

PATIENTS' RIGHTS

UNDENIABLE RIGHTS

All mental health consumers have the same legal rights guaranteed to everyone by the State and Federal law. Under California law the following rights can never be denied:¹

- The right to dignity, privacy, and humane care
- The right to treatment that promotes a person's potential to function independently. Treatment should be provided in the least restrictive way.
- 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 amounts that interfere with the treatment program.
- The right to prompt medical care
- The right to religious freedom and practice
- The right to participate in appropriate public education programs
- 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

DENIABLE RIGHTS

Even when hospitalized, mental health consumers have all the rights listed above. They also have the following specific rights, which a hospital can deny 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 toiletries, in a place that is accessible
- The right to keep and spend a reasonable amount of one's own money for small purchases

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

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

- 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

GOOD CAUSE

The professional staff at a facility have "good cause" to deny a patient's right when there is a good reason to believe that if a patient exercises a specific right, it would cause:

- 1) injury to the patient; or
- 2) a serious infringement on the rights of others; or
- 3) serious damage to the facility; and
- 4) there is no less restrictive way of preventing the possible harm of all of the above.³

The reason used to justify denying a right must be related to the specific right denied. Rights cannot be denied as a condition of admission, a privilege to be earned, a punishment, or part of the treatment program.⁴ Whenever a right is denied, the facility staff must document this in the patient's treatment record, and the patient must be informed about the denial of rights. The treatment record must include:⁵

- The date and time the right was denied
- The specific right denied
- Good cause for the denial
- Date of review if the denial is extended beyond 30 days
- Signature of the professional person who denies the right

Once the good cause for denying a right is gone, the right must be restored immediately.⁶

Guardians, conservators and relatives cannot waive patients' rights.

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

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

refuse medications⁷

- 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 listed 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 patients of their rights in a manner which they understand
- Tell consumers how they can contact their Patients' Rights Advocates and how they can file a complaint

If you have questions for Santa Clara County's Patients' Rights Advocates, call the Law Foundation of Silicon Valley Health Program intake line at (408) 280-2420.

WARNING: This information sheet is intended to provide accurate, general information regarding legal rights. It is not legal advice. Because laws and legal processes are frequently change and can be interpreted differently, the Law Foundation of Silicon Valley cannot guarantee that the information in this sheet is current. The Law Foundation of Silicon Valley cannot be responsible for what anyone does with this information. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

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