

# Protection & Advocacy, Inc.



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March 12, 2003

VIA FACSIMILE  
(626) 859-5848

XXXX XXXXX  
XXXXXXXXX Hospital  
XXX W. XXX XXXXXX Road  
XXXXXXXX, CA XXXXX

Re: XXXXX XXXXXX

Dear Mr. XXXX:

I am writing on behalf of XXXX XXXXXXXXX, who is currently residing as an inpatient in the psychiatric unit at XXXXXXXXX. It is my understanding XXXX admitted Mr. XXXX pursuant to Welf. & Inst. Code § 5150 and that you plan to discharge Mr. XXXX in the next few days. It is also my understanding that XXXX plans to refer Mr. XXXX to a Board & Care facility or a shelter. I am writing this letter to ensure that XXXX complies with its obligations under state and federal law to provide Mr. XXXX with complete and appropriate discharge and aftercare planning.

State and federal law require any hospital planning to discharge an individual held pursuant to Welf. & Inst. Code § 5150 to develop an appropriate written aftercare plan which must contain at least the following elements:

- (1) Nature of the Illness and the 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). **Most importantly, the hospital's aftercare treatment referrals are not complete until the person or agency to which the individual is referred accepts responsibility for providing the necessary services.** Welf. & Inst. Code § 5008(d). It is not enough for the hospital to write out the name and telephone number of someone for the individual or their representative to call for an appointment. The discharging hospital is responsible for "making appointments on the person's behalf, discussing the person's problems with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary." Welf. & Inst. Code § 5008(d).<sup>1</sup> In Mr. XXXX's case, it is likely that he will end up homeless if XXXX is discharged without first being accepted by a board and care or another residential treatment facility.

Federal regulations setting out general hospital discharge planning obligations, such as Welf. & Inst. Code § 5008(d), also require 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.<sup>2</sup>

Psychiatric hospitals are subject to the general discharge planning obligations plus additional duties that apply only 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

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<sup>1</sup>Welf. & 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 cannot otherwise be accepted and completed, referral duties must include assistance such as making appointments, etc.

<sup>2</sup>The 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, the hospital is required to comply with the regulatory conditions of participation for all admissions.

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.

Please forward me a copy of Mr. XXXX's discharge and aftercare plan via facsimile at (XXX) XXX-XXXX as soon as it is available. Thank you for your cooperation. Please do not hesitate to contact me if you have any questions.

Sincerely,

XXXX XXXXX  
Staff Attorney