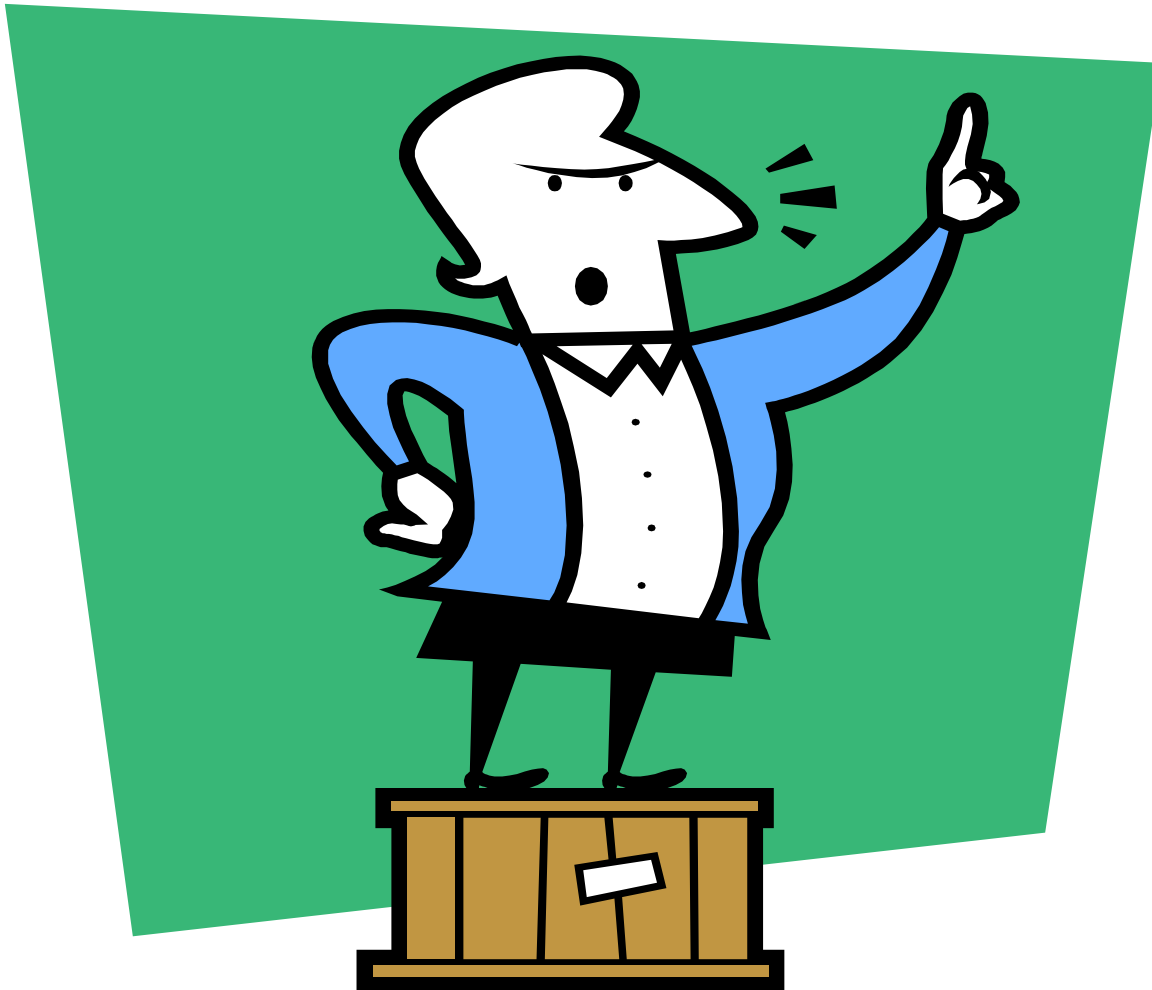


Legal Aspects of Admission WIC § 5150 Certification Workshop



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INVOLUNTARY ADMISSION

LPS Act - Legislative Intent WELFARE AND INSTITUTIONS CODE SECTION 5000-5001

5000. This part shall be known and may be cited as the Lanterman-Petris-Short Act.

5001. The provisions of this part shall be construed to promote the legislative intent as follows: (a) To end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to eliminate legal disabilities;

(b) To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism;

(c) To guarantee and protect public safety;

(d) To safeguard individual rights through judicial review;

(e) To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons;

(f) To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures; (g) To protect mentally disordered persons and developmentally disabled persons from criminal acts.

Persons Receiving Evaluation or Treatment Shall be Given a Choice of Providers

WELFARE AND INSTITUTIONS CODE SECTION 5009

5009. Persons receiving evaluation or treatment under this part shall be given a choice of physician or other professional person providing such services, in accordance with the policies of each agency providing services, and within the limits of available staff in the agency.

Designation of LPS Facilities

WELFARE AND INSTITUTIONS CODE SECTION 7100

Authorized By the County Board of Supervisors

7100. The board of supervisors of each county may maintain in the county hospital or in any other hospital situated within or without the county or in any other psychiatric health facility situated within or without the county, suitable facilities and non-hospital or hospital service for the detention, supervision, care, and treatment of persons who are mentally disordered, developmentally disabled, or who are alleged to be such.

The county may contract with public or private hospitals for such facilities and hospital service when they are not suitably available in any institution, psychiatric facility, or establishment maintained or operated by the county.

The facilities and services for the mentally disordered and allegedly mentally disordered shall be subject to the approval of the

State Department of Mental Health, and the facilities and services for the developmentally disabled and allegedly developmentally disabled shall be subject to the approval of the State Department of Developmental Services. The professional person having charge and control of any such hospital or psychiatric health facility shall allow the department whose approval is required to make such investigations thereof as it deems necessary at any time.

Nothing in this chapter means that mentally disordered or developmentally disabled persons may not be detained, supervised, cared for, or treated, subject to the right of inquiry or investigation by the department, in their own homes, or the homes of their relatives or friends, or in a licensed establishment.

WELFARE AND INSTITUTIONS CODE SECTION 5150-5156

5150. When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

The WIC § 5150 Application Shall Contain

Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, such person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

5150.05. (a) When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.

(b) For purposes of this section, "information about the historical course of the person's mental disorder" includes evidence presented by the person who has provided or is providing mental health or related support services to the person subject to a

determination described in subdivision (a), evidence presented by one or more members of the family of that person, and evidence presented by the person subject to a determination described in subdivision (a) or anyone designated by that person.



(c) If the probable cause in subdivision (a) is based on the statement of a person other than the one authorized to take the person into custody pursuant to Section 5150, a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving any statement that he or she knows to be false.

(d) This section shall not be applied to limit the application of Section 5328.

Peace Officers' Authority to Transport Directly to LPS Facility

5150.1. No peace officer seeking to transport, or having transported, a person to a designated facility for assessment under Section 5150, shall be instructed by mental health personnel to take the person to, or

keep the person at, a jail solely because of the unavailability of an acute bed, nor shall the peace officer be forbidden to transport the person directly to the designated facility. No mental health employee from any county, state, city, or any private agency providing Short-Doyle psychiatric emergency services shall interfere with a peace officer performing duties under Section 5150 by preventing the peace officer from entering a designated facility with the person to be assessed, nor shall any employee of such an agency require the peace officer to remove the person without assessment as a condition of allowing the peace officer to depart.

"Peace officer" for the purposes of this section also means a jailer seeking to transport or transporting a person in custody to a designated facility for assessment consistent with Section 4011.6 or 4011.8 of the Penal Code and Section 5150.

Detained Minor

5585.50. When any minor, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled and authorization for voluntary treatment is not available, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the minor into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for seventy-two hour

treatment and evaluation of minors. The facility shall make every effort to notify the minor's parent or legal guardian as soon as possible after the minor is detained. The facility shall require an application in writing stating the circumstances under which the minor's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the minor is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled and authorization for voluntary treatment is not available. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, the person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

Peace Officer Cannot Be Detained After Delivering Facts and Transfer Of Physical Custody

5150.2. In each county whenever a peace officer has transported a person to a designated facility for assessment under Section 5150, that officer shall be detained no longer than the time necessary to complete documentation of the factual basis of the detention under Section 5150 and a safe and orderly transfer of physical custody of the person. The documentation shall include detailed information regarding the factual circumstances and observations constituting probable cause for the peace officer to believe that the individual required psychiatric evaluation under the standards of Section 5105.

Each county shall establish disposition procedures and guidelines with local law enforcement agencies as necessary to relate to persons not admitted for evaluation and treatment and who decline alternative mental health services and to relate to the safe and orderly transfer of physical custody of persons under Section 5150, including those who have a criminal detention pending.

When Client is Not Admitted

5150.3. Whenever any person presented for evaluation at a facility designated under Section 5150 is found to be in need of mental health services, but is not admitted to the facility, all available alternative services provided for pursuant to Section 5151 shall be offered as determined by the county mental health director.

5150.4. "Assessment" for the purposes of this article, means the determination of whether a person shall be evaluated and treated pursuant to Section 5150.

Professional Person in Charge of LPS Facility or Designee Must Do Pre-Admission Assessment



5151. If the facility for 72-hour treatment and evaluation admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours. Saturdays, Sundays, and holidays may be excluded from the 72-hour period if the Department of Mental Health certifies for each facility that evaluation and treatment services cannot reasonably be made available on those days. The certification by the department is subject to renewal every two years. The department shall adopt regulations defining criteria for determining whether a facility can reasonably be expected to make evaluation and treatment services available on Saturdays, Sundays, and holidays.

Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.

If in the judgment of the professional person in charge of the facility providing evaluation and treatment, or his or her designee, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis.

Nothing in this section shall be interpreted to prevent a peace officer from delivering individuals to a designated facility for assessment under Section 5150. Furthermore, the preadmission assessment requirement of this section shall not be interpreted to require peace officers to perform

any additional duties other than those specified in Sections 5150.1 and 5150.2.

Notifications

5152.1. The professional person in charge of the facility providing 72-hour evaluation and treatment, or his or her designee, shall notify the county mental health director or the director's designee and the peace officer who makes the written application pursuant to Section 5150 or a person who is designated by the law enforcement agency that employs the peace officer, when the person has been released after 72-hour detention, when the person is not detained, or when the person is released before the full period of allowable 72-hour detention if all of the following conditions apply:

(a) The peace officer requests such notification at the time he or she makes the application and the peace officer certifies at that time in writing that the person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint.

(b) The notice is limited to the person's name, address, date of admission for 72-hour evaluation and treatment, and date of release.

Safeguarding of Personal Valuables



5156. At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211; except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him into custody for such property shall terminate.

As used in this section, "responsible relative" includes the spouse, parent, adult child, or adult brother or sister of the person, except that it does not include the person who applied for the petition under this article.

VOLUNTARY ADMISSION

WELFARE AND INSTITUTIONS CODE SECTION 6000 & 6004

6000. Pursuant to applicable rules and regulations established by the State Department of Mental Health or the State Department of Developmental Services, the medical director of a state hospital

for the mentally disordered or developmentally disabled may receive in such hospital, as a boarder and patient, any person who is a suitable person for care and treatment in such hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements:

(a) In the case of an adult person, the application shall be made voluntarily by the person, at a time when he is in such condition of mind as to render him competent to make it or, if he is a conservatee with a conservator of the person or person and estate who was appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 with the right as specified by court order under Section 5358 to place his conservatee in a state hospital, by his conservator.

(b) In the case of a minor person, the application shall be made by his parents, or by the parent, guardian, conservator, or other person entitled to his custody to any of such mental hospitals as may be designated by the Director of Mental Health or the Director of Developmental Services to admit minors on voluntary applications. If the minor has a conservator of the person, or the person and the estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5358 to place the conservatee in a state hospital the application for the minor shall be made by his conservator.

6004. The superintendent or person in charge of the county psychiatric

hospital may receive, care for, or treat in the hospital any person who voluntarily makes a written application to the superintendent or person in charge thereof for admission into the hospital for care, treatment, or observation, and who is a suitable person for care, treatment, or observation, and who in the case of an adult person is in such condition of mind, at the time of making application for admission, as to render him competent to make such application. In the case of a minor person, the application shall be made by his parents, or by the parent, guardian, or other person entitled to his custody. A conservatee, with a conservator of the person, or person and estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5358 to place his conservatee, may be admitted upon written application by his conservator.

Capacity to Give Informed Consent

PROBATE CODE SECTION 810-811 and 813

810. The Legislature finds and declares the following:

(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.

(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(c) A judicial determination that a person is totally without



understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

Judicial Determination of Mental Capacity

811. (a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, **to make medical decisions**, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the

following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to

do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

Judicial Determination of Informed Consent

813. (a) For purposes of a judicial determination, a person has the capacity to give **informed consent to a proposed medical treatment** if the person is able to do all of the following:

(1) Respond knowingly and intelligently to queries about that medical treatment.

(2) Participate in that treatment decision by means of a rational thought process.

(3) Understand all of the following items of minimum basic medical treatment information with respect to that treatment:

(A) The nature and seriousness of the illness, disorder, or defect that the person has.

(B) The nature of the medical treatment that is being recommended by the person's health care providers.

(C) The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the consequences of lack of treatment.

(D) The nature, risks, and benefits of any reasonable alternatives.

(E) A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment.

Minors' Admissions Custody Issues

FAMILY CODE SECTION 3083, 3084, 3002-3007 & 3025

3083. In making an order of joint legal Custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

3084. In making an order of joint physical custody, the court shall specify the rights of each parent to physical control of the child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching and kidnapping.

3002. "Joint custody" means joint physical custody and joint legal custody.

3003. "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

3004. "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents, subject to Sections 3011 and 3020.

3006. "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

3007. "Sole physical custody" means that a child shall reside with



and be under the supervision of one parent, subject to the power of the court to order visitation. .

Non-Custodial Parent Access to Medical Records

3025. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

Emancipated Minor

WELFARE AND INTITUTIONS CODE SECTION 5585.59

5585.59. For the purposes of this part, legally emancipated minors requiring involuntary treatment shall be considered adults and this part shall not apply.

FAMILY CODE SECTION 7050-7052 7050.

An emancipated minor shall be considered as being an adult for the

following purposes:

The minor's right to support by the minor's parents.

The right of the minor's parents to the minor's earnings and to control the minor.

The application of Sections 300 and 601 of the Welfare and Institutions Code.

Ending all vicarious or imputed liability of the minor's parents or guardian for the minor's torts.

Nothing in this section affects any liability of a parent, guardian, spouse, or employer imposed by the Vehicle Code, or any vicarious liability that arises from an agency relationship.

Emancipated Minor May Consent to Psychiatric Care

The minor's capacity to do any of the following:

Consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability.

Enter into a binding contract or give a delegation of power. (3) Buy, sell, lease, encumber, exchange, or transfer an interest in real or personal property, including, but not limited to, shares of stock in a domestic or foreign corporation or a membership in a nonprofit corporation. (4) Sue or be sued in the minor's own name. (5)

Compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. (6) Make or revoke a will. (7) Make a gift, outright or in trust. (8) Convey or release contingent or expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, and consent to a transfer, encumbrance, or gift of marital property.

(9) Exercise or release the minor's powers as donee of a power of appointment unless the creating instrument otherwise provides. (10) Create for the minor's own benefit or for the benefit of others a revocable or irrevocable trust. (11) Revoke a revocable trust. (12) Elect to take under or against a will. (13) Renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including exercise of the right to surrender the right to revoke a revocable trust. (14) Make an election referred to in Section 13502 of, or an election and agreement referred to in Section 13503 of, the Probate Code. (15) Establish the minor's own residence. (16) Apply for a work permit pursuant to Section 49110 of the Education Code without the request of the minor's parents. (17) Enroll in a school or college. 7051. An insurance contract entered into by an emancipated minor has the same effect as if it were entered into by an adult and, with respect to that contract, the minor has the same rights, duties, and liabilities as an adult.

Court Dependents

WELFARE AND INSTITUTIONS CODE SECTION 6550-6552

6550. If the juvenile court, after finding that the minor is a person described by Section 300, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and proceed pursuant to this article.

6551. If the court is in doubt as to whether the person is mentally disordered or mentally retarded, the



court shall order the person to be taken to a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

Involuntary Detention Accomplished Through the LPS Act

Thereupon, Article 1 (commencing with Section 5150) of Chapter 2 of Part 1 of Division 5 applies, except that the professional person in charge of the facility shall make a written report to the court concerning the results of the evaluation of the person's mental condition. If the professional person in charge of the facility finds the person is, as a result of mental disorder, in need of intensive treatment, the person may be certified for not more than 14 days of involuntary intensive treatment if the conditions set forth in subdivision (c) of Section 5250 and subdivision (b) of Section 5260 are complied with. Thereupon, Article 4 (commencing with Section 5250) of Chapter 2 of Part 1 of Division 5 shall apply to the person. The person may be detained pursuant to Article 4.5 (commencing with Section 5260), or Article 4.7 (commencing with Section 5270.10), or Article 6 (commencing with Section 5300) of Part 1 of Division 5 if that article



applies.

If the professional person in charge of the facility finds that the person is mentally retarded, the juvenile court may direct the filing in any other court of a petition for the commitment of a minor as a mentally retarded person to the State Department of Developmental Services for placement in a state hospital. In such case, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the professional person in charge of the facility in which the minor was placed for observation.

The court in which the petition for commitment is filed may accept the report of the professional person in lieu of the appointment, or subpoenaing, and testimony of other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by the court of medical or other expert witnesses or may consider the report as evidence in addition to the testimony of medical or other expert witnesses.

If the professional person in charge of the facility for 72-hour evaluation and treatment reports to the juvenile court that the minor is not affected with any mental disorder requiring intensive treatment or mental retardation, the professional person in charge of the

facility shall return the minor to the juvenile court on or before the expiration of the 72-hour period and the court shall proceed with the case in accordance with Juvenile Court Law.

Any expenditure for the evaluation or intensive treatment of a minor under this section shall be considered an expenditure made under Part 2 (commencing with Section 5600) of Division 5 and shall be reimbursed by the state as are other local expenditures pursuant to that part.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for post-certification treatment of an imminently dangerous person or the petition for commitment of a mentally retarded person is filed or under remand for 90 days for intensive treatment or commitment ordered by such court.

A Minor Dependent of the Court Can Make an Application for Voluntary Admission

6552. A minor who has been declared to be within the jurisdiction of the juvenile court may, with the advice of counsel, make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003. Notwithstanding the provisions of subdivision (b) of Section 6000, Section 6002, or Section 6004, the juvenile court may authorize the minor to make such application if it is satisfied from the evidence before it that the minor suffers from a mental disorder which may reasonably be expected to be cured or ameliorated by a course of

treatment offered by the hospital, facility or program in which the minor wishes to be placed; and that there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interest. The superintendent or person in charge of any state, county, or other hospital facility or program may then receive the minor as a voluntary patient. Applications and placements under this section shall be subject to the provisions and requirements of the Short-Doyle Act (Part 2 commencing with Section 5600), Division 5), which are generally applicable to voluntary admissions.

If the minor is accepted as a voluntary patient, the juvenile court may issue an order to the minor and to the person in charge of the hospital, facility or program in which the minor is to be placed that should the minor leave or demand to leave the care or custody thereof prior to the time he is discharged by the superintendent or person in charge, he shall be returned forthwith to the juvenile court for a further dispositional hearing pursuant to the juvenile court law. The provisions of this section shall continue to apply to the minor until the termination or expiration of the jurisdiction of the juvenile court.

CONSERVATORSHIPS

LPS Conservatorship - Placement in Mental Health Facility

WELFARE AND INSTITUTIONS CODE SECTION 5358

5358(c) (1)(d) (1) Except for a conservatee who is gravely disabled, as defined in

subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, the conservator may transfer his or her conservatee to a less restrictive alternative placement without a further hearing and court approval. In any case in which a conservator has reasonable cause to believe that his or her conservatee is in need of immediate more restrictive placement because the condition of the conservatee has so changed that the conservatee poses an immediate and substantial danger to himself or herself or others, the conservator shall have the right to place his or her conservatee in a more restrictive facility or hospital. Notwithstanding Section 5328, if the change of placement is to a placement more restrictive than the court-determined placement, the conservator shall provide written notice of the change of placement and the reason therefor to the court, the conservatee's attorney, the county patient's rights advocate and any other persons designated by the court pursuant to subdivision (c).

Probate Conservatorship - Does Not Authorize Involuntary Commitment to Mental Health Treatment Facility

PROBATE CODE SECTION 2356

2356. (a) No ward or conservatee may be placed in a mental health treatment facility under this division against the will of the ward or conservatee. Involuntary civil placement of a ward or conservatee in a mental health treatment facility may be obtained only pursuant to Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with

Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

DURABLE POWER OF ATTORNEY FOR HEALTHCARE/ ADVANCED DIRECTIVES

Does Not Authorize Commitment to or Placement in Mental Health Facilities

PROBATE CODE SECTION 4652

4652. This division does not authorize consent to any of the following on behalf of a patient:
- (a) Commitment to or placement in a mental health treatment facility.
 - (b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).
 - (c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code).
 - (d) Sterilization.
 - (e) Abortion.

Out of State Durable Power of Attorney is Valid and Enforceable Within the Limits of a California Durable Power of Attorney

PROBATE CODE SECTION 4053

4053. A durable power of attorney executed in another state or jurisdiction in compliance with the law of that state or jurisdiction or the law of this state is valid and enforceable in this state to the same extent

as a durable power of attorney executed in this state, regardless of whether the principal is a domiciliary of this state.

DETAINMENT FOR MEDICAL REASONS

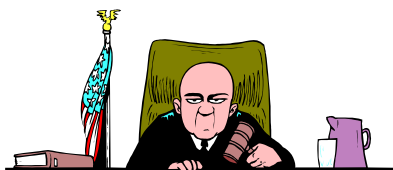
Emergency Room Detainment

HEALTH AND SAFETY CODE SECTION 1799.111

(a) A licensed general acute care hospital, as defined by subdivision (a) of Section 1250, licensed professional staff of the hospital, or any physician and surgeon, providing emergency medical services to a person at the hospital shall not be civilly or criminally liable for detaining a person, or for the actions of the person after release from the hospital, if all of the following conditions exist:

May Detain a Person if All of the Following Conditions Exist

- (1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means an inability to provide for his or her basic personal needs of food, clothing, or shelter.
- (2) The hospital staff, treating physician and surgeon, or appropriate licensed mental health



professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.

The Person is Not Detained Beyond Eight Hours

(3) The person is not detained beyond eight hours.

(b) Nothing in this section shall affect the responsibility of a general acute care hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.

(c) A person detained under this section shall be credited for the time detained, up to eight hours, in the event he or she is placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

Court-Ordered Medical Treatment

PROBATE CODE SECTION 3201-3212

3201. (a) A petition may be filed to determine that a patient has the capacity to make a health care decision concerning an existing or continuing condition.

A Petition May Be Filed to Determine That a Patient Lacks Capacity

(b) A petition may be filed to determine that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a

designated person to make a health care decision on behalf of the patient.

(c) One proceeding may be brought under this part under both



subdivisions (a) and (b).

3202. The petition may be filed in the superior court of any of the following counties:

- (a) The county in which the patient resides.
- (b) The county in which the patient is temporarily living.
- (c) Such other county as may be in the best interests of the patient.

3203. A petition may be filed by any of the following:

- (a) The patient.
- (b) The patient's spouse.
- (c) A relative or friend of the patient, or other interested person, including the patient's agent under a power of attorney for health care.
- (d) The patient's physician.
- (e) A person acting on behalf of the health care institution in which the patient is located if the patient is in a health care institution.
- (f) The public guardian or other county officer designated by the board of supervisors of the county in which the patient is located or resides or is temporarily living.

3204. The petition shall state, or set forth by a medical declaration attached to the petition, all of the following known to the petitioner at the time the petition is filed:

The Petition Shall State, or Set Forth By a Medical Declaration, the Following

- (a) The condition of the patient's health that requires treatment.
- (b) The recommended health care that is considered to be medically appropriate.
- (c) The threat to the patient's condition if authorization for the recommended health care is delayed or denied by the court.
- (d) The predictable or probable outcome of the recommended health care.
- (e) The medically available alternatives, if any, to the recommended health care.
- (f) The efforts made to obtain consent from the patient.
- (g) If the petition is filed by a person on behalf of a health care institution, the name of the person to be designated to give consent to the recommended health care on behalf of the patient.
- (h) The deficit or deficits in the patient's mental functions listed in subdivision (a) of Section 811 that are impaired, and an identification of a link between the deficit or deficits and the patient's inability to respond knowingly and intelligently to queries about the recommended health care or inability to participate in a decision about the recommended health care by means of a rational thought process.
- (i) The names and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (b) of Section 1821.

3205. Upon the filing of the petition, the court shall determine the name of the attorney the patient has retained to represent the patient in the proceeding under this part or the name of the attorney the patient plans to retain for that purpose. If the patient has not retained an attorney and does not plan to retain one, the court shall appoint the public defender or private counsel under Section 1471 to consult with and represent the patient at the hearing on the petition and, if such appointment is made, Section 1472 applies.

3206. (a) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be personally served on the patient, the patient's attorney, and the agent under the patient's power of attorney for health care, if any.

(b) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be mailed to the following persons:

(1) The patient's spouse, if any, at the address stated in the petition.

(2) The patient's relatives named in the petition at their addresses stated in the petition.

(c) For good cause, the court may shorten or waive notice of the hearing as provided by this section.

In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical declaration attached to the petition or in a medical declaration presented to the court.

(2) The desirability, where the condition of the patient permits,



of giving adequate notice to all interested persons.

3207. Notwithstanding Section 3206, the matter presented by the petition may be submitted for the determination of the court upon proper and sufficient medical declarations if the attorney for the petitioner and the attorney for the patient so stipulate and further stipulate that there remains no issue of fact to be determined.

The Court May Make a Recommendation Authorizing Health Care if the Evidence Supports the Appropriate Findings in Three Key Areas

3208. (a) Except as provided in subdivision (b), the court may make an order authorizing the recommended health care for the patient and designating a person to give consent to the recommended health care on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing condition of the patient's health requires the recommended health care.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the patient.

(3) The patient is unable to consent to the recommended health care.

(b) In determining whether the patient's mental functioning is so severely impaired that the patient lacks the capacity to make any health care decision, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(c) The court may make an order authorizing withholding or withdrawing artificial nutrition and hydration and all other forms of health care and designating a person to give or withhold consent to the recommended health care on behalf of the patient if the court determines from the evidence all of the following:

(1) The recommended health care is in accordance with the patient's best interest, taking into consideration the patient's personal values to the extent known to the petitioner.

(2) The patient is unable to consent to the recommended health care.

3208.5. In a proceeding under this part:

(a) Where the patient has the capacity to consent to the recommended health care, the court shall so find in its order.

(b) Where the court has determined that the patient has the capacity to consent to the recommended health care, the court shall, if requested, determine whether the patient has accepted or refused the recommended health care, and whether the patient's consent to the recommended health care is an informed consent.

(c) Where the court finds that the patient has the capacity to consent to the recommended health care, but that the patient refuses consent, the court shall not make an

order authorizing the recommended health care or designating a person to give consent to the recommended health care. If an order has been made authorizing the recommended health care and designating a person to give consent to the recommended health care, the order shall be revoked if the court determines that the patient has recovered the capacity to consent to the recommended health care. Until revoked or modified, the order is effective authorization for the recommended health care.

3209. The court in which the petition is filed has continuing jurisdiction to revoke or modify an order made under this part upon a petition filed, noticed, and heard in the same manner as an original petition filed under this part.

3210. (a) This part is supplemental and alternative to other procedures or methods for obtaining consent to health care or making health care decisions, and is permissive and cumulative for the relief to which it applies.

(b) Nothing in this part limits the providing of health care in an emergency case in which the health care is required because (1) the health care is required for the alleviation of severe pain or (2) the patient has a medical condition that, if not immediately diagnosed and treated, will lead to serious disability or death.

(c) Nothing in this part supersedes the right that any person may have under existing law to make health care decisions on behalf of a patient, or affects the decision making process of a health care institution.

No Person May Be Placed in a Mental Health Treatment Facility

3211. (a) No person may be placed

in a mental health treatment facility under the provisions of this part.

(b) No experimental drug as defined in Section 111515 of the Health and Safety Code may be prescribed for or administered to any person under this part.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on any person under this part.

(d) No person may be sterilized under this part.

(e) The provisions of this part are subject to a valid advance health care directive under the Health Care Decisions Law, Division 4.7 (commencing with Section 4600).

3212. Nothing in this part shall be construed to supersede or impair the right of any individual to choose treatment by spiritual means in lieu of medical treatment, nor shall any individual choosing treatment by spiritual means, in accordance with the tenets and practices of that individual's established religious tradition, be required to submit to medical testing of any kind pursuant to a determination of capacity.

TARASOFF - DUTY TO WARN

Welfare and Institutions Code Sections Governing Release of Confidential Information (5328.5 (r) governs information released for "Tarasoff")

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500),



Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

EVIDENCE CODE SECTION 1010

1010. As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be:

(a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a non-medical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board-certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board-certified psychiatrist as required

by Section 4996.20 or 4996.21 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board-certified psychiatrist. (j) A trainee, as defined in subdivision (c) of Section 4980.03 of

the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical

social worker, or a licensed marriage and family therapist.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

(l) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

FIREARMS PROHIBITION



WELFARE AND INSTITUTIONS CODE SECTION 8100-8108

LPS Conservatee Shall Not Have Possession or Control of a Firearm

8103(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

Persons Admitted on 5150 for DTO/DTS or Certified as Gravely Shall Not Have Possession or Control of a Firearm

8103 (f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a

designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner. (2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Six-Month Prohibition for Communicating Threat of Violence While on a Voluntary or Outpatient Status

(b) (1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of six months whenever, on or after January 1, 1992, he or she communicates to a licensed psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence Code, a serious threat of physical violence against a reasonably identifiable victim or

victims. The six-month period shall commence from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The prohibition provided for in this subdivision shall not apply unless the licensed psychotherapist notifies a local law enforcement agency of the threat by that person.

Petition Court to Reverse

The person, however, may own, possess, have custody or control over, or receive or purchase any firearm if a superior court, pursuant to paragraph (3) and upon petition of the person, has found, by a preponderance of the evidence, that the person is likely to use firearms or other deadly weapons in a safe and lawful manner.

PATIENTS' RIGHTS IN MENTAL HEALTH FACILITIES

WELFARE AND INSTITUTIONS CODE SECTION 5325-5337

5325. Each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital pursuant to Article 5 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 shall have the following rights, a list of which shall be prominently posted in the predominant languages of the

community and explained in a language or modality accessible to the patient in all facilities providing such services and otherwise brought to his or her attention by such additional means as the Director of Mental Health may designate by regulation:

List of Patients' Rights

- (a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.
- (b) To have access to individual storage space for his or her private use.
- (c) To see visitors each day.
- (d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
- (e) To have ready access to letter



writing materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental

condition which depends on the induction of a convulsion by any means, and insulin coma treatment.

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Mental Health shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Mental Health to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient shall immediately be given a copy of a State Department of Mental Health prepared patients' rights handbook.

The State Department of Mental Health shall prepare and provide the forms specified in this section and in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.5325.1. 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. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

Undeniable Rights

- (a) A 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.

(b) A right to dignity, privacy, and humane care.

(c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to participate in appropriate programs of publicly supported education.

(g) A right to social interaction and participation in community activities.

(h) A right to physical exercise and recreational opportunities.

(i) A right to be free from hazardous procedures.

Patients' Rights Violations

Welfare and Institutions Code Section 5326.9

5326.9. (a) Any alleged or suspected violation of the rights described in Chapter 2 (commencing with Section 5150) shall be investigated by the local director of mental health, or his or her designee. Violations of Sections 5326.2 to 5326.8, inclusive, shall also be investigated by the Director of Mental Health, or his or her designee. If it is determined by the local director of mental health or Director of Mental Health that a right has been violated, a formal notice of violation shall be issued.

(b) Either the local director of

mental health or the Director of Mental Health upon issuing a notice of violation may take any or all of the following action: (1) Assign a specified time period during which the violation shall be corrected. (2) Referral to the Medical Board of California or other professional licensing agency. Such board shall investigate further, if warranted, and shall subject the individual practitioner to any penalty the board finds necessary and is authorized to impose. (3) **Revoke a facility's designation and authorization under Section 5404 to evaluate and treat persons detained involuntarily.** (4) Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction.

(c) Any physician who intentionally violates Sections 5326.2 to 5326.8, inclusive, shall be subject to a civil

penalty of not more than five thousand dollars (\$5,000) for each violation. Such penalty may be assessed and collected in a civil action brought by the Attorney General in a superior court. Such intentional violation shall be grounds for revocation of license.

(d) Any person or facility found to have knowingly violated the provisions of the first paragraph of Section 5325.1 or to have denied without good cause any of the rights specified in Section 5325 shall pay a civil penalty, as determined by the court, of fifty dollars (\$50) per day during the time in which the violation is not corrected, commencing on the day on which a notice of violation was issued, not to exceed one thousand dollars (\$1,000), for each and every violation, except that any liability under this provision shall be offset by an amount equal to a fine or penalty imposed

for the same violation under the provisions of Sections 1423 to 1425, inclusive, or 1428 of the Health and Safety Code. These penalties shall be deposited in the general fund of the county in which the violation occurred. The local district attorney or the Attorney General shall enforce this section in any court with jurisdiction. Where the State Department of Health Services, under the provisions of Sections 1423 to 1425, inclusive, of the Health and Safety Code, determines that no violation has occurred, the provisions of paragraph (4) of subdivision (b) shall not apply.

(e) The remedies provided by this subdivision shall be in addition to and not in substitution for any other remedies which an individual may have under law. subdivision shall be in addition to and not in substitution for any other remedies which an individual may have under law.

Important Telephone Numbers

Patients' Rights 681-5228

Access Team Toll-Free 888-868-1649

(in Santa Barbara, 884-1650)

**Mental Health Assessment Team
(MHAT) 911**

Compliance Hotline 884-6855

