

MEMORANDUM

TO: XXXX XXXXX, XXXX XXXXX Road, Unit XXXX
XXXXXXXXXXXX, CA XXXXX

FROM: XXXX XXXXX

RE: XXXX XXXX Hospital's Legal Obligations to Provide Your Brother,
XXXX XXXXX, With Adequate Discharge and Aftercare Planning

DATE: July 28, 2003

Based on my conversation with you, this is my understanding of the facts in your brother's case:

- On or around XXXX XX, 2003, the staff at XXXX Hospital ("XXXX") discharged your brother, XXXXX, into your custody.
- XXXXX was given no form of identification when he left XXXXX. After repeated requests XXXXX staff finally mailed you a poorly reproduced copy of XXXXX' patient ID card, which is hard to read and cannot be used as official identification.
- XXXXX staff failed to complete an SSI application for XXXXX prior to his discharge. XXXXX staff took no steps to ensure that XXXXX would have any kind of benefits upon discharge and failed to make necessary contacts to ensure that XXXXX received mental health services upon discharge.
- XXXXX' doctor at XXXXX only prescribed two weeks worth of medication for XXXXX upon his discharge from XXXXX. Given that XXXXX staff failed to put XXXXX in contact with any mental health professionals in his hometown of XXXXX, he was unable to secure an appointment with a psychiatrist until at least two weeks after his current prescription is set to run

out. Despite your repeated requests, Dr. XXXX (XXXXX's doctor at XXXXX) refused to prescribe any more medication for XXXXX.

- You informed me that you have only recently been appointed as XXXXX's conservator and that you had not been involved in the hospital's discharge planning process prior to this appointment.

Your Rights to Discharge Planning Generally

State and federal law make it clear that XXXXX has a right to the implementation of an appropriate aftercare plan. The aftercare plan developed by the XXXXX should have contained the following elements:

- (1) Nature of illness and follow-up required.
- (2) Medications including the side effects and dosage schedules. (If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on the side effects of the medications.)
- (3) Expected course of recovery.
- (4) Recommendations regarding treatment that are relevant to the patient's care.
- (5) **Referrals to providers of medical and mental health services.**
- (6) Other relevant information.

Health & Safety Code § 1262(a). Welf. & Inst. Code §§ 5622(a), 5768.5(a); California Department of Mental Health Special Order 103.01. Most importantly, a hospital's aftercare treatment referrals are not complete until the person or agency to which you are referred accepts responsibility for providing the necessary services. Welf. & Inst. Code § 5008(d). It is not enough for XXXXX staff to write out the name and telephone number of someone you are to call for an appointment. In XXXXX's case, because he needs assistance in accessing follow up aftercare services, XXXXX is responsible for "making appointments on (his) behalf, discussing (his) problems with the agency or individual to which (he) has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary." Welf. & Inst. Code § 5008(d).¹ Giving XXXXX

¹Welf. & Inst. Code § 5008(d) provides that referral "may include" these services, such as making appointments or arranging transportation. However, the statute uses mandatory language regarding a completed referral: "Referral *shall* be considered complete" when the other agency accepts responsibility. Reading these two parts of § 5008(d) together, where the client is unable to access the recommended services him or herself due to a psychiatric disability and the referral

two weeks worth of medication and leaving his follow-up care entirely up to you does not satisfy the requirement that XXXXX ensure there is an agency that has accepted responsibility for aftercare treatment services.

XXXXX's Discharge Planning Obligations Under Federal Law

Federal regulations setting out general hospital discharge planning obligations require, like Welf. & Inst. Code § 5008(d), that the hospital arrange for the initial implementation of the patient's discharge plan. 42 C.F.R. § 482.43(c)(3). The regulations require an effective, ongoing discharge planning program that facilitates the provision of follow-up care. 42 C.F.R. § 482.43.²

Discharge Planning Obligations Specific to Psychiatric Hospitals

Depending on whether XXXXX is licensed as a psychiatric hospital it may be subject to additional discharge planning requirements that apply to psychiatric hospitals. Under federal law, aftercare plans for patients in psychiatric hospitals must address personal preferences, family relationships, physical and psychiatric needs, financial needs, educational/vocational needs, social needs, accessibility to community resources, and indication of anticipated problems and how to deal with them. 42 C.F.R. §§ 482.61(e), 482.62(a)(4), 482.62(f)(2). The aftercare plan must also define who is responsible for seeing that discharge and aftercare plans are followed.

XXXXX's Failure to Comply With Its Discharge Planning Obligations

XXXXX clearly ignored its discharge planning obligations under state and federal law. XXXXX's failure to provide XXXXX with a valid ID card, its failure to apply for SSI benefits on behalf of XXXXX, its failure to arrange for XXXXX to receive mental health treatment in the community, and its failure to provide XXXXX with a sufficient supply of medication – even after XXXXX staff became aware that XXXXX did not have access to adequate medication in the community – all indicate that XXXXX's discharge planning efforts failed to adequately ensure

cannot otherwise be accepted and completed, referral duties must include assistance such as making appointments, etc.

²The regulations imposing discharge planning obligations on hospitals and psychiatric hospitals are Medicare conditions of participation. That means that as a condition of receiving Medicare for some admissions, a hospital is required to comply with the regulatory conditions of participation for all admissions.

appropriate aftercare for XXXXX. XXXXX was left without access to local mental health services and without access to benefits or sufficient medication. Without appropriate treatment and medication, XXXXX is faced with the possibility of a relapse of symptoms and another institutionalization. XXXXX's professional staff is much more familiar with and has significantly more access to the complex world of local mental services and disability-related benefits than you do. Rather than using its own resources to make a few quick phone calls and start the application process, XXXXX left it to you to relocate to XXXXX and start from scratch seeking appropriate treatment, services, and medication for XXXXX.

Our Recommendations

We recommend that you request a discharge planning meeting involving at least by phone XXXXX's treatment team at XXXXX and a case manager from the Medi-Cal mental health plan ("MHP") in XXXXX County. Topics to be addressed at the meeting include the assignment of a case manager for XXXXX for at least a transition period following discharge, day treatment intensive services, and day rehabilitation services. If the treatment team is unable to ensure that XXXXX receive mental health services and a visit with a psychiatrist in XXXXX by the time his current supply of medication runs out, XXXXX's doctor and treatment team at XXXXX should supplement his current prescription. We also recommend that you request that XXXXX staff complete an application for SSI benefits for XXXXX and furnish XXXXX with a valid form of identification immediately.

If the XXXXX County Medi-Cal MHP does not authorize the follow-up aftercare services you believe you need, ask the XXXXX County Patients' Rights Advocate for information about filing a grievance and a Medi-Cal fair hearing. You can also call us back to assist you in filing for a Medi-Cal fair hearing.

If XXXXX continues to ignore its state and federal discharge planning obligations, you also may be able to file a state licensing complaint and a complaint with The Centers for Medicare and Medicaid Services, the federal agency which oversees compliance with Medicare conditions of participation. We can give you information about that if it becomes necessary to do so.

I recommend that you provide a copy of this memo to XXXXX staff and to the XXXXX County Medi-Cal MHP. That way both XXXXX and XXXXX County Medi-Cal MHP will know the basis for your requests for appropriate discharge planning and implementation of an aftercare plan.

