
MENTAL HEALTH ADVOCACY PROJECT

Asistencia Legal Para La Salud Mental

Law Foundation of Silicon Valley

111 West St. John Street, Suite 315

San Jose, California 95113

(800) 248-MHAP • Fax (408) 293-0106 • Telephone (408) 294-9730

PATIENTS' RIGHTS

Rights of All Mental Health Consumers

All mental health consumers have the same legal rights guaranteed to everyone by the Constitution and other laws. Under California law the following rights may *never* be denied:¹

- The 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 individual.
- The right to dignity, privacy, and humane care.
- The right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication may not be used as punishment, for the convenience of staff, as a substitute for, or in quantities that interfere with the treatment program.
- The right to prompt medical care and treatment.
- The right to religious freedom and practice.
- The right to participate in appropriate programs of publicly supported education.
- The right to social interaction.
- The right to physical exercise and recreational opportunities.
- The right to be free from hazardous procedures.
- The right to see and receive the services of an attorney and a Patients' Rights Advocate.

Rights of Mental Health Consumers When Hospitalized

Even when hospitalized, mental health consumers retain all the rights listed above. In addition, psychiatric facilities must uphold the following specific rights, which can be denied only for good cause:²

- The right to wear one's own clothing.
- The right to keep and use one's own personal possessions, including toilet articles, in a place accessible to the patient.
- The right to keep and spend a reasonable sum of one's own money for small purchases.
- The right to have reasonable access to individual storage space for one's own use.
- The right to see visitors each day.
- The right to have reasonable access to telephones both to make and receive confidential calls.
- The right to have access to letter-writing materials, including stamps.
- The right to mail and receive unopened letters and correspondence.

¹ Cal. Welf. & Inst. Code §§ 5325, 5325.1

² Cal. Welf. & Inst. Code § 5325; 9 C.C.R. § 865.2

Good Cause

Good cause for denial of rights exists when the professional person in charge of a facility or her designee has good reason to believe the exercise of the specific right would cause: 1) injury to that person or others; or 2) a serious infringement on the rights of others; or 3) serious damage to the facility; *and*, there is no less restrictive way of protecting the interest specified.³

The reason used to justify the denial of a right must be related to the specific right denied. These specific rights can be denied when "good cause" exists. They cannot be denied as a condition of admission, a privilege to be earned, a punishment, or part of the treatment program.⁴

Guardians, conservators and relatives cannot waive patients' rights.

Whenever a right is denied, the treatment staff must document this in the patient's treatment record, and the patient must be informed concerning the denial of rights. The entry in the treatment record must include:⁵

- The date and time the right was denied;
- The specific right denied;
- Good cause for the denial of the right;
- Date of review if the denial is extended beyond thirty days;
- Signature of the professional person who denies the right.

Once the good cause for denial of a right is no longer present, the right must be restored immediately.⁶

Additional Rights

All mental health consumers also have the following rights:

- The right to informed consent, including the right to refuse medication, unless specific emergency criteria are met or the patient is found to lack capacity to refuse medications.⁷
- The right to refuse psychosurgery. This right cannot be denied.⁸
- The right to refuse electro-convulsive therapy (shock treatment) or any form of convulsive treatment. This right can only be denied under very specific conditions as defined in California law.⁹

Voluntary inpatients have the following rights:¹⁰

- The right not to be forced into treatment without their consent.
- The right not to be placed in seclusion and restraint.
- The right to discharge themselves from a facility at any time.

All mental health facilities must:¹¹

- Post a list of patients' rights.
- Inform consumers of their rights in a manner in which they can comprehend.
- Tell consumers how they can contact the Patients' Rights Advocate and how they can file a complaint.

Updated 7.04

³ 9 C.C.R. § 865.2 (a)

⁴ 9 C.C.R. § 865.2 (b)

⁵ Cal. Welf. & Inst. Code § 5326, Title 9 C.C.R. § 865.3

⁶ 9 C.C.R. §§ 865.1, 865.5

⁷ Cal. Welf. & Inst. Code §§ 5150, 5325.2, 5332

⁸ Cal. Welf. & Inst. Code §§ 5325 (g), 5326.6

⁹ Cal. Welf. & Inst. Code § 5326

¹⁰ 9 C.C.R. § 851, 22 C.C.R. § 70707 (10)

¹¹ Cal. Welf. & Inst. Code § 5325