

RESOLUTION 02-03-2013

DIGEST

Criminal Law: Hormones and Durable Medical Devices for Inmates

Adds Penal Code section 2658.1 to require county and city jails to provide prescribed medicines, hormone therapies and durable medical devices to inmates.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE WITH RECOMMENDED AMENDMENTS

History:

Identical to Resolution 12-06-2012, which was approved in principle; similar to Resolutions 02-23-2008 and 11-03-2011, both of which were approved in principle; similar to Resolutions 06-12-2009 and 01-08-2010, both of which were approved as amended.

Reasons:

This resolution adds Penal Code section 2658.1 to require county and city jails to provide prescribed medicines, hormone therapies and durable medical devices to inmates. This resolution should be approved with recommended amendments because it would improve the medical care available to inmates in local jails.

Since the advent of realignment, local jail populations have greatly increased. By requiring these facilities to provide previously prescribed drugs, hormones and medical devices, this resolution would provide both continuity to the inmate in his or her medical care and certainty to the jailers in determining the proper level of care.

The resolution also provides inmates with a faster means of appealing a denial of the prescribed medical care because it would allow the inmate to see a different physician within 24 hours of the initial denial. It further mandates provision of the prescribed medical care during the pendency of the dispute.

There is one minor change necessary to the resolution as drafted. Presently the proposed form in subsection (f) requires the "signature or mark of prisoner making request for resumption of prescription drug or hormone therapy." It should be the "signature or mark of prisoner making request for resumption of prescription drug, hormone therapy or durable medical device."

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Penal Code section 2658.1, to read as follows:

- 1 § 2658.1
- 2 (a) A person sentenced to incarceration or who is being held pursuant to a pending
- 3 criminal matter in a county or city jail, or other county or city custodial correctional facility shall
- 4 not be deprived of prescription drugs, hormone therapy, or a durable medical device without

5 review, if such prescription drugs, hormone therapy, or durable medical device has been
6 prescribed by a physician either before or during the term of incarceration.

7 (b) If such prescription drugs, hormone therapy, or a durable medical device is denied or
8 if the prescription for medications, hormone therapy or a durable medical device is not renewed,
9 the prisoner shall be examined by a different physician within 24 hours after such denial or
10 refusal to renew. If the examining physician determines that the denial of or failure to renew
11 prescription drugs, hormone therapy, or a durable medical device is or will be injurious to the
12 health or safety of the prisoner, the examining physician shall immediately so inform the
13 prisoner and the medical director of the facility.

14 (c) Upon receipt of the examining physician's opinion, the medical director of the facility
15 shall cause the prescription drugs, hormone therapy, or the provision of a durable medical device
16 to be resumed within 24 hours, unless he or she determines that the refusal or failure to renew
17 was based on a legitimate medical reason.

18 (d) If the medical director does not agree that the prescription drugs, hormone therapy, or
19 provision of a durable medical device should be resumed, the medical director shall, within 24
20 hours, provide the prisoner with a form, as specified in subdivision (f) of this section, by which
21 the prisoner may petition the superior court of the county in which the facility is located for
22 resumption of the prescription drugs, hormone therapy or provision of a durable medical device.

23 (e) Upon petition by the prisoner, the court shall either order resumption of the
24 prescription drugs hormone therapy, or durable medical device within five judicial days after the
25 petition is filed or receive evidence relevant to the granting or denial of the petition. When
26 evidence is received, the court shall consider the opinion of the physician who examined the
27 prisoner and the opinion of the medical director of the facility and all other evidence it deems
28 relevant. A decision shall be promptly made as to whether the denial of prescription drugs,
29 durable medical device, or hormone treatment was permissible.

30 (f) The form for a request for resumption of prescription drugs, hormone therapy, or
31 durable medical devices as required in subdivision (d) of this section shall be substantially as
32 follows:

33
34 (Name of the facility) _____ day of _____ 20____

35
36 I, _____ (medical director of the facility), have today received a request for the
37 resumption of hormone therapy, namely, _____ (description of prescription drug,
38 hormone therapy, or durable medical device) from the undersigned prisoner.

39
40 _____
41
42 Signature or mark of prisoner
43 making request for resumption
44 of prescription drug or hormone therapy.

45
46 When the prisoner has signed or made his mark upon such form, the medical director of the
47 acility shall, within 24 hours, file the completed form with the superior court.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Under the existing law, county and city jails do not provide prescribed medicines, hormone therapies, and durable medical devices to inmates.

This Solution: Would require prison medical providers to provide prescription medicines or hormone therapies or durable medical devices or provide a mechanism by which the denial or such medicines and therapies can be reviewed by a court of law.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

This resolution adds Penal Code section 2658.1 to require county and city jails to provide prescribed medicines, hormone therapies, and durable medical devices to inmates.

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