

Basic Patients' Rights Advocacy

Presenters: Lisa Long, Pts.' Rights Advocate, Placer County and Ann Coller, Pts' Rights Specialist, California Office of Patients' Rights

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Introductions & Housekeeping

- Welcome & Introductions
- Housekeeping – Accessibility, Breaks, Sign in & Surveys
- Agenda-
 - 11:00 – 12:15
 - 12:15 – 1:15 Lunch on Your Own
 - 1:15 -2:30 (-ish)
 - BREAK (8 min. 47 sec.)
 - 2:38:48 – 4:00

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Why We're Here and the Importance of What We Do

- Life before the Lanterman-Petris-Short Act (LPS)
- Genesis of “patients' rights”

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Patients' Rights Advocacy

“Advocacy” means those activities undertaken on behalf of persons who are receiving or have received mental health services to protect their rights or to secure or upgrade treatment or other services to which they are entitled.

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Patients' Rights Advocacy

California has a legislatively mandated Patients' Rights Advocacy system made up of three components:

- (1) California Office of Patients' Rights (COPR)

- (2) County Patients' Rights Advocates
- (3) State Hospital Patients' Rights Advocates

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Patients' Rights Advocacy

COPR provides training in order to help advocates build their skills and knowledge base in the following areas:

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

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Duties of the Patients' Rights Advocate

- Receive and investigate complaints
- Act as advocate on behalf of patients who are unable to register a complaint
- Monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions
- Providing training and education about mental health law and patients' rights to mental health providers

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Duties of the Patients' Rights Advocate

- Act as local consultant in the area of patients' rights
- Ensure that patients/residents in all licensed health and community care facilities are notified of their rights and that these rights are posted in facilities
- Exchange information, cooperate and act as a liaison with the Patients' Rights Specialist at the California Office of Patients' Rights

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Role of the Advocate

- EXPRESSED INTEREST
- INDIVIDUAL ADOCACY
- SYSTEMS ADVOCACY

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Authority of the Patients' Rights Advocate

- PRA ACCESS TO CLIENTS
- PRA ACCESS TO FACILITES AND TREATMENT STAFF
- PRA ACCESS TO RECORDS
- PENALTIES FOR OBSTRUCTING PRA ACCESS

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Mental Health Patients' Rights

“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...”

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Mental Health Patients' Rights

5325.1 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.”

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Mental Health Patients' Rights

5325 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 letterwriting materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment...

(g) To refuse psychosurgery...

(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.

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Mental Health Patients' Rights

OTHER RIGHTS

- Right to confidentiality
- Right to informed consent
- Right to culturally competent services
- Right to be free from discrimination

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Good Cause for Denial

Good cause 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; or
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)...

The right must be restored when good cause for denial no longer exists

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Good Cause for Denial

What is Not Good Cause?

Denial of Rights may not be used:

- As a condition of admission
- As a part of the treatment plan
- As punishment
- For the management of the facility or the convenience of staff
- At the request or demand of parents, guardian or conservators.

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Good Cause for Denial

Documentation

- (1) Date and time the right was denied.
- (2) Specific right denied.
- (3) Good cause for denial of right.
- (4) Date of review if denial was extended beyond 30 days.
- (5) Signature of the professional person in charge of the facility or his designee authorizing denial of right.

The patient must be told of the content of this denial of rights documentation

- (6) The date a specific right is restored

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Good cause for denial

ANALYZING PATIENTS' RIGHTS DENIALS

1. Identify the right.
2. Has a right been denied/restricted?
3. Is it a "deniable" right?

4. Is the reason given for the denial related to the specific right denied?
5. Would the exercise of the right be injurious to the patient, seriously infringe on the rights of others, or cause the serious damage to the facility?
6. If, so, what less restrictive measures have been considered or tried prior to denying the right?
7. If the right was denied without attempting less restrictive alternatives was the reason related to staff convenience? e.g. "We don't have time to monitor his phone calls."
8. Was the denial regularly reassessed and the right restored when good cause no longer existed?

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Patients' Rights Complaint Process

- When a complaint is received by the Patients' Advocate he or she shall, within two working days, take action to investigate and resolve it.
- If the complainant expresses dissatisfaction with the action taken, the matter shall be referred, within five working days, to the local mental health director.
- If the complaint cannot be satisfactorily resolved by the local mental health director within ten working days, it shall be referred to the Patients' Rights Specialist, whose responsibility it shall be to make a decision in the case. Appeal from the decision of the Patients' Rights Specialist may be made to the Director of the State Department of Health Care Services, or his or her designee.

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Treatment Under LPS

Right to Voluntary Treatment

"The entire thrust of the Lanterman-Petris-Short Act is to promote voluntary treatment for the mentally disordered. I want to emphasize this at the outset because a discussion of the bill inevitably focuses on the new procedures for involuntary treatment. But the provisions for involuntary treatment have been written so that they are a last resort rather than the first, as is now so often the case..." (Emphasis in original).

Speech by Assemblyman Lanterman, California State Archives, Lanterman papers

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Treatment Under LPS -Involuntary

- Probable Cause
- Mental Health Disorder
- Danger to Self
- Danger to Others
- Grave Disability

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Treatment Under LPS - Involuntary

72-HOUR HOLD (DS, DO, GD)

- Initial Detention and Advisement
- Admission to an LPS-Designated Facility
- Rights on Admission
- Release from the 72-Hold

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Treatment Under LPS -Involuntary

14-DAY HOLD (DS, DO, GD)

- Notice of Certification
- Service of the Notice
- Release Prior to the End of the 14-Day Hold
- Due Process Rights During 14-Day Hold

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LONGER-TERM DETENTION Under LPS

- 30-DAY HOLD (GD)
- 2nd 14-DAY HOLD (DS –Suicidal)
- 180-DAY HOLD (DO – Imminently Dangerous)

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LPS CONSERVATORSHIP

- Temporary Conservatorship (GD)
- “Permanent” LPS Conservatorship (GD)
- Authority of the Conservator/Rights of the Conservatee
- Termination of the conservatorship

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Navigating the Treatment Environment

- Who’s Who in the Hospital
- Where to find information
- Building rapport with treatment staff while maintaining your perspective the representative of the clients’ interests.

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Resources

- **CALIFORNIA CODE SEARCH PAGE**
<http://leginfo.legislature.ca.gov/faces/codes.xhtml>
- **CALIFORNIA CODE OF REGULATION SEARCH PAGE**
[https://govt.westlaw.com/calregs/index?_lrTS=20180314175350689&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/index?_lrTS=20180314175350689&transitionType=Default&contextData=(sc.Default))
- **JUDGES’ BENCH GUIDE TO LPS PROCEEDINGS**
http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/bg120_2015.pdf
- **DISABILITY RIGHTS CALIFORNIA**
<https://www.disabilityrightsca.org/>