

**County of San Bernardino
Department of Behavioral Health**

Patients' Rights

Effective Date 12/18/91
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Allan Rawland, Director

Policy It is the policy of the Department of Behavioral Health to adhere to the guidelines established regarding the rights of individuals who are detained and treated for mental retardation or mental illness.

Purpose To assure individuals are given every reasonable opportunity to exercise their rights as a consumer

Entitlement to Patients Rights According to Section 5235, Welfare and Institutions Code, the following individuals are entitled to patients' rights:

- A person who is involuntarily detained for evaluation or treatment under provisions of this part
- A person who is admitted as a voluntary patient for psychiatric evaluation or treatment to any facility as defined in Section 1250 of the Health and Safety Code in which psychiatric evaluation or treatment is offered
- A mentally retarded person who is committed to a state hospital pursuant to Article 5 (commencing with Section 6500), Chapter 2 of Part 2 of Division 6

Note: Patients' rights may be denied for good cause, but individuals shall not be denied their rights on the basis of sex, religion, ethnic origin, social or financial status, or any other unreasonable classification.

Patients' Rights Patients have the right to the following:

- To wear their own clothing, keep and use their own personal possessions, including toilet articles, and to spend a reasonable sum of their own money for canteen expenses and small purchases.
- To have access to individual storage space for their private use
- To see visitors each day
- To have reasonable access to telephones, both to make and receive confidential calls
- To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence (*letters only, not packages*)

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Patients' Rights (continued)

- To receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand
- To participate in decisions regarding his/her health care, including the right to refuse treatment
- To refuse electro convulsive treatment which includes convulsive therapies, such as electro convulsive, chemically-induced convulsive or insulin coma
- To refuse psychosurgery (lobotomy)
- Roger S. Hearings, which gives minors 14 to 17 years of age the right to a hearing.
 - **Note:** Hearings are a right for minors who are admitted involuntarily and minors whose admission is "voluntary" per parent or legal guardian authorization, but the minor is objecting to the admission nonetheless.
- RIESE – Medication Competency Hearings, which grant patients who are involuntarily committed on a 72-hour or 14-day hold, the right to refuse the administration of anti-psychotic medication absent an emergency or a judicial determination of the patient's incompetence to make informed consent.
- To see and receive the services of a patient advocate who has no direct clinical or administrative responsibility for the person receiving mental health services
- Other rights as specified by regulation

Note: A list of patients' rights, prominently posted in the predominant languages of the community, shall be explained in a language or form accessible to the patient in all facilities providing such services.

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**Electro
Convulsive
Therapy**

The table below illustrates the process when an individual *agrees* to electro convulsive therapy:

Step	Action
1	<p>The attending or treatment physician is required to do the following:</p> <ul style="list-style-type: none"> • Document the reasons for the procedure in the patient's treatment record • Consider all reasonable treatment modalities • Sign his statement in the treatment record
2	Two physicians, at least one of whom shall have personally examined the patient, shall conduct a review of the patient's treatment record
3	<p>A responsible relative of the person's choosing and the person's guardian or conservator, if there is one, shall hear the oral explanation by the attending physician.</p> <p>Note: Should the person desire not to inform a relative, or should the chosen relative be unavailable, this requirement is dispensed.</p>
4	<p>The patient gives written informed consent to the convulsive treatment, which specifies a maximum number of treatments over a specified maximum period of time, not to exceed 30 days.</p> <p>Note: Revocation of consent may be either <i>oral</i> or <i>written</i> and shall be effective <i>immediately</i>.</p>
5	<p>The patient's attorney, or if none, a public defender appointed by the court, agrees to the patient's capacity to give written informed consent.</p> <p>Note: Additional treatment requires renewed written informed consent</p>

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Exception

If either the attending physician or the attorney believes that the patient does not have the capacity to give a written informed consent, the following steps will take place:

Step	Action						
1	A petition will be filed in Superior Court to determine the patient's capacity to give written informed consent.						
2	<p>The court will hold an evidentiary hearing after giving appropriate notice to the patient, within three (3) judicial days after the petition is filed.</p> <p>Note: The patient may be present and represented by legal counsel during this hearing.</p>						
3	<p>A decision will be made on the patient's capacity to give written informed consent.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 50%; text-align: center;">If...</th> <th style="width: 50%; text-align: center;">Then...</th> </tr> </thead> <tbody> <tr> <td>The court determines the patient does have the capacity to give written informed consent.</td> <td>The information will be shared with the attending physician and/or attorney for the patient and the patient will be allowed to give his/her written informed consent.</td> </tr> <tr> <td>The court determines the patient does not have the capacity to give written informed consent.</td> <td>The consent for treatment must be gained from a responsible relative, guardian or conservator of the patient.</td> </tr> </tbody> </table> <p>Note: At any time during the treatment, a person deemed incompetent has the right to claim regained competency. If that person asserts this right, the person's competency must be re-evaluated.</p>	If...	Then...	The court determines the patient does have the capacity to give written informed consent.	The information will be shared with the attending physician and/or attorney for the patient and the patient will be allowed to give his/her written informed consent.	The court determines the patient does not have the capacity to give written informed consent.	The consent for treatment must be gained from a responsible relative, guardian or conservator of the patient.
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Constitutional Patients' Rights

Patients also have Constitutional Patient Rights as listed below:

- A. Section 5325.1, Welfare and Institutions Code, provides that persons with mental illness have the same legal rights and responsibilities guaranteed to 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.

 - B. It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:
 - 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.
 - A right to dignity, privacy and humane care
 - 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
 - A right to prompt medical care and treatment
 - A right to religious freedom and practice
 - A right to participate in appropriate programs of publicly supported education
 - A right to social interaction and participation in community activities
 - A right to physical exercise and recreational opportunities
 - A right to be free from hazardous procedures
 - A right to request and receive a copy of his/her medical records, and to request that they be amended or corrected.
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