

## Frequently Asked Questions

Patient Advocacy strives to promote the inherent rights, dignity and worth of individuals within the mental health community and to ensure the fair, professional treatment and care of any person receiving inpatient or residential care in San Diego County.

Patient Advocates work throughout the County advocating for the rights of mentally ill individuals at psychiatric hospitals, Board and Care Facilities, Skilled Nursing Facilities, Institutes of Mental Diseases, Crisis Houses, legal hearings, and more.

It is the duty of the Patient Advocate to protect the rights of mental health consumers, and to educate those same consumers, as well as the providers working with these consumers, about their 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. California Welfare & Institutional (WIC) Code (WIC) § 5325.1.

### **Patient Advocates provide the following services:**

- Ensure residential facilities respect the rights of their residents
- Provide training and education about rights of patients to staff at mental health facilities, law enforcement and facility administrators
- Investigate reports of patient rights violations
- Represent patients at legal hearings, including when an individual is being held against their will
- Educate minors about their rights when being held or treated against their will
- Provide consultation to the County of San Diego and mental health facilities

This brief listing of questions frequently asked of the Patient Advocacy Program encapsulates some of the unique issues that the mental health community experiences and that we as advocates encounter.

### **A patient has been in a hospital on a voluntary basis, now they are asking to leave, but the doctor wants them to stay longer. Does the hospital have to discharge the person?**

Although every patient has the right to be voluntary, patients can change their mind and cannot be coerced to be a voluntary patient if they don't want to be at the hospital or don't agree with the treatment being provided. If a patient is at the hospital voluntarily and he or she asks to leave, an evaluation at that time must be made as to whether that patient is safe to leave. If the hospital staff feels the patient meets the legal criteria to be kept in the hospital (danger to other, danger to self, or gravely disabled – which is ability to provide or use food, clothing and shelter), then the doctor can put the patient on an involuntary hold. The patient does get “credit” for the days he or she was at the hospital voluntarily unless he or she came into the hospital voluntarily and never were put on an involuntary hold until the point in time he or she asked to leave.

## **Can a facility deny someone's personal possessions through a contraband list?**

It is our position that there is no legal basis for a contraband list. We have found no specific mention in the law of a facility's ability or responsibility to remove certain objects or personal possessions from all patients as a general practice.

Regarding the issue of whether the right can be denied when the patient signs a waiver: California Code of Regulations Title 9, 865.2 (c) specifically states that, "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."

While we believe that the facility has the responsibility to keep patients safe, we do not know of any legal authority which would trump the California Code of Regulations (CCR) and the California Welfare and Institutions Code (WIC) as they apply to Patients' Rights. WIC and CCR provide specific language guaranteeing mental health patients the same legal rights as all other citizens and that they cannot be discriminated against due to their voluntary or involuntary treatment in a mental health facility (WIC 5325.1). Thus, rights cannot be denied as a condition of admission into a psychiatric facility.

We suggest to facility staff that they can strongly encourage their patients to utilize their storage or safe options for their personal possessions, otherwise the patient is responsible for any lost or stolen items on their person. If the patient refuses to use the facility's storage option and the staff have documented concerns that the patient will become dangerous to him/herself, dangerous to others, or damage facility property, a denial of rights procedure can be utilized to withhold the patient's personal possessions.

## **If an individual in a facility wants the staff to throw away their possessions, can or should the staff dispose of the items?**

Individuals' belongings can be thrown away at their request but because individuals have a right to their possessions, we suggest that facilities have a policy in place to document exactly what is being thrown away and have the patient/resident sign an agreement to help protect the facility from liability.

## **Can someone deny an individual their right to visitors?**

All individuals receiving mental health services in a facility have the right under the law "to see visitors daily" (WIC 5325 c.). However, this is a right that can be temporarily denied.

Only the professional person in charge of the facility or his or her designee may, for good cause, deny a person any of their deniable rights, including the right to visitors (WIC 5325, 5326). Good cause exists only when the specific visitor would cause injury to the patient/resident, it would seriously infringe on the rights of others, or the facility would suffer serious damage if the right is not denied. Also, denial of rights means there is not a less restrictive measure that could be used, that the reason

for the denial is directly related to the right being denied, and denial of rights cannot be used for treatment purposes.

Although we encourage facility staff to obtain as much information as necessary (with consent) regarding potential visitors from a patient/resident's friends, family, case manager or conservator, none of these individuals have the ability to deny the patient/resident their right to visitors (WIC 5325).

**A resident at a long term care facility damages facility property. Can the facility withhold the resident's funds to make them pay for the damage?**

If the resident is on conservatorship or has a payee, the conservator/case manager or payee has the responsibility to coordinate payment for debts incurred by the conservatee and has the authority to deduct that payment from the conservatee's personal allowance (California Probate Code section 1430). The facility/provider doesn't have the authority to deny or withhold a conservatee their personal allowance. Residents have the right to "keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases" (WIC) 5325).

**Can intramuscular (IM) medication be administered against a resident's or patient's will? If so, according to the law, what steps must be followed?**

Yes, emergency IM medication can be administered against an individual's will *under certain circumstances*.

"An emergency exists when there is a sudden marked change in the patient's condition so that action is immediately necessary for the preservation of the life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first obtain consent. 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." [California Code of Regulations Title IX § 853]

Less invasive interventions attempted must be charted before administering involuntary IM medication. Less invasive interventions could include giving the person time to cool down and regain control of him/herself if they are not in immediate danger of harming themselves, others, or damaging property. If the situation will allow, ask the resident/patient if there is something he or she needs to calm down. If an oral PRN medication is given before the resident/patient becomes severely agitated, involuntary IM medications might be avoided. Record notes must show how the resident/patient was a danger to him/herself or others. IM medications cannot be used as punishment or in order to keep the resident/patient from annoying or bothering staff.

For patients in a hospital who have been deemed unable to refuse medication through a Riese hearing by the Superior Court or through LPS Conservatorship, medications can be administered against the individual's will under the court order.

**A patient has slipped and fallen on water spilled in the common area of a hospital unit, and is complaining of head, back and dental pain. Is this a potential patient rights issue? What would the obligation of the provider be?**

Any injury could result in a potential patient rights issue. The California Welfare and Institutions Code references the specific rights a patient has related to care, injury and follow up treatment. These include the following: a right to humane care, a right to be free from harm, and a right to prompt medical care and treatment (WIC § 5325.1 b c d).

Patient Advocacy would suggest a thorough documentation of any injury, take pictures if possible, and provide a medical evaluation and follow up care as promptly as possible. Documentation of any evaluations, consults and follow up care is highly recommended. Providing additional resources at discharge that would relate to any incident or injury again is also highly recommended.

**A patient is discharged from a hospital, but after several hours remains at the hospital and won't physically leave the premises. What can the hospital do?**

We suggest that hospitals include in their policies to contact security for assistance when a patient is resistant to discharge the premises. Additionally, we recommend that two staff members be present when individuals are transported to their discharge location. It is anticipated that additional staff presence would eliminate incidents of conflict between patients and the hospital.

**What is reasonable access to the telephone for a resident living in an Adult Residential Facility (ARF), also known as a Board and Care?**

Although what is meant by *reasonable* is not defined in the law, California Code of Regulations, Title 22 (85072) states residents in ARFs have the right to have access to telephones in order to make and receive confidential calls, provided that such calls do not infringe upon the rights of other residents and do not restrict the availability of the telephone during emergencies. Individual access to the telephone can be limited in duration in order to ensure equal access to the telephone by all residents in the facility.

ARFs must submit a list of house rules to Community Care Licensing (CCL) for approval and CCL will determine whether or not the ARF's rule regarding phone use is reasonable. For example, an ARF which houses many residents was only allowing their residents use of the telephone for one hour a day. CCL felt this rule was too restrictive and was not considered reasonable access to the phone. The facility in questions changed their policy to provide 24-hour phone access to their residents.

**A licensed nurse or other licensed care professional is admitted to a psychiatric hospital. Does the hospital have a duty to report this admission to the licensing board?**

All patients have the right to privacy and confidentiality. All information and records obtained in the course of providing services to either voluntary or involuntary recipients of services shall be confidential (WIC 5328). If the hospital staff, through the course of the individual's treatment, have reason to believe that the individual, as a result of a behavioral health problem, is responsible for

abuse or neglect of a dependent adult, senior or minor while under the individuals' professional care, a report to Adult Protective Services or Child Protective Services may be appropriate. However, no regulations have been found to indicate a duty on the hospital to report the patient or incident to their licensing board.

**Can a hospital seclude a patient to keep them from eating in order to prepare them for electroconvulsive therapy (ECT) treatment?**

Restraint and/or seclusion may be used only when less restrictive interventions have been determined to be ineffective to protect the patient, a staff member or others from harm [42 C.F.R. Section 482.13(e)(3)]. Convenience is not an acceptable reason to use seclusion or restraint. Our clinical consultant determined that protective, locked seclusion utilized to prevent a patient from eating before ECT is not appropriate and does not "follow the standard of progression of least restrictive measure to a justified more restrictive measure of containment/control."

**Does a facility need consent in order to release information to a San Diego Regional Center (SDRC) case manager?**

The consent of the patient, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care (WIC 5328). Although the guardian or conservator can give consent to release a patient's medical information for the purposes of continuation of care, SDRC does not believe that they are entitled to information regarding clients' hospitalizations without the expressed consent of the client. Our understanding is that SDRC case managers do not qualify as mental health providers for the release of information for the continuation of care.

**A hospital staff member has used unprofessional and profane language with a patient. Is this a potential patient rights issue?**

Yes, patients have the right to dignity, humane care, and to be free from harm and abuse (WIC § 5325.1 b, c).

As Patient Advocates, we understand and acknowledge the challenging situations and environments hospital staff work within. However, we suggest hospital staff proactively develop an individual plan to implement when challenging situations arise. We suggest staff consider removing themselves from the situation, ask for a break and/or seek assistance from fellow staff members or a supervisor. We encourage staff to be aware of their own personal stress levels and take proactive steps to prevent potential problems.

**What would be the most valuable tip or suggestions that Patient Advocates would offer a provider?**

In a word: **Documentation.** We've all heard the catch phrase, "If it's not in the chart, it didn't happen". This is very true and holds up well in day to day practice. Quite often in grievance

investigations, documentation or lack thereof, determines the outcome. We cannot stress enough the value and importance of thorough documentation.

*It is our hope as Patient Advocates that our partners in the community will find these brief vignettes helpful and insightful. We encourage every provider to view each situation as unique and just as individual as we are as people. Feel free to contact us with comments or questions that may arise:*

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***Disclaimer***

***This information should not be construed as legal advice. We encourage providers to consult their counsel regarding any matter related to patient rights, care and treatment. Actual cases may vary, and may turn on specific facts.***