

**OFFICE OF PATIENTS' RIGHTS
Protection & Advocacy, Inc.**

INFORMATIONAL HANDOUT ON ADVOCACY ROLE

WHAT IS PATIENTS' RIGHTS ADVOCACY?

Advocacy is the process of promoting and representing patients' rights and interests through direct assistance, monitoring, training, and policy review. California has a legislatively mandated Patients' Rights Advocacy system made up of three components:

- (1) Office of Patients' Rights,
- (2) State Hospital Patients' Rights Advocate's,
- (3) *County Patients Rights Advocates.*

BEST INTEREST VS. EXPRESSED INTEREST

Advocates represent the patients' interests as defined by the patient (expressed interest), as long as those interests are within the bounds of the law and achievable within the advocates' resources. Advocates do not determine what is most "appropriate" for a patient or what is in the patient's "best interests." Rather, the Advocate will counsel patients about their options and the implications of those options and assist patients to make an informed choice. The Patients' Rights Advocate will then advocate for the "expressed interest" of the patient. This perspective is different from the traditional clinical "best interest" approach frequently used by treatment staff.

INDIVIDUAL ADVOCACY

Historically, Patients' Rights Advocates primary responsibility has been the investigation and resolution of individual problems. This can involve an explanation of legal rights and remedies, assistance in negotiating a solution to a problem, or representation of a client in a hearing or other dispute resolution processes. Additionally, advocates may be involved in representing clients in mental health administrative hearings. Advocates have also been involved in assisting clients with issues related to their hospitalization in the community mental health system.

SYSTEM ADVOCACY

Advocates provide continuous consultation and assistance to mental health facilities by:

- Regularly monitoring mental health facilities for compliance with patients' rights law,
- Reviewing and commenting on policies and practices which affect recipients of mental health service,
- Providing recommendations and developing operational questions for the Office of Patients' Rights and policy questions for the Department of Mental Health,
- Coordinating with other Advocates for systems reform,
- Analyzing state and federal legislation and regulatory developments,
- Educating and performing outreach to recipients of mental health services to increase clients' ability to advocate for themselves,
- Representing clients' interests in public forums,
- Interfacing with other advocacy, consumers, family groups, as well as with federal/state/county administrative or community organizations.

COUNTY PATIENTS' RIGHTS ADVOCATES

Each County Mental Health Director shall appoint, or contract for the services of a Patients' Rights Advocate. The duties shall include, but not limited to the following:

- To receive and investigate complaints from or concerning recipient of mental health services residing in licensed health or community care facilities regarding abuse, unreasonable denial or punitive withholding of rights.
- To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions.
- To provide training and education about mental health law and patients rights to mental health providers.
- To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.
- To exchange information and cooperate with the Office of Patients' Rights.

OFFICE OF PATIENTS' RIGHTS

The State Department of Mental Health has a legal obligation to ensure that mental health laws, regulations and policies on the rights of recipients of mental health services are observed and protected in state hospitals and in licensed health and community care facilities. The State Department of Mental Health has contracted with Protection & Advocacy, Inc. to provide for the Office of Patients' Rights. The Office of Patients' Rights is designated to meet the legal requirements of Welfare & Institutions code; Article 2-Patients' Rights Office § 5510 et al.

The Office of Patients' Rights provides technical assistance and training, program reviews, and Informational Letters in order to ensure that County Patients' Rights Advocate's are provided with the following information in order to build skills and knowledge base:

- Knowledge of the service system, financial entitlements, and service rights of persons receiving mental health services. This knowledge shall include, but need not be limited to, knowledge of available treatment and service resources in order to ensure timely access to treatment and services.
- Knowledge of patients' rights in institutional and community facilities.
- Knowledge of civil commitment statutes and procedures.
- Knowledge of state and federal laws and regulations affecting recipients of mental health services.
- Ability to work effectively and respectfully with service recipients and providers, public administrators, community groups, and the judicial system.
- Skill in interviewing and counseling service recipients, including giving information and appropriate referrals.
- Ability to investigate and assess complaints and screen for legal problems.
- Knowledge of administrative and judicial due process proceedings in order to provide representation at administrative hearings and to assist in judicial hearings when necessary to carry out the intent of Section 5522 regarding cooperation between advocates and legal representatives.
- Knowledge of, and commitment to, advocacy ethics and principles.

CALIFORNIA WELFARE AND INSTITUTIONS CODE §5550:

5550. (a) Any person participating in filing a complaint or providing information pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall be presumed to be acting in good faith and unless the presumption is rebutted shall be immune from any liability, civil or criminal, and shall be immune from any penalty, sanction, or restriction that otherwise might be incurred or imposed. (b) No person shall knowingly obstruct any county patients' rights advocate in the performance of duties as described in this chapter, including, but not limited to, access to clients or potential clients, or to their records, whether financial, medical, or otherwise, or to other information, materials, or records, or otherwise violate the provisions of this chapter. (c) No facility to which the provisions of Section 5325 are applicable shall discriminate or retaliate in any manner against a patient or employee on the basis that such patient or employee has initiated or participated in any proceeding specified in this chapter. Any attempt by a facility to expel a patient, or any discriminatory treatment of a patient, who, or upon whose behalf, a complaint has been submitted to a county patients' rights advocate within 120 days of the filing of the complaint shall raise a rebuttable presumption that such action was taken by the facility in retaliation for the filing of the complaint. (d) No county patients' rights advocate shall knowingly violate any provision of this chapter concerning client privacy and the confidentiality of personally identifiable information. (e) Any person or facility found in violation of subdivision (b) or (d) shall pay a civil penalty, as determined by a court, of not less than one hundred dollars (\$100), or more than one thousand dollars (\$1,000) which shall be deposited in the county general funds.

The listed rights on the next page (Welfare and Institutions Code §5325.1) may not be denied. A denial of rights process, procedure or form may not be used to remove the ability to exercise these rights from a patient. For safety and security, there may be some temporary modifications at times, but a permanent removal shall not be done by policy.

IT IS THE INTENT OF THE LEGISLATURE THAT PERSONS WITH PSYCHIATRIC DISABILITIES SHALL HAVE RIGHTS INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING (W&I CODE, SEC. 5325.1):

- The right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.
- The right to dignity, privacy, and humane care.
- The right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication may not be used as punishment, for the convenience of staff, or as a substitute for, or in quantities that interfere with, the treatment program.

Emergency – A situation in which action is immediately necessary to prevent immediate injury to the patient or others.

Seclusion – Involuntary isolation (includes “time-outs” if prevented from leaving a specified area).

Restraint – Physical devices or techniques for restricting movement.

Medication – A situation in which action to impose treatment immediately necessary for the preservation of life or the prevention of serious bodily harm and it is impractical to first gain consent.

- The right to prompt medical care and treatment.
- The right to religious freedom and practice.
- The right to participate in appropriate programs of publicly supported education.
- The right to social interaction.
- The right to physical exercise and recreational opportunities.
- The right to be free from hazardous procedures.
- The right to see and receive the services of an attorney and a Patients’ Rights Advocate.

PSYCHIATRIC FACILITIES MUST ALSO UPHOLD THE FOLLOWING SPECIFIC LEGAL RIGHTS OF PATIENTS. THESE RIGHTS CAN ONLY BE DENIED WHEN “GOOD CAUSE” EXISTS (W&IC §5325: TITLE 9 C.C.R. SEC. 865.2):

1. The right to wear one’s own clothing.
2. The right to keep and use one’s own personal possessions, including toilet articles, in a place accessible to the patient.
3. The right to keep and spend a reasonable sum of one’s own money for canteen expenses and small purchases. The right to have access to individual storage space for one’s own use.
4. The right to see visitors each day.
5. The right to have reasonable access to a telephone, to make and receive confidential calls or to have calls made for them.
6. To mail and receive unopened correspondence.
7. The right to have ready access to letter-writing materials, including stamps.

These rights can only be denied for “Good Cause” and a formal Denial of Rights must be filed in order to deny these rights to any patient. “Good Cause” exists only when the exercise of the right would cause:

1. INJURY TO THE PATIENT
2. A SERIOUS INFRINGEMENT ON THE RIGHTS OF OTHERS
3. SERIOUS DAMAGE TO THE FACILITY

AND THERE IS NO LESS RESTRICTIVE WAY OF PROTECTING THE INTEREST SPECIFIED ABOVE.

Rights must be restored once “Good Cause” no longer exists. **These rights cannot be denied as a condition of admission to the facility, as a privilege to be earned, as a punishment, as part of a treatment plan, or for the convenience of staff.** In addition, one retains these rights even when in either seclusion or some form of restraint. However, if one is in seclusion and/or restraint, a specific request must be made in order to exercise these rights (individually). Once a request is made, staff will make the determination whether it is appropriate to honor the request. If staff find that there is “Good Cause” to deny the request, then they will file a Denial of Rights which explains the grounds for their decision and the plan to assist the patient in the restoration of the right denied. If a DOR is

being filed, the patient should be informed that such action is being taken and will be requested to sign the DOR form and should receive a copy of it for their records. Guardians, conservators, relatives, attorneys, public defender, etc cannot have a patient's rights denied or restricted.

ALL PATIENTS HAVE THE FOLLOWING TREATMENT RIGHTS:

To be fully informed about any medical and psychiatric treatment that they are to receive, including the right to refuse such medication or treatment, as allowable by law.

Patients have a right to:

1. An explanation of their diagnosis.
2. Information about their treatment
3. To give or refuse consent for treatment. (The right to refuse may only be removed by order of the court.)

The limits on these rights are:

1. Emergency – (documented)
A sudden, marked change with action necessary for preservation of life or prevention of serious bodily harm to the patient or others and it is impractical to first gain consent
2. Judicial Determination
 - Reize or “capacity” Hearing
 - Keyhea

Physical Health Care:

Probate Code § 4650 – “The Legislature finds the following: In recognition of the dignity and privacy a person has a right to expect, the law recognized that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or with drawn”.

Probate Code § 4657 – “A patient is presumed to have the capacity to make a health care decision, to give or revoke an advance health care directive, and to

designate or disqualify a surrogate. This presumption is a presumption of affecting the burden of proof”.

Medical emergency exception

In case of a medical emergency, medical treatment may be provided without the patient’s consent as long as no evidence exists (i.e. Advance Directives) to indicate that the patient would refuse the treatment. **Only the emergency condition may be treated.**

Immediate services must be provided for the alleviation of severe pain,

-Or-

Immediate diagnosis and treatment of unforeseeable medical conditions must be provided, if such conditions would lead to serious disability or death if not immediately diagnosed and treated.

Patients have the right to confidentiality of information and records obtained in the course of providing mental health services (WIC §5328).

The right to request to have one’s own medical record copied (California Health & Safety Code §123130).

A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request.

H&S code § 123115 **does allow** for a provider to deny access to the patient of the psychiatric records when it is determined there is a “substantial risk of significant adverse or detrimental consequences **to the patient** in seeing or receiving a copy” of the records. Access shall not be routinely denied because of a generalized concern over possible adverse consequences.

The right to have family/friends notified about one’s condition with their permission.

The right to an aftercare/discharge plan.

Notification of Rights - CCR – Title 9 § 862:

Patients must be notified of their Rights. Each time notification is given it must be documented on a Legal Advisement of Rights form. A copy of this will be placed into the patients' chart with a copy to the patient. Notification will occur within 24 hours of admission.

CCR – Title 22 § 73523:

Patients are to be fully informed at the time of admissions and during their stay, of these rights (Patients' Rights) and of all rules and regulations governing patient conduct. Below are times often used for these notifications:

- Within 24 hours of admissions
- Upon transfer to a new unit
- Upon change of Legal status
- And at least annually (once a year)