

# Patients' Rights: Understanding Our Legal Rights Is A Necessity

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### **Disability Rights California (DRC)**

California's Protection & Advocacy System

Mission Statement: Advocate, educate, investigate and litigate to advance and protect the rights of Californians with disabilities.

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### **DRC Services**

Intake & Referral

Self-Help Materials

Training

Public Policy & legislation advocacy

State Hospital patients' rights advocacy

Clients' rights advocacy for clients of regional centers

Legal counsel

Represent people with disabilities in priority areas

Systemic litigation

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### **Peer Self-Advocacy Program (PSA) Services**

Facilitate Self-Advocacy Groups in Mental Health Facilities & State Hospitals.

Provide Trainings to People with Mental Health Disabilities, Family Members & Service Providers on Legal Rights and Access to Services.

Help Participants Develop Self-Advocacy Skills & Strategies to Advocate for their Own Goals and Services.

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### **Disclaimer Statement**

This training is not legal advice.

This training is presented from a peer perspective by people who have lived experience with mental disabilities.

Nothing said during this training is confidential.

If you have legal concerns and/or questions related to your disability and would like to discuss them with Disability Rights California, you may want to call their intake number at 800-776-5746.

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### **Agenda**

Why is it important to know about Patients' Rights?

What effect did the LPS Act have on Patients' Rights?

What are the Non-Deniable Patients' Rights?

Rights Subject to Denial for Good Cause & the Denial of Rights Process

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### **Agenda (Continued)**

Who can we contact when our rights have been violated?

What are the roles and responsibilities of the Patients' Rights Advocate?

Why is it important to be informed and to self-advocate?

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### **Why Is It Important To Know About Patients' Rights?**

It is important to understand the legal rights of persons who are placed in mental health facilities to ensure that every person at every facility is treated with respect, dignity and humane care.

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### **Why Is It Important To Know About Patients' Rights? (Continued)**

Patients' Rights Laws are complicated to understand and at times can be misinterpreted by:

- Persons Admitted to Mental Health Facilities
- Persons in charge of these facilities
- Patients' Rights Advocates

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### **Reasons We May Not Understand Our Rights**

When we are admitted to Mental Health Facilities, we should be provided with a Rights for Individuals In Mental Health Facilities Handbook.

When we get the handbook, we are told to read it and often we can't read it for different reasons.

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### **Reasons We May Not Understand Our Rights (Continued)**

Some reasons we may not be able to read or understand the Rights for Individuals In Mental Health Facilities Handbook:

We are new to the Facility.

We have difficulty concentrating & focusing due to our mental health disability or psychotropic medications we take for our disability.

We may not know how to read.

Fear.

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### **What Are Some Consequences Of Not Knowing Our Rights?**

We could:

Be placed in excessive physical restraints.  
Be left in isolation for a prolonged period of time.  
Be placed on unnecessary medication.  
Be abused.  
Have our right to prompt medical attention neglected.  
And we may not know how to report these rights violations and who to report them to.

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### **What Effect Did The Lanterman-Petris-Short Act (LPS) Have On Patients' Rights?**

Prior to LPS, there were insufficient standards for who could be placed involuntarily in a hospital and for how long.  
Involuntary patients had no legal way to appeal their hospital stay.  
Patients had no rights once they were hospitalized.  
All Civil and Constitutional Rights were denied.

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### **The Effects Of The LPS Act On Patients' Rights**

The LPS Act was implemented on July 1, 1969 under Welfare and Institution Code Section 5000. The legislative intent was:  
To provide consistent standards for protection of personal rights of persons receiving services.  
To provide services in the least restrictive settings appropriate to the needs of each person receiving services.  
To end the inappropriate, indefinite and involuntary commitment of persons with mental health disorders.

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### **The Effects Of The LPS Act On Patients' Rights (Continued)**

To provide prompt evaluation and treatment of persons with mental health disorders.

To guarantee and protect public safety.  
To safeguard individual rights through judicial review.  
To protect persons with mental health disorders from criminal acts.

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### **The Effects Of The LPS Act On Patients' Rights (Continued)**

To provide individualized treatment, supervision and placement services by a conservatorship program for persons who are gravely disabled.  
To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives.

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### **Our Rights Under The LPS Act**

There are two types of rights under the LPS Act:

- 1) Rights that can never be denied
- 2) Rights that can be denied, but only if there is "good cause"

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### **Rights That Cannot Be Denied**

We have the right to:

- A. Receive treatment services which promote our potential to function independently.
- B. Be treated with dignity, privacy and humane care.
- C. Be Free from harm.
- D. Prompt medical care and treatment.

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### **Rights That Cannot Be Denied (Continued)**

We have the right to:

- E. Religious freedom and practice.

- F. Participate in appropriate programs of publicly supported education.
- G. Social interaction and participation in community activities.

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### **Rights That Cannot Be Denied (Continued)**

We have the right to:

- H. Be free from hazardous procedures.
- I. Refuse psychosurgery (brain surgery).
- J. See and receive the services of a Patients' Rights Advocate.

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### **Good Cause For Denial Of Patients' Right (Introduction)**

Some rights can only be denied if "Good Cause" exists. The facility must show it has good reason to believe that there is "good cause" because:  
The exercise of the right would be injurious to the patient, or;  
It would seriously infringe on the rights of others, or;  
The facility would suffer serious damage if the right is not denied;  
And there is no less restrictive way of protecting these three interests.

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### **Rights That May Be Denied For Good Cause**

1. The right to wear one's own clothing.
2. The right to keep and use one's own personal possessions, including toilet articles, in a place accessible to the patient.
3. The right to keep and spend a reasonable sum of one's money for small purchases.
4. The right to have access to individual storage space for the person's private use.

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### **Rights That May Be Denied For Good Cause**

5. The right to see visitors each day.
6. The right to have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
7. The right to have ready access to letter-writing materials, including stamps and to send and receive unopened mail and correspondence.

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### **Mental Health Facilities And The Denial Of Patients' Rights**

Facility staff could mistakenly believe they can deny a right:

As a condition of admission;

As part of a treatment plan; or

Because the patient or another person speaking on the patient's behalf has agreed to the denial.

\*\*\*None of these reasons meet the good cause criteria.\*\*\*

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### **Mental Health Facilities And The Denial Of Patients' Rights (Continued)**

If a staff member denies one of our rights, the reason for the denial must be directly related to the specific right denied.

Staff can neither deny our rights as punishment nor use our rights as privileges for good behavior.

Rights may not be waived by the person's parent, guardian or conservator.

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### **What Needs To Be Done If A Right Is Subject To Denial For Good Cause?**

Each denial of a patients' right for good cause must be documented in the treatment record.

This documentation must take place immediately whenever a right has been denied.

This must be done regardless of the gravity or frequency of the denial.

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### **What Needs To Be Done If A Right Is Subject To Denial? (Continue)**

Pursuant to Title 9 C.C.R §865.3, the documentation must include the following:

The date and time the right was denied;

The specific right denied;

Good Cause for denial of the right, including less restrictive ways considered or tried;

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### **What Needs To Be Done If A Right Is Subject To Denial? (Continue)**

The date of the review if the denial was extended beyond 30 days;

The signature of the professional person in charge of the facility or their designee authorizing the denial of rights.

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### **Seclusion And Restraint**

There are specific guidelines for documenting any additional denials of rights while a patient is in seclusion and restraint.



Seclusions and Restraints MUST be reported and documented, because these actions imply the denial of other specific patients' rights, such as the right to access the telephone.

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### **Seclusion And Restraint (Continued)**

If the exercise of a particular right is specifically requested by the patient and denied by the staff while the patient is in restraints or seclusion, the denial of that right MUST be documented in the patient's record and on the Patients' Rights Denial form provided by the facility.

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### **What Patients Need To Know About The Denial Of Rights Process?**

We are entitled to an explanation for each denial of rights. This is what we must be told each time a right is denied:

The reason why the right was denied.

The content of the notation in our treatment record.

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### **Good Cause For the Denial of Patients' Rights (Review)**

To deny a right, the institution needs to show that they have good cause to believe that:

The exercise of the right would be injurious to the patient, or;

It would seriously infringe on the rights of others, or;

The facility would suffer serious damage if the right is not denied;

And there is no less restrictive way of protecting these three interests.

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### **Restoration Of A Right**

When a right is denied, staff must use the least restrictive means of managing the behavior that led to the denial.  
Once the right is denied, it must be restored as soon as good cause for the denial is no longer present.

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### **Restoration Of A Right (Continued)**

The facility is obligated to continually assess whether or not good cause exists for the denial of a right.  
This is why each denial must be tracked in the treatment record.

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### **Restoration Of A Right – Example**

Is there good cause for a denial of rights in the following?  
A patient was denied his right to wear his clothes because of concern about self harm.  
He swallowed three buttons from his shirt in front of staff and told staff he was going to remove the rest to swallow them.  
The patient has a history of harming himself with clothing items.

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### **Restoration Of A Right – Example**

Staff fills out a denial of rights for the patient's clothing.  
The facility decides that the patient cannot have access to shirts with buttons.  
The denial of rights goes into effect, because the facility was able to show that it would be harmful for the patient to have access to shirts with buttons, and they were able to state the least restrictive measures.

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### **Good Cause Criteria – Review**

The facility must first state what the least restrictive measures were used before the denial of rights goes into effect.

**\*\*Staff must give the patient frequent opportunities to show that he can wear his clothes without harming himself.\*\***

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### **Could/Would Questions**

After a few hours, the patient tells you he wants his blue shirt that has buttons.

He tells you he is not going to swallow the buttons anymore.

Does the patient have a right to get the blue shirt with buttons?

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### **Could/Would Questions (Continued)**

Some staff might think he doesn't because he has a tendency to swallow buttons, so he could do it again if he gets the shirt.

Some staff might ask themselves would he do it again if they give him the shirt?

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### **Could/Would Questions (Continued)**

What is the difference between could and would?

Could is a statement of ability.

Would is a statement of intent.

How sure are you that he will do it?

The truth is we are not sure.

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### **Could/Would Questions (Continued)**

Staff must give the patient frequent opportunities to show he can wear his clothes without harming himself.

Therefore, the patient has the right to get his shirts with buttons back.

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### **Who Can We Contact If Our Rights Have Been Violated?**

Patients have the right to see and receive the services of a Patients' Rights Advocate.

A Patients' Rights Advocate can:

Educate us about our rights.

Advise us on the options we have when our rights are violated unjustly or punitively.

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### **The Patients' Rights Office**

The Patients' Rights Office was created in response to California legislation requiring each county mental health director to appoint Patients' Rights Advocates to protect and further the Constitutional and statutory rights of mental health care recipients.

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### **What Are The Roles Of The Patients' Rights Advocate?**

Patients Rights Advocates have the following roles:

Investigate and respond to grievances and complaints about inpatient and outpatient mental health providers.

Prepare clients for their certification review hearings.

Represent clients at medication capacity hearings (Riese Hearings).

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### **Responsibilities Of The Patients' Rights Advocates**

Assist staff in ensuring that information about patients' rights is posted in all facilities providing mental health services.

Ensure that all incoming clients are informed of their rights, including the right to contact the Advocate and the Office of Patients' Rights.

Investigate and resolve complaints received from clients about rights violations or abuse.

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### **Patients' Rights Advocate's Responsibilities (Continued)**

Monitor facilities for compliance with patients' rights laws, regulations and policies.

Train staff in mental health facilities about patients' rights laws, regulations and policies.

Advocate for patients and residents who are unable or afraid to register a complaint.

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### **Patients' Rights Advocate's Responsibilities (Continued)**

To exchange information and cooperate with the State Patients' Rights Office.

Advocate for the "expressed interests" of the patient (not "best interests").

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### **How Can We Get In Contact With The Patients' Rights Advocate?**

If you ever have questions about your rights or treatment options, you can access a Patients' Rights Advocate by:

Contacting the Patients' Rights Advocate Office in your facility or your county.  
Requesting that staff put you in contact with a Patients' Rights Advocate.

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### **How Can We Get In Contact With The Patients' Rights Advocate? (Continued)**

\*\*\* Patients' Rights Posters should be in a visible area where all patients' can have access to them.\*\*\*

\*\*\*A number to the Patients' Rights Advocate Office is usually posted along with the Patients' Rights poster\*\*\*

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### **The Patients' Rights Advocate**

When working with a Patients' Rights Advocate, we have the right to meet with them in private to discuss any concerns we may have.

If we are unable to contact the Patients' Rights Advocate Office, we can contact Disability Rights California for help.

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### **Why Is It Important To Be Informed And To Self-Advocate?**

When we are informed and we self-advocate, we let others know that we have rights.

We know what's best for us and self-advocacy helps us get the services and support we need.

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### **Why Is It Important To Be Informed And To Self-Advocate? (Continued)**

Without self-advocacy, the issues that are important to us may not be heard.

Self-advocacy helps us prevent someone from taking advantage of us.

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### **DRC Resources**

Disability Rights California

1-800-776-5746

Monday to Friday

9:00 a.m. to 4:00 p.m.

For TTY, Call: 1-800-719-5798

DRC Website: [www.disabilityrightsca.org](http://www.disabilityrightsca.org)

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### **Questions and/or Comments**

Your Voice is Important!

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### **Join Us for Upcoming Webinars**

Thursday, July 30th at 3:00 pm: Patients' Rights in Spanish

Tuesday, August 4th at 11:00 am: The 123's & ABC's of Department of Rehabilitation Services in English

Thursday, August 6th at 3:00 pm: The 123's & ABC's of Department of Rehabilitation Services in Spanish

Tuesday, August 11th at 11:00 am: SSI/SSDI Basics in English

Thursday, August 13th at 3:00 pm: SSI/SSDI Basics in Spanish

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### **18th Annual Remembrance Day**

Please join us via webinar to honor & celebrate the lives of those who died without recognition at State Hospitals & Developmental Centers. By giving respect to our peers with mental health & developmental disabilities, we honor all of us!

For more information, go to Disability Rights California's website at [www.disabilityrightsca.org](http://www.disabilityrightsca.org), or call Robyn Gantsweg, Peer Self-Advocacy Program, at (213) 213-8134.