

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

**FAMILY AND PROBATE COURT
NO.**

TEWKSBURY HOSPITAL

V.

JOE SMITH

NOTICE OF APPEAL UNDER CHAPTER 261, SECTIONS 27C AND 27D

Now comes the Respondent, by his attorney, and files this Notice of Appeal pursuant to MGL c. 261, Sections 27C and 27D. As his grounds therefore, he states as follows:

The Respondent, Joe Smith, is the proposed ward in a Rogers Petition. The Petition requests authorization to the administer antipsychotic medications. A Motion for Funds for Independent Exam was filed and allowed on June 3, 2005, but vacated on June 9, 2005. The court ordered an evaluation under C. 210, section 6(e) on June 9, 2005.

Very briefly, the history of the case is as follows:

A guardianship petition requesting Rogers' authority was filed in 2001. Counsel was appointed by the Probate court at that time. The guardianship was not acted upon until 2005. Another attorney was appointed to represent Mr. Smith on the day of the guardianship hearing, March 2, 2005. The attorney met with Mr. Smith an hour or so before the hearing, but did not tell Mr. Smith that he had a right to object, a right to an independent evaluation and a right to appear at the hearing. The attorney representing Mr. Smith did not appose the petition. A Rogers order was entered on that date.

A Motion for Rehearing on the Rogers petition was allowed on May 19, 2005. A motion for Funds for Independent Exam under c. 261, section 27C was allowed on June 3, 2005, but vacated on June 9, 2005 and an order for evaluation under c. 210, section 6(c) was entered on that date. An appeal from the vacated Motion For Funds for Independent Exam was filed on June 15, 2005.

Guardianship of a Mentally Ill Person with Authority to Administer Antipsychotic Medication, Appeals Court No. 85-0081 Civ. (Dreben, J. 1/28/85) allows funds where "... it cannot reasonably be argued that a person of means, facing the treatment with psychoactive medications, would ever knowingly choose not to expend his/her funds to secure the assistance of an independent clinical expert."

The Motion for Funds was made in good faith: Respondent has not been medicated with antipsychotics since July 2004, has full privileges to come and go from the hospital, and is

looking at residential placement in the community for imminent discharge. Even though the Rogers order was in effect as of March 2, 2005 until the Motion for Rehearing was allowed on May 19, 2005, no antipsychotics were administered during that time. (See Affidavit of Joe Smith filed on May 19, 2005.)

The Respondent requests that appeal of the vacated Motion for Funds for Independent Exam be allowed and that procedures set out in MGL c. 261, sections 27C and 27D requiring the court to submit findings thereon within three days to the Appeals court be followed so that this appeal can proceed.

Joe Smith
By his attorney,

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CERTIFICATE OF SERVICE

I hereby certify that a copy
of the above document was
served August 31, 2004 by
mail upon :

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Laura A. Sanford