

## **Steele v. Hamilton County Community Mental Health Board**

Ohio Supreme Court, October 2000

(90 Ohio St.3d 176)

### **Question:**

Must a mentally ill person be imminently dangerous in order for a court to order the forcible administration of antipsychotic medication?

### **Facts:**

On 7/26/97, Jeffrey Steele was brought to the University of Cincinnati Hospital by police officers, due to "seeing things and trying to fight imaginary foes." He was involuntarily admitted to University Hospital. Two days later an affidavit was filed in probate court by his treating psychiatrist, stating that Mr. Steele was mentally ill and unable to provide for his basic physical needs due to paranoid schizophrenia. The probate court subsequently civilly committed Mr. Steele and ordered his transfer to the Lewis Center (a state psychiatric hospital) for long-term treatment.

Two months later, the Hamilton County Mental Health Board sought a court order to administer antipsychotic medication to Mr. Steele without his informed consent. At a probate court hearing, three psychiatrists testified that Mr. Steele suffered from schizophrenia, but was not dangerous to himself or others while in the hospital. However, all three psychiatrists testified that:

1. Mr. Steele lacked the capacity to give or withhold informed consent;
2. Antipsychotic medication was the only effective treatment for his mental illness;
3. The benefits of antipsychotic medication outweighed the side effects;
4. Mr. Steele's illness, without treatment, prevented his release.

The probate court magistrate concluded that Mr. Steele was mentally ill due to schizophrenia, required hospitalization, and lacked the capacity to give informed consent for treatment. However, because Mr. Steele was not imminently dangerous the magistrate concluded that Mr. Steele could not be forcibly medicated.

On appeal, the probate court upheld the magistrate's finding that forced psychotropic medications may only be given to a severely mentally ill person who is a danger within the institution, and only when the treatment is in the patient's medical interest.

On further appeal, the Ohio Court of Appeals reversed the judgment of the probate court and held that dangerousness to self or others is not required to order forced psychotropic medications, when it has been shown that the patient lacks the capacity to give informed consent and medication is in the patient's best interests. The case was then appealed to the Ohio Supreme Court.

### **Holding:**

In a unanimous decision written by Justice Douglas, the Ohio Supreme Court affirmed and ruled that a court may authorize the administration of antipsychotic medication against a patient's wishes without a finding of dangerousness, when clear and convincing evidence exists that:

1. The patient lacks the capacity to give or withhold informed consent regarding treatment;
2. The proposed medication is in the patient's best interest, and;
3. No less intrusive treatment will be as effective in treating the mental illness.

### **Rationale:**

Recognizing that the right to refuse medical treatment is a fundamental right, and guaranteed by the Ohio Constitution and the (substantive) Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Court held that the right to refuse medication is not an absolute right and must yield when outweighed by a compelling governmental interest.

The Court acknowledged that significant liberty interests are infringed upon with forced medication, including the liberty interests of personal security, bodily integrity, and autonomy. Forced antipsychotic medications were described as a "particularly severe" intrusion because of the chemical changes produced in the brain by antipsychotic medications and resultant alteration of cognitive processes. The liberty interest infringement is further magnified by the negative side effects of antipsychotic medications, including parkinsonism, akathisia, dystonic reactions, tardive dyskinesia and risk of neuroleptic malignant syndrome. The Court also considered the therapeutic benefits of antipsychotic medications and their substantial impact on deinstitutionalization.

There are two compelling government interests that may override an individual's right to refuse antipsychotic medications - the state's police powers interest in preventing mentally ill persons from harming themselves or others, and the state's *parens patriae* authority.

The Court held that when an involuntarily committed mentally ill patient poses an imminent threat of harm to himself or others, the state's police powers interest in protecting its citizens outweighs the patient's interests in refusing antipsychotic medication. This is uniquely a medical (rather than judicial) determination to be made by a qualified physician, because this issue arises only when there is an imminent threat of harm. The decision of whether to medicate the patient in an emergency must be made promptly before an injury occurs. There is not time for a judicial hearing, and medical personnel must make the determination whether the patient is dangerous to self or others. Therefore, a physician may order the forced medication of an involuntarily committed mentally ill patient with antipsychotic medications when the physician determines that:

1. The patient presents an imminent danger of harm to himself or others;
2. There are no less intrusive means of avoiding the threatened harm; and
3. The medication to be administered is medically appropriate for the patient.

The Court emphasized that *imminent* dangerousness must be present in order to forcibly medicate a patient in an emergency, and that emergency medication may only be administered as long as the emergency persists. The Court acknowledged that this places tremendous power and authority in the hands of physicians, but is confident that properly trained, competent and compassionate physicians will not abuse such power.

The second compelling governmental interest that may override a mentally ill person's treatment refusal is the state's *parens patriae* authority, which generally allows the state to care for citizens who are unable to care for themselves. This *parens patriae* authority is invoked when a patient lacks the capacity to make an informed decision regarding treatment. Modifying its earlier decision in re Milton, the Ohio Supreme Court found that an individual need not be ruled generally incompetent prior to receiving forced medication, which would unnecessarily stigmatize the patient. Rather, the Court endorsed the concept of specific competencies, *i.e.*, examining whether the patient lacks the capacity to give or withhold informed consent. The Court also found that civil commitment is not equivalent to incompetence to give informed consent for treatment decisions – they are separate liberty interests and must be separately adjudicated. However, failure to recognize the state's *parens patriae* authority could result in the warehousing of mentally ill persons who incompetently refuse medication, which would be inhumane.

Whether an involuntarily committed mentally ill patient, who does not pose an imminent threat of harm to himself or others, lacks the capacity to give informed consent is uniquely a judicial (rather than a medical) determination. Accordingly, the Court held that a court may issue an order to administer antipsychotic medications against the wishes of a mentally ill person if it finds, by clear and convincing evidence, that:

1. The patient lacks the capacity to give or withhold informed consent regarding treatment;
2. It is in the patient's best interest to take the medication, *i.e.*, the benefits of the medication outweigh the side effects; and
3. No less intrusive treatment will be as effective in treating the mental illness.

In the case of Mr. Steele, the Court did not rule whether he had to take medications, since by the time this decision was written he was voluntarily taking medications (whether this was a competently made decision is unknown).

The issue of Procedural Due Process was not raised by the appellant. However, the Court found that procedures required when determining whether the state's *parens patriae* authority outweighs the individual's right to refuse antipsychotic medication include:

1. Representation by an attorney;
2. An independent psychiatrist, or a licensed clinical psychologist and a licensed physician, must be appointed to examine the patient's capacity to give or withhold informed consent and the appropriateness of the proposed treatment;
3. The patient, attorney, and treating physicians must receive notice of all hearings;
4. The patient must have the opportunity to be present at all hearings and to present and cross-examine witnesses.

Periodic hearings to review the patient's capacity and efficacy of treatment should take place, but specific guidelines on the frequency of these hearings were not given. The need for continued forced medication should be substantiated by competent medical evidence. A motion to continue forced medication is subject to the same procedural safeguards as an original motion for forced medication.

**Commentary:**

This is the first case on the issue of forced antipsychotic medication to reach the Ohio Supreme Court. Drawing on elements from Rogers v. Commissioner, Rennie v. Klein, and Washington v. Harper, the court constructed a hybrid model endorsing the use of medical judgment in emergencies, and judicial adjudication in non-emergencies. The Court also embraced the best interest model of judicial decision-making, not substituted judgment.

The procedural requirement of an independent psychiatric examination is new to the Ohio process. The term *independent* was not defined by the Ohio Supreme Court – it remains to be seen whether individual probate courts will require an external independent examination, or whether an internal (but non-treating) independent psychiatric examination will suffice.

Summary prepared by Stephen Noffsinger, M.D.  
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