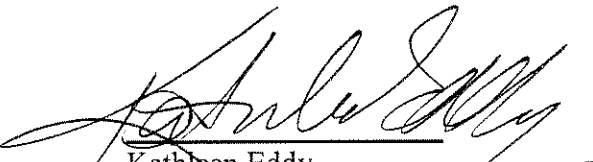
CONCLUSION

OAL finds that Special Order No. 339 is a "regulation" as defined in section 11342.600, does not fall within any express statutory APA exemption, and therefore, it should have been adopted pursuant to the APA.

Date: December 12, 2008


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Attachment #1

Special Order No. 339

CALIFORNIA DEPARTMENT OF MENTAL HEALTH

SPECIAL ORDER

Section 300-399: Forensic

Special Order Number: 339
Replaces: New (Rescinds 336.01)

Effective Date: October 22, 2007

Subject: INVOLUNTARY ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION TO
MENTALLY DISORDERED OFFENDER INDIVIDUALS (PENAL CODE 2962 AND 2972)
AND NOT GUILTY BY REASON OF INSANITY INDIVIDUALS (PENAL CODE 1026)

Special Order: The California Supreme Court Qawi Decision (32 Cal.4th 1) addressed the rights of individuals committed to a State Hospital as Mentally Disordered Offenders (MDO), under Sections 2962 and 2972 of the Penal Code, to refuse antipsychotic medication, but permitted the government to involuntarily administer antipsychotic medications to individuals, under specified circumstances. At the same time, the Court, in the same decision, indicated that individuals committed to a State Hospital as Not Guilty by Reason of Insanity (NGI), under Section 1026 of the Penal Code, would be found to have the same rights regarding involuntary administration of antipsychotic medication.

Therefore, State Hospitals are directed to establish procedures and policies consistent with the California Supreme Court Qawi Decision, and Section 5300 of the Welfare and Institutions Code, for both MDO and NGI individual commitments.

This Special Order pertains to authority for the administration of antipsychotic medication only and does not include medication or treatment for physical health conditions of civilly committed individuals. Authority for the treatment of physical health conditions of a civilly committed individual will follow the procedures described within Section 3200 of Division 4 of the Probate Code.

Authority: By order of the Deputy Director, Long Term Care Services, consistent with the California Supreme Court Qawi Decision, Sections 2962 and 2972 of the Penal Code, Section 1026 of the Penal Code, and Sections 5300 and 5008(m) of the Welfare and Institutions Code.

Purpose: To provide the State Hospitals with uniform direction in the process of seeking authority for involuntary administration of antipsychotic medication for individuals committed to a State Hospital as MDO (Penal Code Sections 2962 and 2972), and for individuals committed as NGI (Penal Code Section 1026), who refuse to give consent to take prescribed antipsychotic medication.

Method: It is the responsibility of all treating psychiatrists and physicians to provide individuals with the education and information they need as to the overall benefits and risks of taking prescribed antipsychotic medication. This education is focused not only on medication, but to encourage an individual's participation in all aspects of his/her treatment plan. If, after all attempts at education and encouragement, the individual refuses antipsychotic medication, the following procedures shall be followed.

Administration of Antipsychotic Medication to MDO and NGI Individuals in a Psychiatric Emergency:

As defined in Section 5008(m) of the Welfare and Institutions Code, the State Hospitals can legally prescribe antipsychotic medication to individuals under psychiatric emergency situations, including for the preservation of life or the prevention of serious bodily harm to the individual and/or others.

Existing policies and procedures for emergency administration, if consistent with the following principles, may be relied upon:

- An emergency situation is defined as when an individual is considered or becomes an imminent danger to self and/or others as a result of mental disease, defect, or disorder.
- Emergency medication administration is considered to be an emergency as long as, but only as long as, the psychiatric emergency continues to exist. Once the emergency is over medication should cease unless the individual voluntarily consents to treatment.
- It is not necessary for harm to take place or become unavoidable prior to the administration of antipsychotic medication or treatment.
- Antipsychotic medication shall be provided in the manner least restrictive to the personal liberty of the individual.

Interim Authority for Involuntary Medication for Purposes Such as Danger to Self and/or Others:

MDO and NGI individuals who are mentally ill and dangerous to self and/or others may be referred to a medical Antipsychotic Medication Review panel to determine the necessity for antipsychotic medication. The panel will consist of a presiding Psychiatrist, a second Psychiatrist, and a Clinical Psychologist. None of the members of the Antipsychotic Medication Review panel are to be directly involved with the individual's treatment. A Social Worker or Nurse who will act as the individual's advocate and who will represent the individual's interests at the hearing, will explain the procedure and findings to the individual, and assist with a writ to State Court if the individual so desires. At least two (2) of the three (3) members of the panel must find that the individual meets criteria for involuntary antipsychotic medication, which may then be ordered for 14 days. At the end of the 14-day period, the panel will review the treatment outcome and may order continued treatment for up to 180 days. After 180 days a new hearing is required to consider the need for continued treatment.

