



California's Protection & Advocacy System  
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## Rights Afforded to Persons under LPS

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Under the Lanterman-Petris-Short (LPS) Act, persons are statutorily entitled to individualized treatment that is least restrictive of their personal liberties. Welf. & Inst. Code § 5325.1. Mental health facilities must also comply with the patients' rights provisions found in Welfare & Institutions Code Sections 5325 and following.

Welfare and Institutions Code Section 5325 ensures the protection of certain basic rights such as the right to wear one's own clothing, to keep and use personal possessions, to have visitors of one's own choice, as well as the right to specified procedures regulating the refusal of certain forms of treatment. These rights under Section 5325 (with the exception of the right to refuse psychosurgery, ECT, and the right to see and receive the services of a patients' rights advocate) may be denied, but only upon a properly documented showing of good cause. Welf. & Inst. Code § 5326. The rights specified in Section 5325 may not be waived by the person's parent, guardian or conservator.

### **1. Denial for good cause**

The facility may, for good cause, deny a person any of the rights specified under Section 5325 except those exempted as stated above.

Good cause for denial of rights exists when the facility has good reason to believe:

- (a) the exercise of the right would be injurious to the patient; OR
- (b) it would seriously infringe on the rights of others; OR

- (c) the facility would suffer serious damage if the right is not denied;  
AND
- (d) there is no less restrictive way of protecting these three interests.

Title 9, California Code of Regulations (C.C.R.) § 865.2(a).

## **2. Good cause narrowly defined**

The reason to justify the denial must be related to the specific right denied. A right cannot be withheld or denied as a punitive measure nor be construed as a privilege to be earned. When a right is denied, staff must use the least restrictive means of managing the behavior that led to the denial. In addition, treatment modalities cannot include denial of any of the rights listed in Section 5325. Finally, a right cannot continue to be denied when the good cause for its denial no longer exists. Title 9 C.C.R. §§ 865.1; 865.5 (emphasis added)

## **3. Documentation**

Each denial of a patient's rights must be documented in the treatment record. Welf. & Inst. Code § 5326; Title 9 C.C.R. § 865.3. This documentation must take place immediately, and must be done regardless of the gravity or frequency of the denial. There are also specific guidelines for documenting any additional denials of rights while a patient is in seclusion and restraint. Title 9 C.C.R. § 865.4(c).

## **4. Same rights and responsibilities guaranteed others**

Welfare and Institutions Code Section 5325.1 provides that: "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." Section 5325.1 also provides, in part:

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

- (a) A right to treatment services which . . . should be provided in ways that are least restrictive of the personal liberty of the individual.
- (b) A right to dignity, privacy, and humane care.
- (c) A right to be free from harm including unnecessary or excessive physical restraint, isolation, medication, abuse or neglect. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.
- (d) A right to prompt medical care and treatment.

The above rights reside with the person, are not affected by conservatorship, and apply to both voluntary and involuntary patients. Welf. & Inst. Code §§ 5325, 5325.1.

As previously discussed, certain rights under Welfare and Institutions Code Section 5325 may be denied but only upon a properly documented showing of good cause. Welf. & Inst. Code § 5326. However, rights under Section 5325.1 may not be curtailed and the penalties for intentional violation include civil fines and license revocation, as well as individual actions against the facility for damages. Welf. & Inst. Code § 5326.9(d)-(e).

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