

# *Orange County*

**Health Care Agency  
Behavioral Health Services**



**Patients' Rights Advocacy  
Services**

## **Mental Health Patients' Rights**

**1-Hour Continuing Education  
Course Outline**

**By: Myra Kanter, RNC, BSN  
[mkanter@ochca.com](mailto:mkanter@ochca.com)**

# MENTAL HEALTH PATIENTS' RIGHTS

## COURSE OUTLINE

### Objectives

Upon completion participants will be able to:

- ◆ Identify the Patients' Rights booklet and poster.
- ◆ Explain how to contact the OC Behavioral Health Service's, Patients' Rights Advocacy Services office.
- ◆ List the Welfare and Institutions Codes (*WIC* §5325 & §5325.1), Statutory Rights of Mental Health patients in the health care setting.
- ◆ Cite the five "Good Cause" Criteria constituting the Denial of a Right(s).
- ◆ Describe eight Interventions to reduce the use of Seclusion and Restraint(s).

### Patients' Rights

◆ Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws of the United States, and the Constitution and laws of the State of California (*WIC* §5325.1).

◆ Patients do not lose their rights by being hospitalized or receiving mental health services.

These Rights can be found in Statutes, Regulations, and case law. The Statutory Patients' Rights are codified in *WIC* §5325 and §5325.1.

◆ Rights can not be waived by Conservators, Parents, or Guardians, unless authority to waive them is specifically granted by Court order. (*Title 9, §883.a & §884.a*)

◆ The person-in-charge of the treatment facility / the Facility Director is responsible for ensuring that all Rights are enforced and protected.

*CA Code of Regulations, Title 9, §881(h), defines "Facility Director" as the Executive Director or Designee in overall charge of the facility.*

### Undeniable Rights

**It is the intent of the Legislature of the State of California that persons with mental illness shall have Rights including, but not limited to the following:**

◆ **RIGHT** to Privacy, Dignity, Respect, and Humane care. (*WIC* §5325.1.b)

*CA Code of Regulations, Title 9, §881(u), defines "Privacy" as being free from observation by individuals of the opposite sex during medical examinations, personal care, bathing and restroom use, except during emergencies and necessary supervision by staff.*

◆ **RIGHT** to receive treatment for a diagnosed mental disorder provided in a method that is least restrictive of individual Liberty and that promotes personal Independence. (WIC §5325.1.a)

*CA Code of Regulations, Title 9 §881(z), defines “treatment” as clinical intervention and action that is devised and implemented based on comprehensive assessment of the patient by the interdisciplinary team and that is designed to improve or stabilize a diagnosed mental and/or physical condition. §881(j), defines “Interdisciplinary team” as the group of persons from each of the disciplines or services that works directly with patient. §881(m), defines “Mental disorder” as a diagnosed mental disorder listed in the American Psychiatric Association: Diagnostic Statistical Manual of Mental Disorders, Fourth Edition. Text Revision DSM-IV-TR, 2000.*

◆ **RIGHT** to Medical care and treatment for Physical ailments and conditions according to accepted Clinical standards and practices. (Title 9, §883.a.3)

*CA Code of Regulations, Title 9, §881(k), defines “Medical care” as those procedures determined to be medically necessary, and not merely cosmetic in nature.*

◆ **RIGHT** to refuse psychosurgery, electroconvulsive therapy, experimental or hazardous procedures. (WIC §5325.g)

◆ **RIGHT** to be Free from harm including abuse or neglect; unnecessary or excessive medication; seclusion or restraint; and protective or administrative isolation. (Title 9, §883.b.5) These shall not be used as punishment; in retaliation for filing a complaint(s); as a substitute for a treatment program; for staff convenience; or in quantities that interfere with treatment.

*CA Code of Regulations, Title 9, §881(a), defines “Abuse” as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. §881(n), defines “Neglect” as negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.*

*§881(y), defines “Seclusion” as the involuntary confinement of a person in a locked room or any area where the person is physically prevented from leaving.*

*§881(t), defines “Physical restraint” as the direct application of physical force and/or approved restraining devices and methods to an individual, to restrict and/or limit freedom of movement.*

*§881(b), defines “Administrative isolation” as a temporary separation of a patient from other patients and the normal living environment for the purpose of protecting possible evidence or maintaining safety and security during a criminal investigation.*

◆ **RIGHT** to be informed of the procedures for filing complaints, and the process for appeals when complaints are not resolved to the patient’s satisfaction. (Title 9, §883.b.7)

*CA Code of Regulations, Title 9, §881(r), defines “Patient” as a person placed in or committed to a facility under authority of law for care and treatment.*

◆ **RIGHT** to confidential case discussions, consultation, examination, and patient records.

*Confidential information shall only be provided to those people providing evaluation and/or treatment, or as authorized by law. (Title 9, §883.b.6)*

◆ **RIGHT** to access the services of a Patients’ Rights Advocate. (WIC §5325.h)

*CA Code of Regulations, Title 9, §881(s), defines “Patients’ Rights Advocate” as a person delegated the responsibility for reviewing and attempting to resolve patients’ rights complaints and for ensuring that the patients’ rights of mentally disordered persons are observed and protected. This individual shall have no direct or indirect clinical or administrative responsibility for the person receiving mental health services.*

◆ **RIGHT** to confidential communications with an attorney, either through correspondence or through private consultation, during regularly scheduled visiting days and hours. (*Title 9, §883.b.9*)

◆ **RIGHT** to religious freedom and practice, within the context of the environment of a secure treatment facility. (*WIC §5325.1.e*)

◆ **RIGHT** to opportunities for physical exercise and recreational activities. (*WIC §5325.1.h*)

*The above Rights can be found in the CA Code of Regulations, Title 9, §883. The Authority cited is the CA Welfare and Institutions Code, §4005.1 & §4027; and §5325 & §5325.1 codify the Rights.*

## **Specific Rights**

**Psychiatric facilities must also uphold “SPECIFIC RIGHTS” that can be denied only when Good Cause exists.**

**GOOD CAUSE** for the denial of a Right(s) is defined in Title 9, §884:

- 1) The exercise of the specific right would be injurious to the patient; or
- 2) There is evidence that the specific right, if exercised, would seriously infringe on the right of others; or
- 3) The institution or facility would suffer serious damage if the specific right is not denied; or
- 4) The exercise of the Right would compromise the safety and security of the facility and/or the safety of others; and
- 5) There is no less restrictive way of protecting the interest specified in (1) through (4).

The reason for the denial of a right under this Section must be related to the specific right denied. A right shall not be withheld or denied as a punitive measure, nor shall a right be considered a privilege to be earned.

A denial of a right shall not exceed thirty days without additional staff review.

Treatment plans shall not include the denial of any right.

**RIGHTS CAN NOT be denied:** as a condition of admission, as a privilege to be earned, as punishment, as part of the treatment plan, nor for staff convenience.

## **Deniable Rights – For Good Cause**

Each person **Involuntarily** detained for evaluation or treatment, and each person admitted as a **Voluntary** patient for psychiatric evaluation or treatment to a health care facility offering psychiatric services shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community, and explained in a language or modality accessible to the patient:

◆ **RIGHT to keep and use personal possessions including toilet articles, as space permits, except items and materials that are listed as contraband by the facility.** (WIC §5325.a)

Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility.

Each patient shall receive a copy of the contraband listing upon admission.

*CA Code of Regulations, Title 9, §811(e), defines "Contraband" as materials, articles, or goods that patients are prohibited from having in their possession because they present a risk to security and safety in the facility. §881(w), defines "Safety" as the protection of persons and property from potential danger, risk, injury, harm, or damaged. §881(x), defines "Security" as the measures necessary to achieve the management and accountability of patients in the facility, staff, and visitors, as well as property of the facility.*

◆ **RIGHT to have access to individual secured storage space for personal possessions in accordance with the formal policies and procedures of the facility.** (WIC §5325.b)

◆ **RIGHT to keep and spend a sum of the patient's own money.** (WIC §5325.a)

◆ **RIGHT to personal visits during regularly scheduled visiting days and hours.** (WIC §5325.c)

▶ The Right to have visits shall not be denied, except as is necessary for facility security and the safety of persons contained therein.

▶ The length & frequency of visits, and the number of persons permitted to visit at one time may be limited consistent with security, safety, and to ensure that all patients have a fair opportunity to have visitors.

◆ **RIGHT to access telephones to make and receive confidential telephone calls, or to have such calls made for them.** (WIC §5325.d)

Telephone hours, frequency & duration of telephone calls, as well as the method of payment may be limited to ensure access by all patients.

*CA Code of Regulations, Title 9, §811(d) defines "Confidential telephone calls" as telephone calls that are not monitored or recorded by hospital staff.*

◆ **RIGHT to have access to letter writing materials and to mail & receive unopened correspondence.** (WIC §5325.e)

◆ **RIGHT to participate in appropriate programs of publicly supported education that is consistent with the patient's treatment plan and with the secure treatment facility environment.** (WIC §5325.1.f)

*CA Code of Regulations, Title 9, §(a), defines "Treatment Plan" as the method developed by the interdisciplinary team to implement for the patient on an ongoing basis. The treatment plan is documented in writing in the patient's medical record, includes specific goals and objectives, identifies a continuum of care, and is reviewed and modified at frequent intervals by the interdisciplinary team.*

◆ **RIGHT to social interaction.** The formation of supervised patient leisure time activity groups that promote educational, social, cultural and recreational interests of participating

patients shall be permitted, except for activities that pose a threat to safety and security. (WIC §5325.1.g)

◆ **RIGHT** to wear one's own clothes (WIC§5325.a)

*The above Rights can be found in the CA Code of Regulations, Title 9, §884. The Authority cited is the CA Welfare and Institution Code, Sections §4005.1 & §4027; and §5325 & §5325.1 codify the Rights.*

## **Documentation of Denial of Rights**

Each denial of Right shall be noted in the patient's treatment record. Documentation shall take place immediately whenever a right is denied. The notation shall include:

- ▶ Date and time the Right was denied.
- ▶ Specific Right denied.
- ▶ Good cause for the denial of Right.
- ▶ The facility director's or designee's signature authorizing the denial.
- ▶ The date a specific Right is restored shall be documented in the patient's treatment record.

◆ The patient shall be told the content of the notation and the process or restoration of the denial.

◆ Each denial of a Right shall be documented regardless of the reason for the denial, or the frequency with which a specific right is denied in a particular facility, or to a particular patient.

◆ A patient's Right shall be restored when Good Cause for its denial no longer exists.

◆ When a right has been denied, staff shall employ the least restrictive means of managing the behavior that lead to the denial.

◆ Information in the patients' treatment record pertaining to a denial of rights shall be available on request to the patient, their Attorney/Conservator/Guardian, the Department of Mental Health or, excluding the patient identity, a member of the State Legislature.

## **Seclusion and Restraints:**

*(Heath & Safety Code § 1180 through §1180.6)*

May only be used in an emergency when there is no less restrictive alternative.

Alternatives/Interventions to reduce the use of S&R:

◆ Physical exercise; Watching television; Having a snack; Positive affirmations; Being alone in a quiet place; Getting involved in program activities; Talking to someone; Relaxation exercises; Counting until you feel calm; Thinking of the consequences; Listening to soft music; Talking to staff to solve the problem; Looking at or reading a book; Etceteras.

◆ Documentation needs to indicate that patient behavior(s) clearly posed imminent danger of serious harm to self, others, and/or facility.

◆ The patient must be informed of: the reason(s) for S&R, how long it will last, and the behavior necessary for release.

- ◆ MD needs to evaluate the patient within 1-hour of the initiation, and the order needs renewed every 4-hours for adults and every 2-hours for children/adolescents (ages 9-17).
- ◆ 1:1 (face-to-face) monitoring is required for JCAHO accreditation (however, video equipment is permitted in acute medical facilities).
- ◆ Patient's need to be offered comfort measures, toileting, range-of-motion, and water every 15-minutes.
- ◆ Maximum freedom of movement needs to be maintained.
- ◆ S&R must end as soon as the patient no longer meets criterion.

**Admission Assessment** needs to address the patients:

- ◆ Wishes in terms of what helps him/her control their behavior(s).
- ◆ Early warning signs, triggers or precipitants of escalation need to be identified at admission, along with medical conditions or histories of psychological trauma that preclude the use of S&R.
- ◆ Prone positioning is prohibited for patients medically at risk.

**Debriefing Session with patient, S&R staff, and family** (at pts request) needs to:

- ◆ Take place within 24-hours of termination of S&R.
- ◆ Identify the incident precipitant(s)
- ◆ Assess if the intervention was necessary and consistent with training & policies.
- ◆ Identify if alternative(s) for more safely / constructively handling the incident existed.
- ◆ Identify new treatment plan intervention(s) aimed at the incidents root cause, and document the new interventions in the treatment plan and progress notes.

## **Additional Rights**

- ◆ **RIGHT** to informed consent to medical and psychiatric treatment (including the right to refuse medication) unless specific emergency criteria are met, or a legal determination of incapacity exists. (*WIC §5326.2, §5325.2, §5332; CCR Title 9. §880-1*)

*Emergency medications should be administered 1-time only, and then documentation of assessment for a **Riese / Capacity Hearing** needs to be recorded. (professional Standard)*

- ◆ **RIGHT** to receive information about treatment & to participate in planning it daily. (*WIC §5325.1*)
- ◆ **RIGHT** to client-centered services designed to meet individual goals, diverse needs, concerns, strengths, motivations, and disabilities. (*WIC §5325.1*)
- ◆ **RIGHT** to services and information in a language the patient understands and that is sensitive to cultural diversity and special needs. (*CCR Title 9. §1810.410*)
- ◆ **RIGHT** to inspect and copy the medical record, unless specific criteria is met. (*HSC §1795.12*)

- ◆ **RIGHT** to have family/friend(s) notified of hospitalization. (*WIC §5328.1*)
- ◆ **RIGHT** to an aftercare plan. (*WIC §5768.5, §5622*)
- ◆ **RIGHT** to confidentiality. (*WIC §5328*)
- ◆ **RIGHT** to receive services in an environment which is physically safe & sanitary. (*Title 22*)
- ◆ **RIGHT** to receive treatment in state supported facilities if unable to pay for the cost of care. (*Title 22*)
- ◆ **RIGHT** to be out-of-doors at regular and frequent intervals. (Human Right in Correctional Requirements, Joint Commission, and HSC)
- ◆ **RIGHT** to mental health services without discrimination due to race, color, sex, creed, religion, age, or national origin. (State of CA, Dept. of Mental Health)
- ◆ **RIGHT** to enter into a contract, to hold or dispose of real property, to hold professional or occupational or driver's licenses, to marry or obtain a divorce, to register to vote, to make a will, or otherwise manage affairs. (*WIC §5331, § 5357 and §5325.1*)
- ◆ **RIGHT** to complain about living conditions, any physical or verbal abuse, threats, acts of cruelty or untoward treatment without being punished for voicing a complaint. (*HSC §1278*)
- ◆ **RIGHT** to visit, write or telephone the Director or Administrator of the facility, or a Patients' Rights Advocate with a problem or complaint about Rights. (*WIC §5325.h and Title 9 §864*)

## **REFERENCES**

**State of California, Law: Welfare and Institutions Code**

[www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)

**State of California, Law: Code of Regulations, Title 9**

<http://ccr.oal.ca.gov>

**Bazelon Center for Mental Health Law**

[www.bazelon.org](http://www.bazelon.org)

**State of California, Law: Health and Safety Code**

[www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)

**Protection and Advocacy. Inc.**

[www.pai-ca.org](http://www.pai-ca.org)

**California Association of Mental Health Patients' Rights Advocates**

[www.camhpra.org](http://www.camhpra.org)

**California Department of Mental Health**

[www.dmh.cahwnet.gov](http://www.dmh.cahwnet.gov)