

1-1 By: Zaffirini S.B. No. 750
1-2 (In the Senate - Filed February 10, 2009; February 25, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; April 14, 2009, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; April 14, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the administration of psychoactive medications to
1-9 persons receiving services in a residential care facility.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 592.038, Health and Safety Code, is
1-12 amended by adding Subsection (d) to read as follows:

1-13 (d) Each client has the right to refuse psychoactive
1-14 medication, as provided by Subchapter E.

1-15 SECTION 2. Subsection (b), Section 592.054, Health and
1-16 Safety Code, is amended to read as follows:

1-17 (b) Notwithstanding Subsection (a), consent is required
1-18 for:

1-19 (1) all surgical procedures; and

1-20 (2) as provided by Section 592.083, the administration
1-21 of psychoactive medications.

1-22 SECTION 3. Chapter 592, Health and Safety Code, is amended
1-23 by adding Subchapter E to read as follows:

1-24 SUBCHAPTER E. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

1-25 Sec. 592.081. DEFINITIONS. In this subchapter:

1-26 (1) "Capacity" means a client's ability to:

1-27 (A) understand the nature and consequences of a
1-28 proposed treatment, including the benefits, risks, and
1-29 alternatives to the proposed treatment; and

1-30 (B) make a decision whether to undergo the
1-31 proposed treatment.

1-32 (2) "Medication-related emergency" means a situation
1-33 in which it is immediately necessary to administer medication to a
1-34 client to prevent:

1-35 (A) imminent probable death or substantial
1-36 bodily harm to the client because the client:

1-37 (i) overtly or continually is threatening
1-38 or attempting to commit suicide or serious bodily harm; or

1-39 (ii) is behaving in a manner that indicates
1-40 that the client is unable to satisfy the client's need for
1-41 nourishment, essential medical care, or self-protection; or

1-42 (B) imminent physical or emotional harm to
1-43 another because of threats, attempts, or other acts the client
1-44 overtly or continually makes or commits.

1-45 (3) "Psychoactive medication" means a medication
1-46 prescribed for the treatment of symptoms of psychosis or other
1-47 severe mental or emotional disorders and that is used to exercise an
1-48 effect on the central nervous system to influence and modify
1-49 behavior, cognition, or the affective state when treating the
1-50 symptoms of mental illness. "Psychoactive medication" includes the
1-51 following categories when used as described in this subdivision:

1-52 (A) antipsychotics or neuroleptics;

1-53 (B) antidepressants;

1-54 (C) agents for control of mania or depression;

1-55 (D) antianxiety agents;

1-56 (E) sedatives, hypnotics, or other
1-57 sleep-promoting drugs; and

1-58 (F) psychomotor stimulants.

1-59 Sec. 592.082. ADMINISTRATION OF PSYCHOACTIVE MEDICATION.

1-60 (a) A person may not administer a psychoactive medication to a
1-61 client receiving voluntary or involuntary residential care
1-62 services who refuses the administration unless:

1-63 (1) the client is having a medication-related
1-64 emergency;

2-1 (2) the refusing client's representative authorized by
2-2 law to consent on behalf of the client has consented to the
2-3 administration;
2-4 (3) the administration of the medication regardless of
2-5 the client's refusal is authorized by an order issued under Section
2-6 592.086; or
2-7 (4) the administration of the medication regardless of
2-8 the client's refusal is authorized by an order issued under Article
2-9 46B.086, Code of Criminal Procedure.

2-10 (b) Consent to the administration of psychoactive
2-11 medication given by a client or by a person authorized by law to
2-12 consent on behalf of the client is valid only if:
2-13 (1) the consent is given voluntarily and without
2-14 coercive or undue influence;
2-15 (2) the treating physician or a person designated by
2-16 the physician provides the following information, in a standard
2-17 format approved by the department, to the client and, if
2-18 applicable, to the client's representative authorized by law to
2-19 consent on behalf of the client:
2-20 (A) the specific condition to be treated;
2-21 (B) the beneficial effects on that condition
2-22 expected from the medication;
2-23 (C) the probable health care consequences of not
2-24 consenting to the medication;
2-25 (D) the probable clinically significant side
2-26 effects and risks associated with the medication;
2-27 (E) the generally accepted alternatives to the
2-28 medication, if any, and why the physician recommends that they be
2-29 rejected; and
2-30 (F) the proposed course of the medication;
2-31 (3) the client and, if appropriate, the client's
2-32 representative authorized by law to consent on behalf of the client
2-33 are informed in writing that consent may be revoked; and
2-34 (4) the consent is evidenced in the client's clinical
2-35 record by a signed form prescribed by the residential care facility
2-36 or by a statement of the treating physician or a person designated
2-37 by the physician that documents that consent was given by the
2-38 appropriate person and the circumstances under which the consent
2-39 was obtained.

2-40 (c) If the treating physician designates another person to
2-41 provide the information under Subsection (b), then, not later than
2-42 two working days after that person provides the information,
2-43 excluding weekends and legal holidays, the physician shall meet
2-44 with the client and, if appropriate, the client's representative
2-45 who provided the consent, to review the information and answer any
2-46 questions.

2-47 (d) A client's refusal or attempt to refuse to receive
2-48 psychoactive medication, whether given verbally or by other
2-49 indications or means, shall be documented in the client's clinical
2-50 record.

2-51 (e) In prescribing psychoactive medication, a treating
2-52 physician shall:
2-53 (1) prescribe, consistent with clinically appropriate
2-54 medical care, the medication that has the fewest side effects or the
2-55 least potential for adverse side effects, unless the class of
2-56 medication has been demonstrated or justified not to be effective
2-57 clinically; and
2-58 (2) administer the smallest therapeutically
2-59 acceptable dosages of medication for the client's condition.

2-60 (f) If a physician issues an order to administer
2-61 psychoactive medication to a client without the client's consent
2-62 because the client is having a medication-related emergency:
2-63 (1) the physician shall document in the client's
2-64 clinical record in specific medical or behavioral terms the
2-65 necessity of the order and that the physician has evaluated but
2-66 rejected other generally accepted, less intrusive forms of
2-67 treatment, if any; and
2-68 (2) treatment of the client with the psychoactive
2-69 medication shall be provided in the manner, consistent with

3-1 clinically appropriate medical care, least restrictive of the
 3-2 client's personal liberty.

3-3 Sec. 592.083. ADMINISTRATION OF MEDICATION TO CLIENT
 3-4 COMMITTED TO RESIDENTIAL CARE FACILITY. (a) In this section,
 3-5 "ward" has the meaning assigned by Section 601, Texas Probate Code.

3-6 (b) A person may not administer a psychoactive medication to
 3-7 a client who refuses to take the medication voluntarily unless:

3-8 (1) the client is having a medication-related
 3-9 emergency;

3-10 (2) the client is under an order issued under Section
 3-11 592.086 authorizing the administration of the medication
 3-12 regardless of the client's refusal; or

3-13 (3) the client is a ward who is 18 years of age or older
 3-14 and the guardian of the person of the ward consents to the
 3-15 administration of psychoactive medication regardless of the ward's
 3-16 expressed preferences regarding treatment with psychoactive
 3-17 medication.

3-18 Sec. 592.084. PHYSICIAN'S APPLICATION FOR ORDER TO
 3-19 AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A
 3-20 physician who is treating a client may file an application in a
 3-21 probate court or a court with probate jurisdiction on behalf of the
 3-22 state for an order to authorize the administration of a
 3-23 psychoactive medication regardless of the client's refusal if:

3-24 (1) the physician believes that the client lacks the
 3-25 capacity to make a decision regarding the administration of the
 3-26 psychoactive medication;

3-27 (2) the physician determines that the medication is
 3-28 the proper course of treatment for the client; and

3-29 (3) the client has been committed to a residential
 3-30 care facility under Subchapter C, Chapter 593, or other law or an
 3-31 application for commitment to a residential care facility under
 3-32 Subchapter C, Chapter 593, has been filed for the client.

3-33 (b) An application filed under this section must state:

3-34 (1) that the physician believes that the client lacks
 3-35 the capacity to make a decision regarding administration of the
 3-36 psychoactive medication and the reasons for that belief;

3-37 (2) each medication the physician wants the court to
 3-38 compel the client to take;

3-39 (3) whether an application for commitment to a
 3-40 residential care facility under Subchapter C, Chapter 593, has been
 3-41 filed;

3-42 (4) whether an order committing the client to a
 3-43 residential care facility has been issued and, if so, under what
 3-44 authority it was issued;

3-45 (5) the physician's diagnosis of the client; and

3-46 (6) the proposed method for administering the
 3-47 medication and, if the method is not customary, an explanation
 3-48 justifying the departure from the customary methods.

3-49 (c) An application filed under this section must be filed
 3-50 separately from an application for commitment to a residential care
 3-51 facility.

3-52 (d) The hearing on the application may be held on the same
 3-53 date as a hearing on an application for commitment to a residential
 3-54 care facility under Subchapter C, Chapter 593, but the hearing must
 3-55 be held not later than 30 days after the filing of the application
 3-56 for the order to authorize psychoactive medication. If the hearing
 3-57 is not held on the same date as the application for commitment to a
 3-58 residential care facility under Subchapter C, Chapter 593, and the
 3-59 client is transferred to a residential care facility in another
 3-60 county, the court may transfer the application for an order to
 3-61 authorize psychoactive medication to the county where the client
 3-62 has been transferred.

3-63 (e) Subject to the requirement in Subsection (d) that the
 3-64 hearing shall be held not later than 30 days after the filing of the
 3-65 application, the court may grant one continuance on a party's
 3-66 motion and for good cause shown. The court may grant more than one
 3-67 continuance only with the agreement of the parties.

3-68 Sec. 592.085. RIGHTS OF CLIENT. A client for whom an
 3-69 application for an order to authorize the administration of a

4-1 psychoactive medication is filed is entitled:

4-2 (1) to be represented by a court-appointed attorney
4-3 who is knowledgeable about issues to be adjudicated at the hearing;

4-4 (2) to meet with that attorney as soon as is
4-5 practicable to prepare for the hearing and to discuss any of the
4-6 client's questions or concerns;

4-7 (3) to receive, immediately after the time of the
4-8 hearing is set, a copy of the application and written notice of the
4-9 time, place, and date of the hearing;

4-10 (4) to be informed, at the time personal notice of the
4-11 hearing is given, of the client's right to a hearing and right to
4-12 the assistance of an attorney to prepare for the hearing and to
4-13 answer any questions or concerns;

4-14 (5) to be present at the hearing;

4-15 (6) to request from the court an independent expert;

4-16 and

4-17 (7) to be notified orally, at the conclusion of the
4-18 hearing, of the court's determinations of the client's capacity and
4-19 best interest.

4-20 Sec. 592.086. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE
4-21 MEDICATION. (a) The court may issue an order authorizing the
4-22 administration of one or more classes of psychoactive medication to
4-23 a client who:

4-24 (1) has been committed to a residential care facility;

4-25 or

4-26 (2) is in custody awaiting trial in a criminal
4-27 proceeding and was committed to a residential care facility in the
4-28 six months preceding a hearing under this section.

4-29 (b) The court may issue an order under this section only if
4-30 the court finds by clear and convincing evidence after the hearing:

4-31 (1) that the client lacks the capacity to make a
4-32 decision regarding the administration of the proposed medication
4-33 and that treatment with the proposed medication is in the best
4-34 interest of the client; or

4-35 (2) if the client was committed to a residential care
4-36 facility by a criminal court with jurisdiction over the client,
4-37 that:

4-38 (A) the client presents a danger to the client or
4-39 others in the residential care facility in which the client is being
4-40 treated as a result of a mental disorder or mental defect as
4-41 determined under Section 592.087; and

4-42 (B) treatment with the proposed medication is in
4-43 the best interest of the client.

4-44 (c) In making the finding that treatment with the proposed
4-45 medication is in the best interest of the client, the court shall
4-46 consider:

4-47 (1) the client's expressed preferences regarding
4-48 treatment with psychoactive medication;

4-49 (2) the client's religious beliefs;

4-50 (3) the risks and benefits, from the perspective of
4-51 the client, of taking psychoactive medication;

4-52 (4) the consequences to the client if the psychoactive
4-53 medication is not administered;

4-54 (5) the prognosis for the client if the client is
4-55 treated with psychoactive medication;

4-56 (6) alternative, less intrusive treatments that are
4-57 likely to produce the same results as treatment with psychoactive
4-58 medication; and

4-59 (7) less intrusive treatments likely to secure the
4-60 client's consent to take the psychoactive medication.

4-61 (d) A hearing under this subchapter shall be conducted on
4-62 the record by the probate judge or judge with probate jurisdiction,
4-63 except as provided by Subsection (e).

4-64 (e) A judge may refer a hearing to a magistrate or
4-65 court-appointed master who has training regarding psychoactive
4-66 medications. The magistrate or master may effectuate the notice,
4-67 set hearing dates, and appoint attorneys as required by this
4-68 subchapter. A record is not required if the hearing is held by a
4-69 magistrate or court-appointed master.

5-1 (f) A party is entitled to a hearing de novo by the judge if
 5-2 an appeal of the magistrate's or master's report is filed with the
 5-3 court before the fourth day after the date the report is issued.
 5-4 The hearing de novo shall be held not later than the 30th day after
 5-5 the date the application for an order to authorize psychoactive
 5-6 medication was filed.

5-7 (g) If a hearing or an appeal of a master's or magistrate's
 5-8 report is to be held in a county court in which the judge is not a
 5-9 licensed attorney, the proposed client or the proposed client's
 5-10 attorney may request that the proceeding be transferred to a court
 5-11 with a judge who is licensed to practice law in this state. The
 5-12 county judge shall transfer the case after receiving the request,
 5-13 and the receiving court shall hear the case as if it had been
 5-14 originally filed in that court.

5-15 (h) As soon as practicable after the conclusion of the
 5-16 hearing, the client is entitled to have provided to the client and
 5-17 the client's attorney written notification of the court's
 5-18 determinations under this section. The notification shall include
 5-19 a statement of the evidence on which the court relied and the
 5-20 reasons for the court's determinations.

5-21 (i) An order entered under this section shall authorize the
 5-22 administration to a client, regardless of the client's refusal, of
 5-23 one or more classes of psychoactive medications specified in the
 5-24 application and consistent with the client's diagnosis. The order
 5-25 shall permit an increase or decrease in a medication's dosage,
 5-26 restitution of medication authorized but discontinued during the
 5-27 period the order is valid, or the substitution of a medication
 5-28 within the same class.

5-29 (j) The classes of psychoactive medications in the order
 5-30 must conform to classes determined by the department.

5-31 (k) An order issued under this section may be reauthorized
 5-32 or modified on the petition of a party. The order remains in effect
 5-33 pending action on a petition for reauthorization or modification.
 5-34 For the purpose of this subsection, "modification" means a change
 5-35 of a class of medication authorized in the order.

5-36 Sec. 592.087. FINDING THAT CLIENT PRESENTS A DANGER. In
 5-37 making a finding under Section 592.086(b)(2) that the client
 5-38 presents a danger to the client or others in the residential care
 5-39 facility in which the client is being treated as a result of a
 5-40 mental disorder or mental defect the court shall consider:

5-41 (1) an assessment of the client's present mental
 5-42 condition; and

5-43 (2) whether the client has inflicted, attempted to
 5-44 inflict, or made a serious threat of inflicting substantial
 5-45 physical harm to the client's self or to another while in the
 5-46 facility.

5-47 Sec. 592.088. APPEAL. (a) A client may appeal an order
 5-48 under this subchapter in the manner provided by Section 593.056 for
 5-49 an appeal of an order committing the client to a residential care
 5-50 facility.

5-51 (b) An order authorizing the administration of medication
 5-52 regardless of the refusal of the client is effective pending an
 5-53 appeal of the order.

5-54 Sec. 592.089. EFFECT OF ORDER. (a) A person's consent to
 5-55 take a psychoactive medication is not valid and may not be relied on
 5-56 if the person is subject to an order issued under Section 592.086.

5-57 (b) The issuance of an order under Section 592.086 is not a
 5-58 determination or adjudication of mental incompetency and does not
 5-59 limit in any other respect that person's rights as a citizen or the
 5-60 person's property rights or legal capacity.

5-61 Sec. 592.090. EXPIRATION OF ORDER. (a) Except as provided
 5-62 by Subsection (b), an order issued under Section 592.086 expires on
 5-63 the anniversary of the date the order was issued.

5-64 (b) An order issued under Section 592.086 for a client
 5-65 awaiting trial in a criminal proceeding expires on the date the
 5-66 defendant is acquitted, is convicted, or enters a plea of guilty or
 5-67 the date on which charges in the case are dismissed. An order
 5-68 continued under this subsection shall be reviewed by the issuing
 5-69 court every six months.

6-1 SECTION 4. Subsections (a) and (b), Article 46B.086, Code
6-2 of Criminal Procedure, are amended to read as follows:

6-3 (a) This article applies only to a defendant:

6-4 (1) who is determined under this chapter to be
6-5 incompetent to stand trial;

6-6 (2) for whom an inpatient mental health facility,
6-7 residential care facility, or outpatient treatment program
6-8 provider has prepared a continuity of care plan that requires the
6-9 defendant to take psychoactive medications; and

6-10 (3) who, after a hearing held under Section 574.106 or
6-11 592.086, Health and Safety Code, has been found not to meet the
6-12 criteria prescribed by Sections 574.106(a) and (a-1), or Sections
6-13 592.086(a) and (b), Health and Safety Code, for court-ordered
6-14 administration of psychoactive medications; or

6-15 (4) who is subject to Article 46B.072.

6-16 (b) If a defendant described by Subsection (a) refuses to
6-17 take psychoactive medications as required by the defendant's
6-18 continuity of care plan, the director of the correctional facility
6-19 or outpatient treatment provider shall notify the court in which
6-20 the criminal proceedings are pending of that fact not later than the
6-21 end of the next business day following the refusal. The court shall
6-22 promptly notify the attorney representing the state and the
6-23 attorney representing the defendant of the defendant's refusal.
6-24 The attorney representing the state may file a written motion to
6-25 compel medication. The motion to compel medication must be filed
6-26 not later than the 15th day after the date a judge issues an order
6-27 stating that the defendant does not meet the criteria for
6-28 court-ordered administration of psychoactive medications under
6-29 Section 574.106 or 592.086, Health and Safety Code. The motion to
6-30 compel medication for a defendant in an outpatient treatment
6-31 program may be filed at any time.

6-32 SECTION 5. This Act takes effect September 1, 2009.

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