PSYCHOTROPIC MEDICATIONS: *Judge Leonard Edwards, Santa Clara Superior Court (Ret.)*

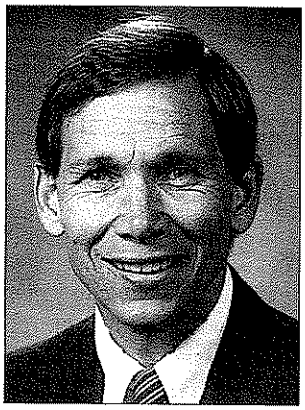
California juvenile court judges have the unique responsibility of deciding whether to permit doctors to administer psychotropic medications to wards and dependent children of the court (W & I sections 369.5 & 739.5 and CRC 5.640). In other states social workers and caretakers have that responsibility. Psychotropic drugs are "those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorders and or illnesses." [W & I section 396.5(d)]. Most judges are not trained in medical science. Thus making decisions about the administration of these medications can be challenging as the hypothetical situations below reveal.

You have been given a request for approval of certain psychotropic medications for a dependent child. The request includes a description of the child's condition, the list of proposed medications to be administered, and a summary of what the doctor believes will be the result of the treatment. You consider taking one of the following actions:

1. You talk to your own doctor about the request including asking him questions about the impact of certain drugs on a child.
2. You call a doctor who spoke at the last juvenile court conference you attended and ask similar questions.
3. You go to a website where a doctor claims to be able to give advice to judges who have questions about the appropriateness of psychotropic medications for children.
4. You look up your notes from the last seminar you attended and make your decision based on them.
5. You take none of these actions, but simply sign the order even though you have no idea whether the request is reasonable or in the child's best interests.

Are there legal or ethical issues involved in any of these courses of action?

Judicial decisions regarding the administration of psychotropic medications to children have both legal and ethical implications. National data reveal that these medications can be dangerous, that foster children, particularly minority children, are given these medications disproportionally to the population at large, and that many of these medications have not been tested on children. The 2006 Physicians' Desk Reference showed that "approximately 45% of medications used for the treatment of emotional or behavioral disturbances in children or adolescents are off-label, having no approved use for patients under 18." There have been tragic cases involving children who died from taking psychotropic medications. This is understandable as children are developing beings, and the impact of psychotropic medications and particularly combinations of these medications in many situations cannot be known. Moreover, foster children before the juvenile court have their own difficulties. They have been removed from parental care because of abuse or neglect.



All of this leads to the conclusion that judges must be very careful about approving requests for the administration of psychotropic medications to foster children. Without medical training some judges will naturally seek help in order to make the best decision possible about the proposed medical intervention. In the first situation (#1) you made an ex parte communication when you contacted your personal doctor about the impact of the prescribed drugs. Your communication is a violation of Canon 3B(7) of the Code of Judicial Conduct. Canon 3B(7)(a) of the Code of Judicial Conduct provides that a judge

> may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

In this scenario you consulted your doctor without informing the parties. You have conducted an investigation regarding the facts of a pending matter. This is a violation of Canon 3B(7) of the Code of Judicial Conduct. The Advisory Committee Commentary to that canon prohibits this conduct.

> A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law

You may have to disqualify yourself pursuant to CCP 170.1, disclose the facts of your communication to the parties, and wait to see if the parties will waive your disqualification. (refer to the discussion at Part B, Section 1). At the very least you must disclose what you have learned from your doctor and give the parties an opportunity to respond to the information you received.

Calling the doctor who recently taught at a judicial conference (#2) and consulting the web (#3) are also improper ex parte communications and independent investigations outside the record. The analysis is the same as in the first scenario.

In the fourth scenario (#4) you refer to notes you took at the last seminar. Whether you are refreshing your recollection or reading information you have forgotten, you are collecting information outside the record. If you are going to rely upon your notes, you must inform the parties and give them an opportunity to respond. Only in that way will the record be clear to the parties, they have an opportunity to respond to the information contained in your notes, and any reviewing court will have a complete record including all the evidence you relied upon.

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In the fifth scenario (#5), you are not exercising judicial discretion, but simply rubber stamping a request from a doctor. Your action does not promote "public confidence in the integrity and impartiality of the judiciary" (Canon 2), nor does it promote the independence of the judiciary. (Canon 1). Failure to exercise judicial discretion when making an important decision is also an abrogation of your judicial duty to "hear and decide all matters assigned to the judge..." (Canon 3B). You have an obligation to make an independent judgment regarding this issue.

PROPOSED SOLUTIONS

You can address the issues raised in these scenarios in several ways. First, you can insist that the attorney for the child give an independent evaluation regarding the request for the administration of psychotropic medications. The attorney for the child has an obligation to "advocate for the protection, safety, and physical and emotional well-being of the child." [W & I section 317(c)]. The child's attorney also has a duty to investigate the facts of the case in order to "protect the interests of the child." [W & I section 317(e)]. Some California juvenile court judges have found that the child's attorney can develop expertise in the prescription of psychotropic medications for children and can provide valuable information to the court.

Second, you can consult with an expert after giving notice to the parties that you intend to do so. [Advisory Committee Commentary to Canon 3B(7)(a)]. One California juvenile court judge has written a local rule that gives notice to all parties that the judge will be consulting a second doctor regarding applications for psychotropic medications. The rule states that if any party wishes to know the content of that investigation, the matter can be set for a formal hearing. By using this procedure, you will avoid having to disclose to the parties the results of your consultation unless they make a request.

Third, some California juvenile court judges advise the parties that they will be consulting with the doctor who filled out the application. This procedure enables you to clarify any questions you may have about the application and is consistent with the Advisory Committee Commentary to Canon 3B(7).

Using these procedures avoids the ethical difficulties outlined in the discussion and possibly gives you information in order to exercise your discretion and make an informed decision.