


Psychotropic Medication Guidelines and Summary
§ 39.407 Florida Statutes; Fla.R.Juv.P 8.355
Effective March 1, 2006 (updated May 2008)

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. § 394.455(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); Rule 8.355 (c)(1).
 - 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 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); Rule 8.355 (c)(1).

- 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); Rule 8.355 (a)(1).




- 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); Rule 8.355 (a)(2).





- 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); Rule 8.355 (a)(3).

- 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); Rule 8.355(b).
 - 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. If licensed psychiatrist or licensed physician states that “more likely than not, discontinuing psychotropic medication would not cause significant harm to the child”
 - 1. Unless the prescribing physician specializes in mental health of children and adolescents.
 - 2. Can discontinue if required opinion is also from physician 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); Rule 8.355(c)(2).
- 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); Rule 8.355(c)(3).

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).

Information Gathering

1. As time is of the essence, **please establish a protocol within your circuit for communication regarding motions for psychotropic medications.**
 - a. Remember, the department has 48 hours to notify you of their motion to continue or initiate psychotropic medications. If you object, you must file your objection within two **(2)** working days.
2. Express and informed consent granted
 - a. The department's obligation is continuing – the department must continually enable the prescribing physician to get express and informed consent unless parental rights terminated.
3. Gather information about child's medical history:
 - a. Review the Department's Motion which must include:
 - i. Department's report
 - ii. Prescribing physician's signed medical report
 - b. Have organic causes been ruled out before the administration of psychotropic medications? Has the child been subject to any head or

- bodily trauma which may be causing the same behaviors the medications are targeted to treat? e.g. if the child was in a car accident, head trauma may cause what is perceived as acting out behavior (all of the following should be considered, but are not necessarily required):
- i. Neurological Evaluation. Rule out organic causes
 - ii. EEG. Does the child have a seizure disorder?
 - iii. MRI
 - iv. CT Scan
 - v. PET Scan
- c. Medications before psychotropic drug prescription
 - i. How does child feel about taking the drug (age appropriate)
 - ii. Review records (physician(s), hospital, child protective services agencies); this may require an independent medical evaluator
 1. Review child's admission history
 2. Write down how many times child is given each medication
 3. Review nurses notes as they are often more involved with child
 4. Check behavioral incidents against administration of a new drug (medication, restraint and seclusion logs)
 5. Any evidence of adverse side effects (slurred speech, shaking hands, weight gain, etc.)
 6. Child's behavior before and after drug administered
 7. Drug monitoring (blood tests, follow-up appointments)
4. If an emergency, then consider challenging the emergency nature of the motion – if behavior puts self/others at risk then why not Baker Act?
 5. Gather information about the requested drug
 - a. Prescribing Physicians Medical Report
 - b. Physician's Desk Reference (PDR) :
http://www.pdrhealth.com/drug_info/index.html
 - i. Attach PDR printout
 - c. Drug Manufacturer's website (e.g. Risperdal is manufactured by Janssen, see www.risperdal.com and www.janssen.com)
 - i. Do the medications counteract each other (i.e. some psychotropic medications may lower an individual's seizure threshold – causing increased seizures – bringing the appearance of increased acting out behavior)
 - d. U.S Food and Drug Administration
<http://www.accessdata.fda.gov/scripts/cder/drugsatfda/>
 - e. MedLine Consultation by **Phone 1-866-453-2266**
 6. Gather information about the diagnosis
 - a. Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)
 7. Gather information about the professionals involved in child's health care
 - a. Qualifications
 - b. How often child monitored

8. Request that the court consider more than the department's report and prescribing physician's signed medical report.
 - a. Ask for a second opinion § 39.407(3)(d)
 - i. Referral must be made in 1 day
 - ii. Second opinion must be available in 21 days
 - iii. Court order for a second (third) opinion outside the court system and outside the institution where the child lives. Advocate for state to pay the costs – best interests argument.
 - b. Ask court to consider consultation from the MedConsult Line at the University of Florida. § 39.407(3)(d)
9. Foster Parent(s) or caretaker bring child to the physician
 - a. The child advocate is responsible for:
 - i. Finding out about the visit
 - ii. Obtaining information about visits to the doctor
 1. Should be a regular part of the child advocate's home visit and should be included in the home visit form/or safety assessment; in the alternative, child advocate should contact physician's office to obtain information.

10. Child's Consent

- a. It is desirable that the child, if able, understand the risks and benefits of the prescribed medication. The child advocate should be supportive of the child, responsive to any questions that the child may have about his medication. However, it is the physician's responsibility to inform the child as clearly as possible and as fully, as is appropriate. The child advocate should always attempt to ensure that the physician fulfills this responsibility but the child's failure to understand or consent is not, by itself, sufficient to prevent the administration of a prescribed medication.

(Children and Psychotropic Drugs: What's an Attorney to Do? By Kathi Grasso, June 1997 issue of the ABA Child Law Practice)

Hearing

1. The issue: Do the potential benefits outweigh the risks of medications for THIS child
 - a. Benefit – Risk Analysis
 - i. For example, weigh the risks of behavior vs. risks of medication, i.e. Paxil not approved for children as there is an increased risk of suicide
2. Have all lesser intrusive/restrictive measures been ruled out?
 - a. Individual therapy, group therapy, other behavior modification plan. Has behavior modification been attempted by someone who is licensed?
3. Questions to ask in Court (*American Academy of Child and Adolescent Psychiatry*)
 - Is parent available?
 - Is child mature minor? If no, Court acting in loco parentis?
 - Have you reviewed the child's Resource Record and Medical Passport?
 - Are you aware of the medications attempted in the past?
 - What is the name of the medication? Is it known by other names / generic names?
 - What is known about the helpfulness with other children having similar condition to the child?
 - In your opinion, how will medication help the child? How long before there is an improvement?
 - Has the medication been approved by the FDA for this condition for pediatric use or is this an off label use?
 - Is there an FDA Medwatch related to the medication (*See www.fda.gov/medwatch/index.html*)?
 - If not, on what research are you relying for choosing this medication?
 - What are the side effects that may occur with this medication?

- What are the extreme, serious or irreversible side effects?
- Is the medication addictive? Can it be abused?
- What is the requested dosage and range for the medication? How often?
- Are there any laboratory tests that need to be done before the child begins taking the medication?
- Will a child and adolescent psychiatrist be monitoring the child's response to the medication and make dosage changes if necessary? How often will progress be checked? By whom?
- Are there any foods or other medications the child should avoid while taking this medicine?
- Are there any activities the child should avoid while taking the medication? Any precautions recommended for other activities?
- How long does the child need to take this medication? How will the decision be made to stop this medication?
- What should be done if a problem develops (illness, doses missed, or side effects develop)
- Does the child's school nurse need to be informed about the medication?

Most of these questions should be answered prior to attending court, if possible, and may be found in the department's motion, particularly the prescribing physicians signed medical report. Not all of the questions may apply to every medication issue. Also, keep in mind that some children may benefit from the administration of psychotropic medications.

Ask the court to direct the agency to submit regular progress reports (at least monthly) on the child's progress with the prescription – to be made available before review hearings. The department must inform the court of the child's medical and behavioral status at Judicial Reviews. If the child's status should be monitored more often, the court may review more frequently on motion or good cause shown. § 39.407(3)(f)(1).