




PSYCHOTROPIC MEDICATION GUIDELINES

§ 39.407 FLORIDA STATUTES-EFFECTIVE MARCH 1, 2006

1. **Consent.** The prescribing physician shall attempt to obtain express and informed consent of parents or legal guardians. The department must continue to try to get consent. § 39.407 (3)(a)(1).
 - a. If no consent or if parents or legal guardians are unavailable, or parental rights are terminated, then department may seek court authorization (after consultation with prescribing physician) § 39.407 (3)(a)(1).
 - i. The department must provide the evaluating physician all pertinent medical information to continue or initiate psychotropic medication. § 39.407(3)(a)(2).
 - ii. *What is express and informed consent?* "Express and informed consent" means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion. § 39.455(9)
2. **Continuation of Psychotropic Medication – Pre-Shelter Hearing.** § 39.407(3)(b)(1).
 - a. The department may take possession of the psychotropic medication and continue to provide it to the child until the shelter hearing if:
 - i. the psychotropic medication is in its original container
 - ii. it is a current prescription for the child
 - b. The department must inform parents or legal guardians that the drug is being administered. The child's official departmental record must include:
 - i. reason parent's authorization not obtained
 - ii. why the psychotropic medication is necessary for the child's well being. § 39.407(3)(b)(2).
3. **Continuation of Psychotropic Medication – Shelter Hearing to Arraignment Hearing** § 39.407(3)(b)(3).
 - a. If advised by a licensed physician, the department shall request court authorization of continuation of psychotropic medication at shelter hearing. The department shall provide any pertinent information to court.
 - i.  Authorization granted at shelter hearing valid only until arraignment hearing or 28 days following the child's removal (whichever is first).
4. **Continuation of Psychotropic Medication – Before Filing of Dependency Petition.** § 39.407(3)(b)(4).
 - a. Before the filing of the dependency petition, the department must have child evaluated by a licensed physician to determine appropriateness of continuing psychotropic medication.
 - b. If continuing psychotropic medication is appropriate, *the department* must:
 - i.  File a motion at the same time as the dependency petition or within 21 days after shelter hearing.
5. **Contents of the Department's Motion.** The motion seeking the court's authorization to initiate or continue psychotropic medication must include the following: § 39.407(3)(c).

- a. Report written by the department including the efforts made to enable the prescribing physician to obtain the parent's consent, and treatment considered for the child or recommended for child, and
- b. Prescribing physician's signed medical report which must include:
 - i. The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.
 - ii. A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.
 - iii. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.
 - iv. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.
 - v. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends.

6.  The department must notify parties of the motion to obtain court authorization in writing or other method within 48 hours after motion is filed. § 39.407(3)(d)(1).

7.  **If a party objects then the party must file objection within 2 working days of the department's notice of motion.** § 39.407(3)(d)(1).

a. **Please establish a protocol within your circuit for communication regarding motions for psychotropic medications.**

8. Court shall hold hearing as soon as possible.

a. Burden of Proof is Preponderance of the Evidence. § 39.407(3)(d)(2).


b. Court authorization of initiation or continuation of psychotropic medication. § 39.407(3)(d)(1).


c. The court can authorize based on department's motion, medical report and child's best interests.

1. Court shall ask what other services are being provided to the child for child's medical condition.

ii. The court may order additional medical consultation

1. MedConsult Line at the University of Florida, or

2.  May require second opinion (not to exceed 21 days)


a.  The department must make referral for second opinion within one working day.

d. Court may not discontinue psychotropic medication if contrary to the prescribing physician unless: § 39.407(3)(d)(1).


- i. A licensed psychiatrist or licensed physician states that “more likely than not, discontinuing psychotropic medication would not cause significant harm to the child.” If prescribing psychiatrist specializes in mental health of children and adolescents in order to discontinue the medication the required opinion must originate from a psychiatrist that specializes in mental health of children and adolescents.
- ii. Court may discontinue psychotropic medication if treating physician states that continuing psychotropic medication would cause significant harm to child due to diagnosed non-psychiatric condition. § 39.407(3)(d)(1).

9. **Emergencies when psychotropic medication must be given before court authorization.** § 39.407(3)(e)(1).


- a. **Significant Harm.** Child’s prescribing physician certifies in a signed medical report that delay would cause “significant harm.” Medical report must contain:
 - i. Why child may experience significant harm, and
 - ii. Nature and extent of harm


- b.  The department must submit motion to continue psychotropic medication within **3 working days** after commencing psychotropic medication.

- i. The department shall seek order at next regularly scheduled court hearing or within **30 days** after date of prescription (whichever is sooner).

1.  If any party objects to the department’s motion, the court shall hold a hearing within **7 days**.

- c. **Hospital, crisis stabilization units and statewide inpatient programs.** § 39.407(3)(e)(2).

- i.  Must seek court authorization within **3 working days** after medication begun.

- ii.  Must follow same motion process
 - 1. Must file motion with written report, physician report,
 - 2. Notify other parties within **48 hours**, and

3. Objections must be filed within **2 working days**.

10. **Judicial Reviews.** § 39.407(3)(f)(1). The department must inform court, as part of the social services report, of child’s medical and behavioral status.

- a. The department shall provide pertinent medical records since the last hearing.
- b. Court may review child’s status more frequently on motion or good cause shown by any party.

11. Court may order the department to obtain medical opinion regarding whether continued use of the psychotropic medication under the circumstances is “safe and medically appropriate.” § 39.407(3)(f)(2).