

## **Common Sense Investigation of the Most Common Complaints**

There is a wealth of excellent material instructing Patients' Rights Advocates on investigating complaints. It would take days to cover all of what you need to know to conduct investigations, in general. Much of this material can be obtained on the internet by visiting the State Office of Patients' Rights website at <http://www.pai-ca.org/about/OPR.htm> and accessing materials from State trainings of earlier years.

This guide was designed to be a basic step-by-step manual, in outline form, to walk you through investigating some of the most commonly received complaints by County Patients' Rights Advocates. It is my hope that you will be able to use it to streamline you through the basic steps of investigating specific types of complaints without having to wade through all of the information on investigations to find that which is relevant to the single issue at hand.

At different points in the process of your investigation, this guide directs you to ask yourself questions. The answers to those questions will determine which step you should proceed to next, and help you decide when you have gathered sufficient evidence to come to a conclusion and decide upon an action. Hopefully you will find this useful.

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## Complaint comes in. What do you do?

First and foremost, DO NOT JUMP TO ANY CONCLUSIONS! Get ready to gather more information. Maintain an open mind and an attitude of genuine curiosity in your fact-gathering process. This will help prevent you from alienating facility staff members and may assist in helping the facility to give you the access to information you need to get to the truth. The less authority you throw in their face, the more transparent they are likely to be with you.

### **Section I – Should You Investigate?**

1. **Is it something that falls in your jurisdiction as a PRA?** Ask yourself some questions. Is it a potential violation of a code or regulation? Denial of a deniable right under W&I Section 5325? Denial of an undeniable right, such as privacy? Violation of confidentiality under HIPAA or W&I Section 5328? A due process violation in the course of involuntarily detaining or treating the person? Physical abuse or neglect? Inappropriate seclusion and/or restraint? Administration of emergency medication absent an emergency as defined in Title 9, Section 853.
    - 1) **No**, but the person is upset over some experience.
      - a) No formal investigation possible but several actions are still possible.
        - i) Ask complainant if he/she wishes you to communicate with staff or provide some active advocacy.
        - ii) Engage in active listening, verbalize your understanding of what is shared, provide empathy, provide information on any options patient may have, and if appropriate, educate person regarding involuntary hold process and the right to a hearing.
        - iii) If the client is entitled to mental health services through the county and the issue is regarding the quality of services or failure to provide services, assist the person in filing a GRIEVANCE.
    - 2) **Yes**.
      - a) Violation of **Patients' Rights, Due Process, or Confidentiality**. Proceed to **Section II, Page 3** and begin gathering facts.
      - b) Possible **physical/psychological abuse** or **neglect**. Proceed to **Section III, Page 5**.
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## **Section II - Gathering Facts – Allegation of Patients’ Rights Violation**

What type of violation is the allegation? Determine which section of code or regulation is alleged to be violated and use that information to guide your fact-gathering. Get familiar with that section of the code. **See Section V** --- for a list of some common complaints and their associated codes and regulations.

### **a. Due Process Violation**

i. Relating to involuntary treatments, codes violated most commonly are W&I Sections 5150-5157, 5250-5258, 5260-5265, 5332-5336, 5350-5365.1 5275-5277. Proceed to **PROCESS A, this page.**

b. **Patients’ Rights**, codes violated most commonly are 5325- 5325.2, Title 9 Sections 850-865.5 – Proceed to **PROCESS B, page 4.**

c. **Confidentiality Violation**, W&I Section 5328 – Proceed to **PROCESS C, page 4.**

### **1) PROCESS A –Due Process Violation**

- a) Did you or other PRA *discover* the violation? How? Document how you discovered it.
- What documents (or lack of documents) did you encounter?
  - Did you overhear staff mentioning their error? What did you hear? Who said it? Did they try to hide the error?
  - Did the patient point out the error? Did he/she not know something about which staff should have advised patient?
  - Did someone at the facility report the error to you?
- b) *Review the chart.* Make copies of evidence that substantiates the complaint.
- Review Legal Section of the chart to examine 5150, advisements, 5250 Notice, any petitions to the court.
  - Review ambulance and transfer paperwork needed to determine sequence of detention including times of events. This is usually at the back of the chart.
  - Review Doctors’ Orders for legal status changes or submission of paperwork to the court.
  - Review Progress Notes to check for documentation of advisements given or service to the patient of documents related to involuntary treatment. Notification to the patient, advising patient of changes in legal status, legal rights, hearing procedures, etc.
  - Review the facilities Policies and Procedures regarding involuntary detention, legal status changes, medication consents, filing for court proceedings, etc.
- c) *Contact* court clerks for information regarding proper filing of paperwork (when relevant)
- d) *Interview* other facility personnel such as clerks, medical records staff, etc.
- e) Have all your evidence? Have you reached a *conclusion*?
- Evidence **substantiates** the allegation that a due process violation has occurred. Proceed to **page 7, Section IV, Process A(a).**
  - Not enough evidence** to argue that patient’s due process rights were violated. **Proceed to page 7, Section IV, Process A(b).**

## 2) PROCESS B – Patients’ Rights Violation

- a) *Interview* all persons with knowledge of the event and document details. Interview each person separately.
- i) The complainant
  - ii) The victim (if not the same as complainant)
  - iii) Witnesses (other patients, family members, staff members, janitorial staff, security personnel, other Patients’ Rights Advocates)
    - (1) When interviewing facility staff, be sure to emphasize that you are simply gathering facts and not making any assumptions or accusations.
- b) *Review the chart* for facts. Copy evidence that substantiates the allegation.
- i) Check Doctor’s Orders Section for an order by the doctor for a denial of right.
  - ii) Review Progress Notes for documentation to substantiate the complaint.
    - (1) Check for documentation of “Good Cause” for denial of a right.
    - (2) Check for less restrictive measures attempted to avoid outright denial of the right.
    - (3) Does the denial of the right appear punitive?
    - (4) Are there misunderstandings? Cultural issues?
  - iii) Review Nurses’ Notes for documentation of incidences related to complaint.
    - (1) Check for activity that substantiates the complaint.
    - (2) Check for activity that might constitute “Good Cause” for denial of a right.
  - iv) Look for inconsistencies. Does all documentation report the same facts? Do all staff members stories match?
  - v) Obtain from the facility their Policies and Procedures relevant to the issue you are investigating.
    - (1) Have they followed their own Policies and Procedures?
    - (2) Are their P&Ps in compliance with codes and regulations?
- c) Have all your evidence? Have you reached a *conclusion*?
- i) **Evidence substantiates** the allegation that a patients’ rights violation has occurred. Write a report on your activities and findings. **Proceed to page 8, Section IV, Process B(a).**
  - ii) **Not enough evidence** to prove that a violation of code or regulation occurred. Document your activities, evidence and reason for ultimate conclusion. **Proceed to page 8, Section IV, Process B(b).**
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## 3) PROCESS C – Violation of Confidentiality

- a) *Get details* of alleged violation from complainant. If patient is not complainant, get permission from patient to investigate.
- i) Who is reporting the violation?
  - ii) Who released the information?
  - iii) To whom was the information released?
  - iv) Is the allegation that the release of info was intentional?
  - v) What was the consequence of the release of information?

- (1) Effect to patient's employment.
  - (2) Effect to patient's housing.
  - (3) Criminal charges.
  - (4) Effect to patient's personal relationships.
- b) With consent of the patient, *interview* others who are knowledgeable of the facts.
- i) Facility Staff.
  - ii) The recipient of the released information.
  - iii) Witnesses or others who were aware of the release.
- c) *Review the chart*. Make copies of evidence that supports the allegation.
- i) Look for signed releases.
    - (1) Is it standard in the admission process to get signed releases from patients?
  - ii) Check documentation of doctors, social workers and nurses for:
    - (1) Verbal consent of permission to release info.
    - (2) Verbal requests that information not be shared with others.
    - (3) Evidence that information was released, such as phone calls or conversations with others.
- d) Have all your evidence? Have you reached a *conclusion*?
- i) Evidence **substantiates** the allegation that a confidentiality violation has occurred. Write a report on your activities and findings. **Proceed to page 8, Section IV, Process C(a).**
  - ii) **Not enough evidence** to conclude that a violation of confidentiality occurred. Document your activities, evidence and reason for ultimate conclusion. **Proceed to page 8, Section IV, Process C(b).**
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### **Section III – Physical/Psychological Abuse or Neglect Allegation**

Physical abuse or neglect can consist of a variety of complaints. Examples of issues falling under this category are:

Physical Assault \* Inappropriate Seclusion and Restraint \* Inappropriate Administration of Emergency Medication \* Failure to Evaluate and/or Treat Pain \* Failure to Provide Necessary Medical Treatment \* Failure to Protect a Patient from Abuse by Others \* Sexual Harassment/Assault \* Failure to Address Physical Discomforts \* Failure to Provide a CPAP to a Patient with Sleep Apnea \* Letting Patients Get Too Hot or Cold \* Dietary Neglect, Including Cold Food \* Failure to Protect Patient from Self Harm

Investigations of Physical Abuse have many similarities to criminal investigations and sometimes involve an action that is literally a crime and may require the involvement of law enforcement.

Emotions can run high and it is important to let the complainant tell his/her story and express himself/herself before you can try to focus the conversation on the "facts".

## 1) *Interview*

- a) Patient – Get the patient’s story and try to extract as much of the necessary factual detail as possible of the What?, When?, Who?, and Where?.
  - i) If the complaint involves an incident of Seclusion/Restraint or physical intervention of staff members, does the patient describe precipitating factors that led to frustration, anger or loss of control?
    - (1) Ignored by staff when trying to get needs met?
    - (2) Insulted or offended by staff?
    - (3) Attempts to communicate a problem to staff before it reached the extreme?
    - (4) Staff failure to protect patient from others infringing on sense of safety?
    - (5) Reaction to medications?
- b) Witnesses – Family Members, Staff Members, Other Patients, Security Staff, Janitorial Staff
  - i) Were witnesses aware of precipitating events that might have contributed to the problem?
  - ii) Do witnesses describe systemic problems that contribute to a pattern of similar events?
- c) Supervisors – Find out what the supervisors were told about the incident. See if they will share their conclusions. If you don’t have a history of reacting punitively, they will sometimes be quite open, knowing that it will save everyone a lot of work if you don’t have to dig for the truth.
- d) Administrators – See if the administrator of the facility is aware of the problem. This sets the background for being able to come to an agreeable resolution, if the complaint is substantiated.

## 2) *Gather Physical Evidence.*

- a) With patient’s permission, take pictures using a digital or Polaroid camera. Cell phone cameras don’t work well for this.
- b) Draw diagrams of any visible injuries.
- c) Draw diagrams of the physical scene if there was a physical altercation.
- d) Check any other physical evidence, such as torn clothing, damaged furniture, etc.

## 3) *Review the chart.*

- a) Check Nursing Notes, Progress Notes, and Doctors’ Notes for documentation of the incident. Note any inconsistencies in the documentation of the facts.
  - i) Was a medical examination done for the injuries?
    - (1) X-rays and other tests?
    - (2) Are there notes and diagrams of the injuries?
    - (3) What was the conclusion of the professional who performed the exam?
- b) Look at Seclusion and Restraint orders and orders for emergency medications.
  - i) Look for documentation of adverse reactions to medications, or reports of patient complaining about discomfort.
- c) Look for evidence of precipitating factors that could have been dealt with in a way that could have prevented the extreme situation.
  - (1) Patient asking for assistance.
  - (2) Patient described as intrusive, demanding, needy, uncooperative, or refusing to follow redirection.
    - (a) Negative language used to describe patient could indicate defensiveness in a situation where staff is aware that they carry responsibility for the problem.
  - (3) Influences of Language or Cultural barriers that lead to misunderstandings or frustration in communicating needs.

- (4) Patient reporting physical discomfort, medical problem, or pain, with poor response from staff members.
  - (5) Patient receiving bad news (served with notice of 5250 hold, Capacity Petition, delayed discharge).
  - d) Was there a report of a Sentinel Event to CMS or JCAHO?
- 4) Have all your evidence? Have you reached a *conclusion*?
- i) Evidence substantiates the allegation of abuse or neglect. Write a report on your activities and findings. **Proceed to Page 9(a).**
  - ii) Not enough evidence to prove that the abuse or neglect occurred. Document your activities, evidence and reason for ultimate conclusion. **Proceed to Page 9(b).**
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## **Section IV – What to Do With Your Conclusion**

What do you do once you have finished gathering facts and have decided whether your facts support the allegation of the complainant?

- 1) What was the ultimate goal of the investigation?
  - a) Use the information to provide education and help prevent future abuse or violations?
  - b) Get the patient released from the hospital? (Due Process complaint)
  - c) Use the information persuasively to advocate for changes in:
    - i) Facility Policies?
    - ii) Staff Culture?
    - iii) Countywide Policies?
    - iv) Combine it with information from other investigations to show patterns?
    - v) Take legal action?
  - d) Report the findings to regulatory boards or agencies for the purposes of affecting changes.
  - e) Report the findings to regulatory boards or agencies for the purposes of requesting disciplinary action.
- 2) What did the patient hope to get out of it?
  - a) Improved treatment and more positive environment?
  - b) Safety?
  - c) Validation?
  - d) An apology?
  - e) To take civil action?
  - f) File criminal charges?

Whether the allegation is substantiated or not, you can potentially use the information you gather during your investigation to achieve some goals, depending on what your intention was.

### **PROCESS A –Due Process Violation**

- a) Substantiated
  - i) Raise it as a Procedural Issue in a Hearing representing the expressed interest of your patient for release; or retain rights the facility seeks to remove, such as the right to refuse medication.
    - (1) In doing this, the Hearing Officer may require you to show how the error prejudices your client’s case, or puts your client at a legal disadvantage.

- ii) Bring it to the attention of the responsible parties at the facility.
- b) Unsubstantiated
  - i) Ascertain the patient's expressed interest in regard to the legal issue and prepare evidence to represent those interests in a hearing, based on substantive issues.
  - ii) Arrange with the Public Defender, Private Defender, etc. for the patient to be represented in the appropriate hearing (e.g. Writ, De Novo, Conservatorship Hearing, etc).

### **PROCESS B – Patients' Rights Violation**

- a) Substantiated
  - i) Discuss your findings with the supervisor of the staff member(s) responsible for the violation and ask that you be contacted with a follow-up report and a concrete plan for preventing a reoccurrence. Offer to provide whatever education or support is needed from your office to assist in remedying the problem.
    - (1) If this does not resolve the issue to your satisfaction, communicate your report up the chain of command until the problem is addressed by someone who takes responsibility and deals with the violation appropriately. Continue to offer support from your office.
  - ii) Contact the person at the most appropriate level of authority to assure the seriousness of the violation is addressed and dealt with to your satisfaction. Contact whoever is most likely to get real action, i.e. Medical Directors, Nurse Managers, Clinical Directors, Administrative Directors of Nursing, Administrators, and CEOs.
  - iii) Write a complaint to State Licensing or DMH. You may want to reserve this action as a last resort, in cases where there is a clear pattern of violations, or when you experience the facility to be consistently unresponsive to your concerns.
  - iv) Contact Licensing Boards such as the Board of Behavioral Sciences and the Medical Board of California to report professional treatment staff who have violated their code of ethics or violated the California Business and Professions Code.
  - v) Contact the County Contract Liaison to the facility, your Contract Liaison (if you are a contracted program), or the Mental Health Director of your county. This should be considered only when all other avenues have been exhausted.
- b) Unsubstantiated
  - i) You may not have enough evidence to "prove" a violation occurred; it is unlikely that a staff member will document actions they know are a violation of a patient's rights. You frequently will find that you have enough information to help you to identify a problem needs that to be addressed by:
    - (1) The person whose action the patient is unhappy with.
    - (2) Someone in a position of authority (e.g. Charge Nurse, Doctor, Nurse Manager, etc.).
  - ii) Share what you have found with the complainant and explain the options and limitations when there is an absence of evidence that would constitute "proof". Assure them that you have given the concern your attention, give support, validate experiences and feelings, and assist patient to communicate with anyone they feel needs to hear their concern. Advocate wherever possible.

### **PROCESS C – Violation of Confidentiality**

- a) Substantiated
  - i) You can take any of the actions suggested above for a substantiated violation of Patients' Rights.
  - ii) W&I Code, Section 5330 provides information of actions for damages that may be brought against a person who violated a patient's confidentiality. A patient can obtain a Personal Injury Attorney or file a claim in Small Claims Court, if they wish to pursue this avenue. You can provide information

and referral for this. Some PRAs have assisted patients in bringing cases to Small Claims Court and patients have prevailed and been awarded damages.

- b) Unsubstantiated
    - i) Share what you have found with the complainant and explain the options and limitations when there is an absence of evidence that would constitute “proof”. Assure them that you will continue to monitor the situation and assist them in communicating their position in relation to whom they do or do not give authorization to receive information.
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## **Physical/Psychological Abuse or Neglect Investigations**

- a) Substantiated
  - i) Generally, you want to take the least punitive action possible in response to finding that a violation has occurred. However, some abuse or neglect violations are so egregious and severe or stand the chance of affecting future patients, that extreme action is the most appropriate response. Staff member who has purposefully injured a patient (psychologically or physically) may need to be prevented from working with a vulnerable population. A staff culture that results in all patients being treated with disrespect and denies the dignity of the patients may need to be dramatically changed. This may require you to get people in a high position of authority involved, without trying to work it out at lower levels. You will have to **use your judgment**. The following are a list of options for addressing a substantiated report of abuse or neglect.
    - (1) Discuss your findings with the supervisor of the staff member(s) responsible for the violation and ask that you be contacted with a follow-up report and a concrete plan for preventing a reoccurrence. Offer to provide whatever education or support is needed from your office to assist in remedying the problem.
      - (a) If this does not resolve the issue to your satisfaction, communicate your report up the chain of command until the problem is addressed by someone who takes responsibility and deals with the violation appropriately. Continue to offer support from your office.
    - (2) Contact the person at the most appropriate level of authority to assure the seriousness of the violation is addressed and dealt with to your satisfaction. Contact whoever is most likely to get real action, i.e. Medical Directors, Nurse Managers, Clinical Directors, Administrative Directors of Nursing, Administrators, and CEOs.
    - (3) Write a complaint to State Licensing or DMH. You may want to reserve this action as a last resort, in cases where there is a clear pattern of violations, or when you experience the facility to be consistently unresponsive to your concerns.
    - (4) Contact Licensing Boards such as the Board of Behavioral Sciences and the Medical Board of California to report professional treatment staff who have violated their code of ethics or violated the California Business and Professions Code.
    - (5) Contact the County Contract Liaison to the facility, your Contract Liaison (if you are a contracted program), or the Mental Health Director of your county. This should be considered only when all other avenues have been exhausted.

## **Section V – Common Violations and Associated Codes**

### **IM meds given without PO order**

“If antipsychotic medication is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient.”

(Title 9, Division 1, Chapter 4, Article 5.5, §853)\*

\*This section of code specifically refers to voluntary patients

### **Patient not offered voluntary admission prior to certification**

“The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.”

(WIC §5250 c)

### **Patient served legal documents without an interpreter**

“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.”

(WIC §5325)

### **Inappropriate use of Seclusion/Restraint**

“Seclusion is the involuntary isolation of a patient in a locked room. Seclusion and/or restraints shall never be used as punishment or as a substitute for a less restrictive alternative form of treatment.”

(Title 9, Division 1, Chapter 4, Article 6, §865.4 a)

- (a) Restraint shall be used only when alternative methods are not sufficient to protect the patient or others from injury.
- (b) Patients shall be placed in restraint only on the written order of the physician or clinical psychologist, acting within the scope of his or her professional licensure. This order shall include the reason for restraint and the type of restraint to be used. In a clear case of emergency, a patient may be placed in restraint at the discretion of a registered nurse and a verbal or written order obtained thereafter. If a verbal order is obtained it shall be recorded in the patient’s medical record and be signed by the physician or clinical psychologist on his or her next visit.
- (c) Patients in restraint by seclusion or mechanical means shall be observed at intervals not greater than 15 minutes.
- (d) Restraints shall be easily removable in the event of fire or other emergency.”

(Title 22, Division 5, Chapter 2, Article 6, §71545)

### **Hospital staff spoke with patient’s family member without consent**

- (a) Upon request of a member of the family of a patient, or other person designated by the patient, a public or private treatment facility shall give the family member or the designee notification of the patient’s diagnosis, the prognosis, the medications prescribed, the side effects of medications prescribed, if any, and the progress of the patient, if, after notification of the patient that this information is requested, the patient authorizes its disclosure. [...]
- (c) No public or private entity or public or private employee shall be liable for damages caused or alleged to be caused by the release of information or the omission to release information pursuant to this section”

(WIC §5328.1)

- (a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter.
- (b) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter.

(WIC §5330)

**Patient's chart is missing a personal property sheet**

“(b) (2) Records of patients’ monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the patient or to the person responsible for the patient.”

(Title 22, Division 5, Chapter 2, Article 6, §71555)

**Patient complains of no hot water for showering**

“For hot water used by patients, there shall be temperature controls to automatically regulate the temperature between 40.5° C (105° F) and 48.9° C (120° F).”

(Title 22, §71665 d)

**Food that should be hot is served cold**

“All readily perishable foods or beverages capable of supporting rapid and progressive growth of microorganisms which can cause food infections or food intoxication shall be maintained at temperatures of 7° C (45° F) or below, or at 60° C (140° F) or above, at all times during necessary periods of preparation and service. Frozen food shall be stored at -18° C (0° F) or below.”

(Title 22, §71243, k 3)

**Voluntary patient is given IM meds**

“Every person admitted as a voluntary patient for psychiatric evaluation or treatment [...] has the right to refuse the administration of antipsychotic medications.”

(Title 9, Division 1, Chapter 4, Article 5.5, §850)

**Patient denied rights for therapeutic reason (i.e. room lockout)**

“Good cause for denying a patient/resident the exercise of a right exists when the professional person in charge of a facility or his designee has good reason to believe:

- (1) That the exercise of the specific right would be injurious to the patient/resident
- (2) That there is evidence that the specific right, if exercised would seriously infringe on the rights of others;
- or
- (3) That the institution or facility would suffer serious damage if the specific right is not denied; and
- (4) That there is no less restrictive way of protecting the interests specified in (1), (2), or (3).

(b) The reason used to justify the denial of a right to a patient/resident must be related to the specific right denied. A right shall not be withheld or denied as a punitive measure, nor shall a right be considered a privilege to be earned.

(c) Treatment modalities shall not include denial of any right specified in Section 861 of this article. Waivers signed by the patient/resident or by the responsible relative/guardian/conservator shall not be used as a basis for denying Section 861 rights in any treatment modality.”

(Title 9, Division 1, Chapter 4, Article 6, §865.2)