

# **The Office of Patients' Rights Semi-Annual Activity Report**

**January 1, 2009 – June 30, 2009**

## **I. SIGNIFICANT EVENTS, ACTIVITIES, ISSUES**

### **Significant Events and Activities**

#### **Presentation to UC Davis School of Law**

In January, Agnes Lintz, PRS presented as a panel member to a Disability Law class at US Davis. The presentation included the role of California Office of Patients' Rights, importance of expressed interests, varied consumer perspectives on recovery and treatment issues and different ways of establishing rapport with individuals receiving varying degrees of treatment services.

#### **Restraint & Seclusion (SB 130) Workgroup**

The Sacramento office continues to provide individual trainings in regards to the data collection and reporting requirements set by Health and Safety 1180 and implemented by the Department of Mental Health Licensing and Certification unit.

#### **DMH-Draft Regulation Review Work Group**

Michele Mudgett, Director has been working with the DMHHQ workgroup on developing regulations on personal possessions for CCR Title 9 section 880 et al. The proposed regulations will limit personal possessions of the state hospital residents known as "Non-LPS". Currently the regulations restrict only those items that are identified as "contraband" as defined by the regulations.

#### **California Association of Mental Health Patients' Rights Advocates (CAMHPRA)**

Ann Coller, Patients' Rights Specialist assigned to provide trainings and technical assistance to county advocates has attended the in person quarterly CAMHPRA meetings. In addition, she has attended the regional coalition meetings in northern California, Bay area, and the southern California areas.

Generally these meeting discuss advocacy approaches, trends in issues being addressed by the advocacy programs, and training needs for the annual Patients' Rights Training held by Office of Patients' Rights each fall.

### **Issues & Cases**

#### **Smoking Issues**

Since the conversion to a tobacco free environment in the state hospitals our office has seen an increase in contraband related searches, peer-to-peer altercations, smoking in dorms and related safety issues, and allegations of staff providing tobacco related contraband. As a result of this conversion we continue to receive complaints regarding the

lack of consideration towards wellness and recovery (model) and a belief that it is contrary to personal choice and autonomy promoted by the WRP.

### **Spending Limits**

DMH Special Order 801.1 which limits "Personal and Incidental expenses" to \$300 absent specific permission from the Executive Director for a larger disbursement. Special Order 801.1, in turn, cites California Government Code, section 11152 for its authority:

*Subject to the approval of the Governor, the head of each department may arrange and classify the work of the department and consolidate, abolish, or create divisions thereof. So far as consistent with law the head of each department may adopt such rules and regulations as are necessary to govern the activities of the department and may assign to its officers and employees such duties as he sees fit. For the betterment of the public service, he may reassign to any employees under the chief of any division, such duties as he sees fit.*

While this section gives the Department of Mental Health the authority to make rules and regulations to ensure the smooth running of the Department, it is unclear how this section gives the Department the authority to specify how competent adults will spend their own money. Further, this restriction appears to conflict with Welfare and Institutions Code, section 7281 Patients' personal deposit funds:

*...Any funds coming into possession of the superintendent, belonging to any patient in that institution, shall be deposited in the name of that patient in the patient's personal deposit fund, except that if a guardian or conservator of the estate is appointed for the patient then he shall have the right to demand and receive such funds...*

*...Any funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals for the patient or may be applied in an amount not exceeding five hundred dollars (\$500) to the payment of his burial expenses. (emphasis added).*

In short, we are unable to locate anything authority that would allow the Department of Mental Health to specify how unconserved individuals spend their own funds.

### **Qawi Hearings**

Recently as a result of investigating Appeals, we have found a lack of legal documentation in the charts of those being involuntarily medicated under the Mentally Disorder Offender commitment as required under Qawi. We have addressed this with one state hospital and found that they in fact did notify the county of commitment of their request to involuntarily medicate an individual. Due to the lack of a court objection, the state hospital continued with

the involuntary administration of medications. We have expressed our concerns about regards to involuntarily medicating an individual absent an emergency and without a court order.

As a result of our advocacy efforts we are now seeing the state hospital's letter to county notifying them of the use of involuntary medications in the individual's medical chart.

Special Order 339 provides a sample petition to authorize involuntary medications that must be filed with the court to seek the authority to involuntarily medicate. To date we have not seen this completed.

### **Abuse & Neglect Allegations**

We have encountered difficulties with various SSI offices when we report peer to peer assaults as allegations of abuse and or neglect. We have been told they do not meet the definition of abuse as defined in the DMH Special Order 227.08.

Each resident has the right to be free from harm as a "dependant adult" while residing in the state hospital.

The California Office of Patients' Rights reports all allegations of abuse and neglect to the Senior Special Investigator at each site per contract requirement and consistent with Welfare & Institutions Code sections 15630 – 15632 and defined by Welfare & Institutions Code sections 15610-15610.65.

We have recently sought the assistance of the Department of Mental Health Headquarters in resolving this reporting issue.

### **Meals**

At one of the state hospitals the complete and timely service of meals has been an area of complaint. Our office looked into the complaints and found the meals served were not as posted, often incomplete, lacked substitutes for medical needs such as food allergies, and were provided hours late from the normal meal times. We notified the Dietary Department, Administration, and Standards & Compliance. We understand there were difficulties with the physical kitchens during this time. The concern is the lack of planning for such an event and the lack of information provided to the residents as to the cause of the problem and projected date of resolution. This occurred in mid June and to date we are still receiving complaints about the lack of food quality that is being provided.

### **Debriefing after Shakedowns/Physical Searches**

As a result of direct advocacy, we have seen debriefing occur after an individual has experienced a physical search of their person. The complaints were brought to our attention by those who had a history of abuse and after experiencing a physical body search re-experienced the trauma of abuse.

## II. SUMMARY OF SERVICES AND DATA REPORTS

### Complaints Filed; Listed by Hospital

All of the information gathered in this report and shown in the tables reflects the information entered into the data-tracking program, known as DAD. The Central Office of Patients' Rights gathers the information from the entries made at the remote sites (state hospitals) of the Office of Patients' Rights.

The following table gives the total number of complaints filed at each state hospital, by hospital, by month. The "closed" column is the number of complaints that were brought to resolution within the reporting period.

Office of Patients' Rights Report of Complaints - By Hospital, By Month January 1, 2009 - June 30, 2009										
State Hospital	Open From Previous Period	New Complaints							Closed This Period	Carried to Next Period
		Jan	Feb	Mar	Apr	May	Jun	Total New		
ASH	81	159	158	191	156	133	175	972	879	174
CSH	383	125	95	136	106	83	114	659	747	295
MSH	5	48	30	49	72	81	99	379	347	37
NSH	69	122	129	137	136	103	146	773	688	154
PSH	68	95	161	134	211	195	213	1009	927	150
<b>Total</b>	<b>606</b>	<b>549</b>	<b>573</b>	<b>647</b>	<b>681</b>	<b>595</b>	<b>747</b>	<b>3792</b>	<b>3588</b>	<b>810</b>

## **Complaint Listed by Problem Code – Listed by Hospital**

In order for a complaint to be received as a Patients' Rights Issue, it must fall within one of the categories or problem areas listed below. (See attached) The table below identifies by problem area the number of complaints at each hospital.

<b>Office of Patients' Rights New Complaints - By Problem Area, By Hospital January 1, 2009 - June 30, 2009</b>						
	<b>ASH</b>	<b>CSH</b>	<b>MSH</b>	<b>NSH</b>	<b>PSH</b>	<b>Total</b>
Abuse/Neglect	26	45	30	65	46	212
Medications	61	10	9	27	43	150
Patients Rights	262	411	54	248	220	1195
Restraint and Seclusion	9	3	0	1	0	13
Treatment Environment	577	184	284	415	699	2159
*Unrelated	37	6	2	17	1	63
<b>Total Complaints (CO)</b>	<b>972</b>	<b>659</b>	<b>379</b>	<b>773</b>	<b>1009</b>	<b>3792</b>
<b>Total Clients (CL)</b>	<b>332</b>	<b>254</b>	<b>109</b>	<b>289</b>	<b>396</b>	<b>1380</b>

\*The "Unrelated" category is when the complaint has been withdrawn, or is unreadable.

### **Treatment Environment**

This problem code reflects complaints that raise the issues of:

- Daily Living-
  - TV usage
  - Unit temperature
  - Search & Seizures / Room searches
  - PAS / Grounds
  - Legal (access to library, commitment info, etc.)
  - Staff attitude & behavior
  - Toileting supplies
  - Conservatorship

## Patients' Rights Issues – by Problem Sub-Code

The following table reflects the number of complaints by subcategory. These were entered into the problem code of "Patients' Rights". This table provides the actual sub-categories for each patient's rights complaint. The total number of sub issues (980) equals the total number of **Patients' Rights** reflected in the previous chart.

<b>Office of Patients' Rights Patient's Rights Complaints - By Problem Area, By Hospital January 1, 2009 - June 30, 2009</b>						
<b>Patient's Rights Issue</b>	<b>ASH</b>	<b>CSH</b>	<b>MSH</b>	<b>NSH</b>	<b>PSH</b>	<b>Total</b>
Access / Use of Personal Possessions	47	75	9	37	46	<b>214</b>
Advocacy Services	5	14	4	2	0	<b>25</b>
Clothing Issues	0	5	0	2	10	<b>17</b>
Confidentiality of treatment, records, etc.	24	16	2	2	7	<b>51</b>
Dignity / Privacy / Respect / Humane Care	0	0	0	1	0	<b>1</b>
Free From Hazardous Procedures	0	0	1	1	1	<b>3</b>
Keep / Spend Personal Funds	12	6	15	49	14	<b>96</b>
Letter Writing / Confid Correspondence	11	19	2	23	7	<b>62</b>
Medical Care and Treatment	77	146	10	81	69	<b>383</b>
Mental Health Treatment	10	37	1	17	6	<b>71</b>
Packages	1	4	0	0	4	<b>9</b>
Exercise / Recreation / Out of Doors	5	3	0	3	0	<b>11</b>
Religious Freedom and Practice	6	9	2	11	7	<b>35</b>
Social Interaction / Participation	1	4	0	0	0	<b>5</b>
Storage Space	0	4	1	1	1	<b>7</b>
Telephones / Confidential Use	5	6	1	3	10	<b>25</b>
Treatment Services Promoting Independence	15	21	1	3	0	<b>40</b>
Visitors / Visiting Space	4	3	0	0	3	<b>10</b>
<b>Total</b>	<b>262</b>	<b>411</b>	<b>54</b>	<b>248</b>	<b>220</b>	<b>1195</b>

## Report of Complaint Type - By Hospital

Office of Patients' Rights Report of Complaints (New Only) - By Type, By Hospital January 1, 2009 - June 30, 2009						
	ASH	CSH	MSH	NSH	PSH	Total
Abuse/Neglect Allegation	26	46	32	62	48	214
Direct Advocacy	648	385	143	270	292	1738
Referral	0	0	0	0	1	1
T/A to Client or Family	298	228	204	441	668	1839
<b>Total</b>	<b>972</b>	<b>659</b>	<b>379</b>	<b>773</b>	<b>1009</b>	<b>3792</b>

### **Abuse/Neglect;**

Complaints that present with allegations of abuse or neglect are immediately reported to the Senior Special Investigator, Program Director, and Executive Director by the Patients' Rights Advocate in addition to their own immediate and in-person investigation.

### **Direct Advocacy;**

These complaints present as Patients' Rights issues. The Patients' Rights Advocate will solicit input from the treatment program either in writing, in person, or by phone as part of their investigation. Upon completion of the investigation the Patients' Rights Advocate will provide a written response to the patient.

### **Referral;**

These complaints address issues that do not rise to the level of a rights violation. The issues are generally in regards to dissatisfaction with daily protocols, activities, or policies. They are best addressed by the Program or Unit. Once identified as a referral, the Assistant Patients' Rights Advocate completes the letter of referral and contacts the individual for permission to make the referral.

### **Technical Assistance;**

This is a complaint that raises an issue the advocacy staff can answer or respond to right away without investigating or researching. Typically direction is provided on who to talk to, what the process is, or where to go to find information addressed in the complaint.

**Method Used to Register Complaints – Listed by Hospital**

The Office of Patients' Rights tracks the method by which formal complaints are filed by clients. The complaints accepted by phone, voice message, or in person, do not have a patient/client written complaint to accompany the issues addressed by the Patients' Rights Advocate. A written summary of the issues discussed are entered into our data tracking program and if necessary, a memo is written by the Patients' Rights Advocate to assist in the advocacy process.

<b>Office of Patients' Rights Report of Complaints (New Only) - By Source, By Hospital January 1, 2009 - June 30, 2009</b>						
	<b>ASH</b>	<b>CSH</b>	<b>MSH</b>	<b>NSH</b>	<b>PSH</b>	<b>Total</b>
Complaint Left on Voicemail	2	10	22	62	110	<b>206</b>
Complaint Made by Telephone	12	16	166	44	98	<b>336</b>
Complaint Made in Person	1	12	4	6	13	<b>36</b>
Complaint Made in Writing	957	621	187	661	788	<b>3214</b>
<b>Total</b>	<b>972</b>	<b>659</b>	<b>379</b>	<b>773</b>	<b>1009</b>	<b>3792</b>

**Legal Status of patients making complaints**

The following table provides the legal status of the patients making complaints that have been opened and/or carried over from the previous reporting period. This table provides an overview of all complaints received from all State Hospital residents. (CL = individuals and CO = Complaints)

<b>Office of Patients' Rights Report of Complaints - By Legal Status January 1, 2009 - June 30, 2009</b>				
<b>Legal Status</b>	<b>Total</b>			
	<b>CL</b>	<b>CO</b>	<b>CO per CL</b>	<b>% of Total CO</b>
PC 1026: NGI	337	845	2.5	22.3
PC 1370: IST	327	881	2.7	23.2
PC 1370.1:	2	4	2.0	.1
PC 2684: CDCR	63	136	2.2	3.6
PC 2962: MDO: Cond. Of Parole	208	629	3.0	16.6
PC 2964: MDO: Parolee Returned	4	4	1.0	.1
PC 2970: MDO: Evaluation Hold -	3	8	2.7	.2

PC 2972: MDO: 1 Yr CivilCommit.	155	432	2.8	11.4
PC 2974: Lanterman-Petris-Short Commitment While On Parole	3	5	1.7	.1
Voluntary	1	1	1.0	.0
WI 5358: Conservatorship Year-To-Year Commitment (Mur-Con)	80	205	2.6	5.4
WI 6552: Juvenile Court Voluntary	1	1	1.0	.0
WI 6316: MDSO	4	6	1.5	.2
WI 6602: SVP: Had A Probable Cause Hearing	97	299	3.1	7.9
WI 6604: SVP committed	148	336	2.3	8.9
<b>Total</b>	<b>1433</b>	<b>3792</b>	<b>2.6</b>	<b>100.00</b>

### III. APPEALS

The table below identifies the Appeal requests received by the Sacramento Office of Patients' Rights. With each request, we determine if the first level of Appeal has been completed. If not, the request is returned to the sender with information on how to file for an Appeal. These reflect as Technical Assistance (TA). TA's also reflect calls for information from staff, clients, and family/friends.

<b>Office of Patients' Rights  Appeals and Technical Assistance State Hospitals  And Counties(New Only)  January 1, 2009 - June 30, 2009</b>	
ASH - Appeal	10
CSH - Appeal	23
CSH - TA	2
NSH - Appeal	9
NSH - TA	4
PSH - Appeal	1
PSH - TA	1
Napa County Appeal	1
Stanislaus County Appeal	1

#### IV. SUMMARY OF COUNTY SERVICES

##### County Program Review - San Luis Obispo

Ann Coller, Patients' Rights Specialist (PRS) conducted a review of the San Luis Obispo County Patients' Rights Program with an eye toward identifying the program's strengths and areas in need of improvement. During the review, the PRS identified outreach to potential clients' as one of the strengths of the SLO Patients' Rights Program.

Areas requiring improvement included the training the advocate receives in patients' rights and in the role of the patients' rights advocate. Additionally a review of the San Luis Obispo County Psychiatric Health Facility Policies conducted in conjunction in the Program Review revealed significant problems with the facilities patient's rights policies.

The review packet will be provided to the County Department of Mental Health upon completion.

##### Number of Routine Technical Assistance (TA) Services by County

The columns below reflect technical assistance services that were provided to counties as part the Central Office of Patients' Rights daily operations. These services were provided by way of email, written requests, and telephone inquiries.

Alameda County	2
Calaveras County	1
Contra Costa County	6
Fresno County	1
Humboldt County	1
Kern County	2
Lassen County	1
Los Angeles County	6
Monterey County	1
Napa County	2
Placer County	1
Sacramento County -	5

San Bernardino County	1
San Francisco County	2
San Mateo County	1
Santa Barbara County	3
Santa Clara County -	1
Shasta County	2
Sonoma County	1
Sutter County	1
Tuolumne County	2
Yolo County	1
<b>Total</b>	<b>44</b>

## **V. QUALITY IMPROVEMENT ACTIVITIES**

### **In Service Trainings for COPR Staff**

The California of Office of Patients' Rights has completed two in service trainings this reporting period. In February we had three days of training with a focus on facilitating and presenting on patients' rights within the state hospitals. In addition some of our staff visited our NSH office to have a better sense of the varied office set-up and locations with each site. In May we conducted our training in the LA area and provided a tour of the MSH grounds and office. Our focus during this in service training was on complaint resolution and updates on court orders addressing medications for those commitments who reside in state hospitals.

## **VI. COMPLAINTS / GRIEVANCE SUMMARY**

We did not receive any grievances during this reporting period.