

## **OFFICE OF PATIENTS' RIGHTS**

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### **M E M O R A N D U M**

TO: All Interested Persons

FROM: California Office of Patients' Rights

RE: Right to Exercise and Recreational Opportunities

DATE: May 25, 2001

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Advocates sometimes encounter facility policies and procedures, which either severely limit or deny access to space (indoors or outdoors) for exercise. Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations.

This informational memorandum discusses steps advocates may take to ensure that patients have reasonable access to exercise and recreational opportunities.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following; a right to physical exercise and recreational opportunities, Welfare and Institutions Code Section 5325.1, (h)

Facilities may attempt to identify extenuating circumstances such as weather, individual behavior, or lack of adequate staffing as reasons for not providing the clients the opportunity to exercise these rights. These arguments, and/or similar ones are not valid for a denial of the right to exercise. In fact the Welfare and Institutions Code does not provide a provision for denying the right to exercise or recreational opportunities. In these circumstances facilities are obligated to identify alternatives.

Advocates have the ability to effect change in many areas of life in the hospital on behalf of clients. Many times the problems or problem areas are only due to a lack of understanding of laws and regulations, or a misperception of the true needs of clients. Advocates and clients can work together with hospital administrations to find good solutions to what may appear to be difficult problems.

In order to identify these areas you may need to gather pertinent information i.e. facility policies, information from patients about the amount of access to exercise, out of doors access, observation of the physical plant, and copies of daily schedules. Once the information has been gathered you will need to analyze the materials and address the following questions:

#### Review Facility Policies

- a. Does the policy recognize the patients' right to exercise?
- b. Does the policy limit denials for what the hospital perceives as good cause?
- c. Does the policy identify alternatives which should be used if exercise must be limited ?(e.g. inclement outdoor weather, good cause denial of other rights that may ultimately infringe on this right – such as seclusion and restraint)

#### Identify Barriers to Exercise

- a. Can the daily schedule be altered to allow for greater access?
- b. Can the physical plant be changed – e.g. closing a parking lot for part of a day; expanding existing exercise space?
- c. Can the facility be encouraged to provide exercise equipment or recreation opportunities?

#### Identify Allies in the Facility and Community

- a. Discuss exercise and recreation strategies with the Recreation Therapist (if one is on staff) for the facility.
- b. Proactively work with clients to identify what would satisfy their needs for additional exercise opportunities
- c. Offer assistance on behalf of clients to the facility for planning a more client services directed exercise program.

Another consideration in the right to exercise is the use of seclusion and restraint or line of sight restrictions. Using the following may provide assistance in the monitoring of seclusion and restraint.

### Infringing Denials

- a. Ensure that legal requirements such as range of motion exercises are conducted.
- b. Work with staff to identify times patient would be able to participate in more than basic range of motion. This may include times patient is escorted out of seclusion to restroom facilities, removed from restraint for extended time periods, etc.

There may be times when you encounter a difficult situation and are unable to reach a point of negotiation. Should this take place, here are a just a few avenues for you to explore:

Address the matter with the Mental Health Director

Refer to the applicable licensure or certification agency, i.e. CCR-Title 22

Check Protection & Advocacy, Inc.'s web page for resource materials and links.

You may also seek advice or technical assistance from the Office of Patients' Rights. We are available any time you have questions or when you want to share or explore ideas for resolving difficult patients' rights issues.