IN THE
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MAINE

JANE DOE	*	
Plaintiff	*	
vs.	*	
	*	CASE NO._____
STEVEN ROWE, in his capacity as Attorney General of the State of Maine, and	*	
BRENDA HARVEY, in her capacity as Commissioner, Maine Department of Health and Human Services and,	*	
DAVID PROFFITT, in his capacity as Superintendent of Riverview Psychiatric Center	*	
Defendants	*	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
INJUNCTIVE RELIEF SOUGHT

Introduction

1. This is a declaratory judgment action to declare Maine Public Law 2008, Chapter 580 which amends 34-B M.R.S.A. § 3003, sub- §2, ¶C (2007) and 34-B M.R.S.A. § 3861, sub- §3 "An Act Regarding Clinical Review of Certain Requests for Involuntary Mental Health Treatment"

(hereinafter "Act") unconstitutional and to permanently enjoin its enforcement. (A copy of this new law is attached as Exhibit A).

2. This law creates a new procedure in Maine in which individuals who have been civilly involuntarily committed to a psychiatric hospital, pursuant to the provisions contained within 34-B M.R.S.A. Chapter 3, subchapter 4 (34-B M.R.S.A. §§ 3801-3873 "Hospitalization"), can be forced to undergo treatment against their will in non-emergency situations. This forced treatment can include the forcible administration of medications that can have devastating and irreversible side effects or can even cause death.

3. Plaintiff challenges the constitutionality of this statute on Due Process grounds and seeks both declaratory and injunctive relief from the enforcement of this law.

JURISDICTION

4. This Court has original jurisdiction over this action because Ms. Doe's claims arise under the Fourteenth Amendment of the United States Constitution. The jurisdiction of this Court is based upon 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1343(3) and 28 U.S.C. 2201.

VENUE

5. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because Ms. Doe's claims arise in this district, and the defendants are public officials located within this district.

PARTIES

Plaintiff

6. Ms. Doe is an 83 year old woman who has been a patient at the Riverview Psychiatric Center (hereinafter "RPC") since September 28, 2007.

7. On May 28, 2008 she was involuntarily committed to RPC pursuant to 34-B M.R.S.A. § 3864 by order of the Maine District Court, Seventh District Court, Division of Southern Kennebec, for a period not to exceed 16 weeks.

Defendants

Defendant Rowe

8. Defendant Steven Rowe is the Attorney General of the State of Maine. He is the chief legal officer charged with the responsibility of enforcing the Act. He is charged with the faithful execution of the laws of the state, including the statutory provision that is at issue in this complaint. He is sued in his official capacity.

Defendant Harvey

9. Defendant Brenda Harvey is the Commissioner of the State of Maine Department of Health and Human Services. She is responsible for the control and supervision of the department and the maintenance of RPC. 22 M.R.S.A. § 204; 34-B M.R.S.A. § 3201. She is being sued in her official capacity only.

Defendant Proffitt

10. Defendant Proffitt is the superintendent of RPC and is responsible for the superintendence of RPC and its grounds under the direction of the commissioner. 34-B M.R.S.A. § 3202.

ALLEGED FACTS

11. On May 28, 2008 Ms. Doe was involuntarily committed to RPC pursuant to 34-B M.R.S.A. § 3864 by order of the Maine District Court, Seventh District Court, Division of Southern Kennebec, for a period not to exceed 16 weeks.

12. On that same day, Dr. Brendan Kirby, Ms. Doe's treating physician at RPC, filed a request with RPC Superintendent David Proffitt, pursuant to section 34-B M.R.S.A. § 3861(3)(A) of the Act, that a clinical review panel be designated for the purpose of determining whether Ms. Doe should be treated involuntarily.

13. On May 30, 2008, pursuant to 34-B M.R.S.A. § 3861(B)(1) of the Act, RPC Superintendent David Proffitt notified William Nelson, MD, Medical Director of RPC, that he was authorized to convene a clinical review panel.

14. Dr. Kirby's proposed involuntary treatment of Ms. Doe was described in his request as: "Anti-Psychotic medication starting with Geodon 20 mg PO BID/10 mg IM BID if refused to max 80 mg Geodon PO BID/20 mg IM BID. Back-up possibilities: Zyprexa 5 mg BID PO to 20 mg BID PO or up to 10 mg BID IM; Prolixin 5 mg to 20 mg BID PO or up to 10 mg BID IM; and Haldol 5 mg to 20 mg BID PO or up to 10 mg

BID IM + See Attached". The "+ See Attached" referred to a document listing all medications that Dr. Kirby had proposed.

15. On Thursday, June 5, 2008, pursuant to 34-B M.R.S.A. § 3861 (B)(2) of the Act, William Nelson, MD notified Ms. Doe in writing that a "hearing of a Clinical Review Panel for Involuntary Mental Health Treatment would be held on Tuesday June 10, 2008." The notice stated that Ms. Doe was "encouraged to attend."

16. The notice of Thursday, June 5, 2008 did not include any description of the treatment the clinical review panel would be considering. This notice is the only information Ms. Doe received regarding the Clinical Review Panel process.

17. The clinical review panel meeting was held on Tuesday June 10, 2008. It was not recorded.

18. Lisa Willis, a peer support worker and an RPC employee, attended this meeting.

19. At the clinical review panel meeting Ms. Willis was informed that she could ask questions of Dr. Kirby on behalf of Ms. Doe.

20. Ms. Willis informed the members of the Clinical Review Panel that she was neither a lawyer nor a clinician and therefore did not ask any questions of Dr. Kirby.

21. During the meeting, Dr. Nelson informed Ms. Doe that she could review the documents that Dr. Kirby submitted to the panel for their consideration. These documents were not given to Ms. Doe to review

prior to this meeting, nor was Ms. Doe given copies of the documents to review during the meeting.

22. At this meeting one of the panel members, commenting on Ms. Doe's advanced age, referred to a possible risk of death resulting from some of the medications that were being proposed to be administered to Ms. Doe over her objections.

23. Ms. Doe was unaware of this risk and this was the first time that this risk had been mentioned to her by anyone, including her primary physician at RPC, Dr. Kirby.

24. Elderly patients with dementia related psychosis treated with atypical antipsychotic, such as Geodon and Zyprexa have a higher chance for death than patients who do not take the medicine. This risk is so important that the Federal Drug Administration requires that these medications carry a "black box" warning regarding this risk.

25. At the time of the panel meeting Dr. Kirby had not ruled out dementia as a diagnosis for Ms. Doe.

26. After this meeting Dr. Nelson signed a two-page form that stated at the end that the panel "hereby orders the proposed treatment."

27. The primary medication that Dr. Kirby recommended that Ms. Doe be forced to take is Geodon.

28. On June 17, 2008, Ms. Doe was advised that the decision of the Clinical Review Panel was rescinded. The letter rescinding the decision

stated that "if it is still appropriate for your care, your treating physician may decide to request again that a clinical review panel be convened."

29. The clinical review panel law which this June 17, 2008 letter refers to, and the one that Ms. Doe is still in danger of being subjected to, is described in Exhibit A, "An Act Regarding Clinical Review of Requests for Involuntary Health Treatment".

30. The Maine Legislature passed "An Act Regarding Clinical Review of Requests for Involuntary Health Treatment" as L.D. 2193 on April 4, 2008 and the Governor signed the bill into law on April 8, 2008. The bill became Maine Public Law 2007, Chapter 580, 123rd Maine State Legislature and it amends 34-B M.R.S.A. § 3003, sub- §2, ¶C (2007) and 34-B M.R.S.A. § 3861, sub- §3.

31. The Act allows for the involuntary treatment of individuals who have been civilly committed to a state mental health institute or a designated non-state mental health institution pursuant to the provisions contained within 34-B M.R.S.A. Chapter 3, subchapter 4 (34-B M.R.S.A. §§ 3801-3873 "Hospitalization"). This new Act allows for the involuntary administration of medications, including powerful psychotropic medications, to patients who are refusing to accept such treatment.

32. The Act grants the authority to a committee of at least two licensed professionals to issue a finding that a patient should be involuntarily

medicated against their will. This committee is called the Clinical Review Panel (hereinafter "the panel"). 34-B M.R.S.A. § 3861(3)(D).

33. The law provides that the panel should consist of 2 or more licensed professional staff who do not provide direct care to the patient. At least one person must be a professional licensed to prescribe medication relevant to the patient's care and treatment. 34-B M.R.S.A. § 3861(3)(B)(1).

34. The Act allows the panel to be formed at the direction of the superintendent of a mental health institution or chief administrative officer of a non-designated state mental health institution upon request of the patient's treating physician. 34-B M.R.S.A. § 3861(3)(A).

35. The Act allows for an order of involuntary treatment, including forcing the patient to take psychotropic medications, after the panel has had a meeting. 34-B M.R.S.A. § 3861(3)(D).

36. The Act does not require that the patient be informed as to why the panel is meeting nor does the Act require that the patient be given notice sooner than 24 hours prior to the panel meeting.

The notice requirement in the Act is as follows:

> (e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include contact information for requesting assistance from a

lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient. 34-B M.R.S.A. § 3861(3)(B)(1)(e).

[N]o less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney. 34-B M.R.S.A. § 3861(3)(B)(2).

37. This Act does not give the patient a right to a lawyer, instead the Act provides that the patient has a "right to a lay advisor". The Act does not require that the "lay advisor" be qualified. However it does allow any employee of the hospital to be a "lay advisor". 34-B M.R.S.A. § 3861(3)(C)(1).

38. The Act allows the panel to issue an order of forced treatment so long as the panel makes certain findings of fact. 34-B M.R.S.A. § 3861(3)(B)(4) provides as follows:

(4) The clinical review panel may approve a request for involuntary treatment and order the treatment if the clinical review panel finds, at a minimum:

(a) That the patient lacks the capacity to make an informed decision regarding treatment;

(b) That the patient is unable or unwilling to comply with the proposed treatment;

(c) That the need for the treatment outweighs the risks and side effects; and

(d) That the proposed treatment is the least intrusive appropriate treatment option.

39. If the patient appears at the meeting of the panel in order to be heard on those issues, the Act outlines the patient's involvement as follows:

C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under paragraph A.

(1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient's expense.

(2) The patient may review any records or documents considered by the clinical review panel.

(3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.

(4) The patient may ask questions of any person who provides information to the clinical review panel.

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private

meetings authorized under paragraph B, subparagraph 3, division (b). 34-B M.R.S.A. § 3861(3)(C).

40. The Act does not require the proceedings of the panel to be recorded.

41. The Act only allows the patient to review records or documents that the panel has considered. "[T]he patient may review any records or documents *considered* by the clinical review panel. (emphasis added). 34-B M.R.S.A. § 3861(3)(C)(2). The Act does not allow the patient to access records or documents that the panel decided not to consider.

42. Although under Maine law the patient has the right to access his or her entire medical record upon request, the hospital has three working days in which to respond to such a request. 14-193 C.M.R. Chapter 1 Part A § (IX)(K)(1) (1995) ("such records shall be made available within three working days of such request").

43. The Act does not articulate any evidentiary standard that the panel must adhere to prior to making its determinations.

44. The Act does not provide for any qualifications of the lay advisor.

45. Unless otherwise altered by agreement of the patient and physician or court order, the Act allows the panel to issue an order of forced treatment, including forced administration of psychotropic medications for a period of up to 120 days or until the end of the period of commitment whichever is sooner. 34-B M.R.S.A. § 3861(3)(E).

46. The Act does not allow for any *de novo* judicial review of the order to force treatment. Judicial review is only by appeal under Maine Rule of Civil Procedure 80C. 34-B M.R.S.A. § 3861(3)(F).

47. Pursuant to M.R. Civ. P. 80C(a) appeals are governed by the Maine Administrative Procedure Act, 5 M.R.S.A. § 11001 et. seq., 5 M.R.S.A. § 11005 provides that the agency "shall file in the reviewing court within 30 days after the petition for review is filed, or within such shorter or longer time as the court may allow on motion, the original or a certified copy of the complete record of the proceedings under review."

48. Under Rule 80C(g), unless otherwise ordered by the court, the agency would have up to 30 days to file a responsive brief after the petitioner files his or her brief.

49. Unless otherwise ordered by the reviewing court, the judicial review of the forced medication order allowed under the Act can be delayed a minimum of up to 60 days solely by virtue of actions taken by the agency as provided in Maine Rule of Civil Procedure 80C.

Count I

SUBSTANTIVE DUE PROCESS

The Act on its face violates the Fourteenth Amendment by depriving Ms. Doe of a Protected Liberty Interest.

50. Ms. Doe realleges paragraphs 1 through 49 and incorporates them herein by reference.

51. Ms. Doe has a constitutionally protected fundamental liberty and/or substantial liberty interest to refuse medical treatment that includes the forcible administration of powerful psychotropic medications. This liberty interest includes refusing such medical treatment regardless of how unwise her sense of values may seem to her treating psychiatrists.

52. The Due Process clause forbids the State of Maine from infringing upon this interest unless the infringement is narrowly tailored to serve a compelling state interest.

53. On its face, the law allows for the involuntary treatment of individuals who have been civilly committed to a psychiatric hospital if the panel finds that: (1). they lack capacity to make informed consent regarding treatment; (2). are unwilling or unable to accept the proposed treatment; (3). that the need for the treatment outweighs the risks and side effects and that (4). the proposed treatment is the least intrusive appropriate treatment option. 34-B M.R.S.A. § 3861(3)(B)(4).

54. That the State of Maine's infringing upon Ms. Doe's liberty interest on the basis of these four factors violates her substantive due process rights guaranteed to her under the Fourteenth Amendment.

Count II

PROCEDURAL DUE PROCESS

The Act on its face violates the Fourteenth Amendment by depriving Ms. Doe of a Protected Liberty Interest without Due Process of Law.

55. Ms. Doe realleges paragraphs 1 through 54 and incorporates them herein by reference.

56. The Act allows as little as 24 hours notice to a patient prior to the convening of a panel whose purpose is to determine whether or not the patient will be forced to take medications against his or her will.

57. The Act does not require that any information about why the panel is convening or what will be determined at the panel meeting be given in the notice to the patient.

58. The Act does not allow the patient to access any documents prior to the panel meeting in order to prepare for the meeting.

59. The Act only allows the patient to review those select documents which the panel has chosen to rely on when making its decision.

60. The Act does not require that any information the panel receives be verified for its accuracy, either through sworn testimony, certification of records, or the like.

61. The Act does not allow for any of the proceedings of the panel to be recorded.

62. The Act does not require that the notice to the patient include any information as to the issues to be decided.

63. The Act does not give the patient a right to lawyer. Instead the Act gives the patient a right to a lay advisor whose only qualification requirement is that they may be an employee of the hospital.

64. The Act contains no evidentiary standard, whether preponderance of the evidence or clear and convincing evidence, which the panel is to use when making its findings, which includes making a finding of lack of capcity to make treatment decisions.

65. The Act allows only for judicial review of any forced medication order under Maine Rule of Civil Procedure 80C.

66. Prior to the deprivation of her fundamental liberty interest, Ms. Doe has a right under the Fourteenth Amendment to the United States Constitution to notice and an opportunity to be heard "at a meaningful time and in a meaningful manner."

67. The Act allows for a panel to be convened with as little as 24 hours advance notice to the patient, with the notice not even having to inform the patient as to what the panel is meeting about. At the meeting the panel is making a determination on whether or not the patient has the capacity to make treatment decisions and then can order treatment over the patient's objections. This meeting is not recorded. The panel consists of no judicial officers. The panel is not required to adhere to any evidentiary standards when receiving information and is not required to give the patient access to any documents it is relying on to make this determination until the date of the panel meeting. The only documents that the patient can see are those relied on by the panel and if the patient is given less than three working days notice of the meeting he or she does not have the legal right to review his or her entire record prior

to the meeting. When making its findings, the panel need not rely on any legal standard (preponderance, clear and convincing, etc.). The individuals who present evidence at the meeting are not required to do so under oath. The law does not give the patient the right to a lawyer, but instead the right to assistance from a hospital employee who need not have any qualifications. The panel can issue an order of forced medication for up to 120 days. The only judicial review that the law allows is through an appellate process where filing deadlines for briefs and agency records are measured in thirty-day increments.

68. The Maine Act does not give Ms. Doe notice and an opportunity to be heard "at a meaningful time and in a meaningful manner" prior to being deprived of her liberty interest and therefore this law should be struck down as unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this court:

(1) issue a declaratory judgment that Maine Public Law 2007, Chapter 580, 123rd Maine State Legislature violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(2) grant a permanent injunction enjoining the defendants, their agents, successors, employees, attorneys, assigns and other representatives, and all those acting in concert with them at their direction, from enforcing the specified provisions of the law;

(3) Award Plaintiff her reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988 and costs.

(3) grant such additional relief as the court deems just and proper.

Dated: July 10, 2008

/s/ Mark C. Joyce

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An Act Regarding Clinical Review of Certain Requests for Involuntary Mental Health Treatment

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, on January 1, 2008, Public Law 2007, chapter 446 became effective, establishing clinical review of requests for involuntary treatment for mental illness; and

Whereas, a repeal of Public Law 2007, chapter 446, section 6 on rulemaking and enactment of law in place of those rules is necessary at the earliest possible time to establish the procedures of the clinical review panel and the rights of the patient; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 34-B MRSA §3003, sub-§2, ¶C, as amended by PL 2007, c. 446, §1 and affected by §7, is further amended to read:

C. Standards for informed consent to treatment, including reasonable standards and procedural mechanisms for determining when to treat a client absent informed consent, consistent with applicable law. ~~The rules must include the following process:~~, except that involuntary treatment of involuntarily hospitalized incapacitated persons who are unwilling or unable to comply with treatment is allowed solely in accordance with the provisions of section 3861, subsection 3 or section 3864, subsection 1-A;

~~(1) The primary treating physician may request an order for involuntary treatment of a patient from a clinical review panel;~~

~~(2) A clinical review panel that consists of 2 or more professional staff who do not provide direct care to the patient is convened. At least one member of the panel must be a professional licensed to prescribe the medications relevant to the patient's care;~~

~~(3) The clinical review panel conducts the review and makes a decision on the request of the primary treating physician within 4 days of the request based on the criteria in section 3864, subsection 7-A, paragraph B;~~

~~(4) If the clinical review panel decides to approve the request for involuntary treatment, the panel enters an order of involuntary treatment in the patient's hospital records. An order for involuntary treatment may be made for as long as the period of commitment and pending any appeal; and~~

~~(5) At any hearings or meetings pertaining to involuntary treatment, the patient is offered the assistance of a lay advisor, rather than legal counsel;~~

Sec. 2. 34-B MRSA §3861, sub-§3 is enacted to read:

3. Involuntary treatment. Except for involuntary treatment ordered pursuant to the provisions of section 3864, subsection 7-A, involuntary treatment of a patient at a designated nonstate mental health institution or a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter may be ordered and administered only in conformance with the provisions of this subsection. For the purposes of this subsection, involuntary treatment is limited to medication for the treatment of mental illness and medication for the management of side effects.

A. If the patient's primary treating physician proposes a treatment that the physician, in the exercise of professional judgment, believes is in the best interest of the patient and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient's primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

(1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;

(2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;

(3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;

(4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;

(5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;

(6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;

(7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and

(8) Documentation of consideration of any advance health-care directive given in accordance with Title 18-A, section 5-802 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

B. The provisions of this paragraph apply to the appointment, duties and procedures of the clinical review panel under paragraph A.

(1) Within one business day of receiving a request under paragraph A, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall appoint a clinical review panel of 2 or more licensed professional staff who do not provide direct care to the patient. At least one person must be a professional licensed to prescribe medication relevant to the patient's care and treatment. At the time of appointment of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall notify the following persons in writing that the clinical review panel will be convened:

(a) The primary treating physician;

(b) The director of the Office of Adult Mental Health Services within the department or that person's designee;

(c) The patient's designated representative or attorney, if any;

(d) The State's designated federal protection and advocacy agency; and

(e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include

contact information for requesting assistance from a lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient.

(2) Within 4 days of receiving a request under paragraph A and no less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney.

(3) The clinical review panel shall hold the meeting and any additional meetings as necessary, reach a final determination and render a written decision ordering or denying involuntary treatment.

(a) At the meeting, the clinical review panel shall receive information relevant to the determination of the patient's capacity to give informed consent to treatment and the need for treatment, review relevant portions of the patient's medical records, consult with the physician requesting the treatment, review with the patient that patient's reasons for refusing treatment, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering involuntary treatment have been met.

(b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating, making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.

(c) The clinical review panel shall conduct its review in a manner that is consistent with the patient's rights.

(d) Involuntary treatment may not be approved and ordered if the patient affirmatively demonstrates to the clinical review panel that if that patient possessed capacity, the patient would have refused the treatment on religious grounds or on the basis of other previously expressed convictions or beliefs.

(4) The clinical review panel may approve a request for involuntary treatment and order the treatment if the clinical review panel finds, at a minimum:

(a) That the patient lacks the capacity to make an informed decision regarding treatment;

(b) That the patient is unable or unwilling to comply with the proposed treatment;

(c) That the need for the treatment outweighs the risks and side effects; and

(d) That the proposed treatment is the least intrusive appropriate treatment option.

(5) The clinical review panel may make additional findings, including but not limited to findings that:

(a) Failure to treat the illness is likely to produce lasting or irreparable harm to the patient; or

(b) Without the proposed treatment the patient's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the patient to pose a likelihood of serious harm.

(6) The clinical review panel shall document its findings and conclusions, including whether the potential benefits of the proposed treatment outweigh the potential risks.

C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under paragraph A.

(1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient's expense.

(2) The patient may review any records or documents considered by the clinical review panel.

(3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.

(4) The patient may ask questions of any person who provides information to the clinical review panel.

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under paragraph B, subparagraph 3, division (b).

D. If the clinical review panel under paragraph A approves the request for involuntary treatment, the clinical review panel shall enter an order for the treatment in the patient's medical records and immediately notify the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution. The order takes effect:

(1) For a patient at a state mental health institute, one business day from the date of entry of the order; or

(2) For a patient at a designated nonstate mental health institution, one business day from the date of entry of the order, except that if the patient has requested review of the order by the director of the Office of Adult Mental Health Services within the department under paragraph F, subparagraph (2), the order takes effect one business day from the day on which the director issues a written decision.

E. The order for treatment under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, unless altered by:

(1) An agreement to a different course of treatment by the primary treating physician and patient;

(2) For a patient at a designated nonstate mental health institution, modification or vacation of the order by the director of the Office of Adult Mental Health Services within the department; or

(3) An alteration or stay of the order entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under paragraph F.

F. The provisions of this paragraph apply to the review and appeal of an order of the clinical review panel entered under paragraph B.

(1) The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

(2) The order of the clinical review panel at a designated nonstate mental health institution may be reviewed by the director of the Office of Adult Mental Health Services within the department or the designee of the director upon receipt of a written request from the patient submitted no later than one day after the patient receives the order of the clinical review panel. Within 3 business days of receipt of the request for review, the director or designee shall review the full clinical review panel record and issue a written decision. The decision of the director or designee may affirm the order, modify the order or vacate the order. The decision of the

director or designee takes effect one business day after the director or designee issues a written decision. The decision of the director or designee is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

Sec. 3. PL 2007, c. 446, §5 is repealed.

Sec. 5. Commissioner to adopt rules. The Commissioner of Health and Human Services shall adopt rules to implement the Maine Revised Statutes, Title 34-B, section 3003, subsection 2, paragraph C, subparagraphs 1 to 5 no later than January 1, 2008 for use beginning on that date. The rules must include amendment of Rule 14-198 Chapter 1: "Rights of Recipients of Mental Health Services." Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A and are not subject to the provisions of Title 34-B, section 3003, subsection 4.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 8, 2008.