

Understanding the Lanterman-Petris-Short (LPS) Act

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Chapter 3: Your Rights under the LPS Act

Under the Lanterman-Petris-Short (LPS) Act and other laws, even if you are receiving treatment involuntarily, you maintain certain patients' rights. For example, you are statutorily entitled to individualized treatment that is least restrictive of your personal liberties. You have the right to use the telephone and have visitors. WIC § 5325. You also have the same state and federal rights granted to any other citizen while you are receiving treatment, including the right to receive medical treatment and the right to be treated with dignity. WIC § 5325.1.

There are two types of rights in LPS: (1) rights that can never be denied; and (2) rights that can be denied, but only if there is "good cause." When a right is denied for good cause, it must be denied in the least restrictive way possible. Your rights, and when they may be denied, are described below.

Mental health facilities must also comply with the patients' rights provisions found in the California Welfare & Institutions Code (WIC).

Non-Deniable Rights

WIC § 5325.1 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."

These rights include, but are not limited to:

- 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 personal liberty 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 shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, 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 and participation in community activities.
- The right to physical exercise and recreational opportunities.
- The right to be free from hazardous procedures.
- The right to refuse psychosurgery (brain surgery).
- The right to see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

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

As previously discussed, certain rights under WIC § 5325 may be denied, but only upon a properly documented showing of good cause. WIC § 5326. However, **rights under § 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. WIC § 5326.9(d)-(e).

Denial of Rights for Good Cause

Some rights under the LPS act may be denied for “good cause,” which means that the facility cannot deny you that right without showing at least one of only a few narrowly defined exceptions. Following is a list of rights which may be denied for good cause. WIC § 5325.

- 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 money for small purchases.
- The right to have access to individual storage space for his or her private use.
- The right to see visitors each day.
- The right to have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
- The right to have ready access to letter-writing materials, including stamps, and to send mail and receive unopened correspondence.
- Other rights, as specified by regulation.

The rights specified in WIC § 5325 may not be waived by the person's parent, guardian, or conservator.

Though a patient has the right to refuse convulsive treatment, that right may be denied under limited circumstances, as set out in WIC § 5326.7.

Requirements for Good Cause Denial

To deny a right for good cause, the facility must show it has good reason to believe that:

- The exercise of the right would be injurious to the patient, or;
- It would seriously infringe on the rights of others, or;
- The facility would suffer serious damage if the right is not denied;
- AND there is no less restrictive way of protecting these three interests.

If staff denies one of these rights, the reason for the denial must be directly related to the specific right denied. Staff can neither deny your rights as punishment nor use your rights as privileges for good behavior. 9 C.C.R. § 865.2.

Facility staff sometimes mistakenly believe that they can deny a right as a condition of admission, as part of a treatment plan, or because the patient or another person speaking on the patient's behalf has agreed to the denial. None of these reasons meet the good cause criteria. State laws and regulations specify the following:

- Rights may not be denied as a condition of admission, as part of a treatment plan, or for the convenience of staff, for punishment nor may they be treated as a privilege to be earned. 9 C.C.R. § 865.2(b)(c).
- Treatment modalities may not include any denial of rights. 9 C.C.R. § 865.2(c).
- Waivers signed by the patient, responsible relative, guardian, or conservator cannot be used to deny a right. 9 C.C.R. § 865.2 (c); WIC § 5325.

Notification and Documentation of Denial of Rights

Each denial of a patient's rights for good cause must be documented in the treatment record. WIC § 5326; 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. 9 C.C.R. § 865.4(c).

Patients are entitled to an explanation for each denial of rights. This means that a patient must be told each time a right is denied and the reason why the right was denied. The patient must also be told of the content of the notation in their treatment record. 9 C.C.R., § 865.3.

Each denial of a patient's rights must be noted in the patient's treatment record. Documentation must take place immediately whenever a right has been denied. Pursuant to 9 C.C.R., § 865.3, the documentation must include the following:

- The date and time the right was denied;
- The specific right denied;
- Good cause for the denial of the right including less restrictive ways considered or tried;
- Date of review if the denial was extended beyond 30 days;
- The signature of the professional person in charge of the facility or their designee authorizing the denial of rights.

Restoration of a Right

Once a right is denied, it must be restored as soon as good cause for the denial is no longer present. 9 C.C.R. §§ 865 et seq. Staff must also track

each denial in your treatment record. WIC § 5326. When a right is denied, staff must use the least restrictive means of managing the behavior that led to the denial.

This means that a facility is obligated to continually assess whether or not good cause exists for the denial of a right. If, for example, a patient was denied his right to wear his own clothes because of a concern about self-harm, staff must give him frequent opportunities to show that he can wear his clothes without harming himself.

Contacting a Patients' Rights Advocate

Patients have the right to see and receive the services of a patients' rights advocate, or PRA for short. WIC § 5325. A PRA can help educate you about your rights and advise you on what options you have regarding your treatment. A PRA works independently of any facility or clinical staff, and only represents the patient's interests.

If you ever have questions about your rights or treatment options, you can contact a PRA for help. You can access a PRA either by directly contacting the PRA office in your facility, or by requesting that staff put you in contact with a PRA. When working with a PRA, you have the right to meet with them privately to discuss any issues you are concerned about.

If you are unable to contact your PRA, you can reach out to the California Office of Patients' Rights using the following contact information:

California Office of Patients' Rights
1831 K Street
Sacramento, California 95811-4114
Telephone: (916) 504-5810

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