

AGENDA

Patients' Rights Committee

January 15, 2014
Kona Kai Resort
1551 Shelter Island Drive
San Diego, CA 92106
(619) 221-8000

Notice: All agenda items are subject to action by the Patients' Rights Committee. The scheduled times on the agenda are estimates and subject to change.

		Tab
12:00 p.m.	Welcome and Introductions <i>Daphne Shaw, Chairperson</i>	
12:05 p.m.	Planning Council Member Issue Requests	
12:15 p.m.	Review and Discuss Results of PRC Survey <i>Daphne Shaw</i>	A
12:55 p.m.	Discuss PRC Presentation to CMHPC in 2014 <i>Daphne Shaw</i>	B
1:05 p.m.	New Business <i>Daphne Shaw</i>	
1:15 p.m.	Evaluate Meeting/Discuss Next Agenda <i>Daphne Shaw</i>	
1:30 p.m.	Adjourn	

Committee Members

Daphne Shaw, Chairperson
Cindy Claflin, Vice-Chairperson
Carmen Lee
Adam Nelson, MD
Walter Shwe
Richard Krzyzanowski (ad-hoc)

Dan Brzovic (ad-hoc)

Staff

Michael Gardner

If you have any questions, concerns, or need special accommodations to participate; please call Mike Dorman at 916-552-9560 no later than January 3, 2014 so that arrangements can be made.

Times on the agenda are estimates only and may be not be accurate.

X INFORMATION

TAB SECTION: A

___ ACTION REQUIRED:

DATE OF MEETING:
1/15/2014

PREPARED BY: Michael Gardner

DATE MATERIAL
PREPARED:
12/9/2013

AGENDA ITEM: *Review and Discuss the PRC Survey*

ENCLOSURES: Copy of 'Survey Questions'; Results/Answers to Survey Questions as of 12/13/2013

OTHER MATERIAL RELATED TO ITEM:

ISSUE:

The Patients' Rights Committee has developed and distributed its first survey. It was distributed widely to various organizations including NAMI, CalMHB, and through their networks to various interested parties. The PRC will discuss the results and determine a course of action for further surveys. The results will be analyzed by the committee and the next steps outlined.

[Edit this form](#)

Patients' Rights Committee of the California Mental Health Planning Council

The Patients' Rights Committee (PRC) of the California Mental Health Planning Council (CMHPC) is asking for your help to determine the effectiveness and needs of your county's Patients' Rights Advocacy services. Please help the PRC by completing this short survey.

Starting January 1, 2013 the California Mental Health Planning Council was mandated by the State Legislature to perform the duties listed below.

WIC Code 5514.

There shall be a five-person Patients' Rights Committee formed through the California Mental Health Planning Council. This committee, supplemented by two ad hoc members appointed by the chairperson of the committee, shall advise the Director of Health Care Services and the Director of State Hospitals regarding department policies and practices that affect patients' rights. The committee shall also review the advocacy and patients' rights components of each county mental health plan or performance contract and advise the Director of Health Care Services and the Director of State Hospitals concerning the adequacy of each plan or performance contract in protecting patients' rights. The ad hoc members of the committee shall be persons with substantial experience in establishing and providing independent advocacy services to recipients of mental health services.

The mandate listed below has already existed for some time.

WIC Code 5520

Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocates. The duties of these advocates shall include, but not be limited to, the following.

* Required

WIC Code 5520 - (a) *

(a) To receive and investigate complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding abuse, unreasonable denial or punitive withholding of rights guaranteed under the provisions of Division 5. Is this being done in your county? If so how?



If not, what are the barriers to implementation?



Describe any suggestions you have about how the process can be improved.

**WIC Code 5520 - (b) ***

(b) To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions. Is this being done in your county? If so how?

If not, what are the barriers to implementation?

Describe any suggestions you have about how the process can be improved.

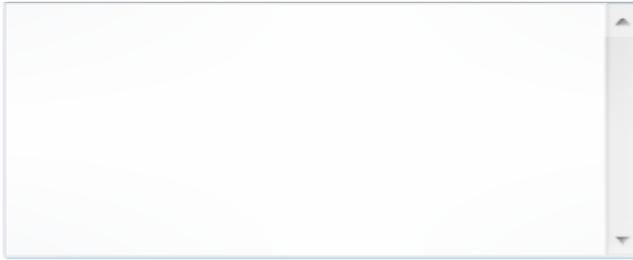
WIC Code 5520 - (c) *

(c) To provide training and education about mental health law and patients' rights to mental health providers. Is this being done in your county? If so how?

If not, what are the barriers to implementation?

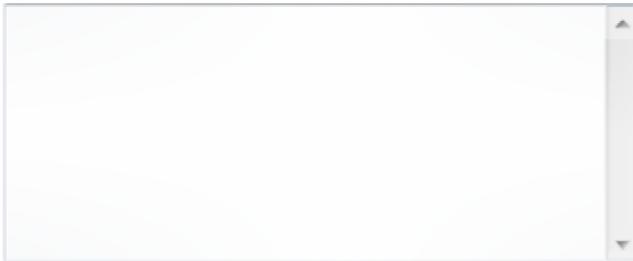


Describe any suggestions you have about how the process can be improved.

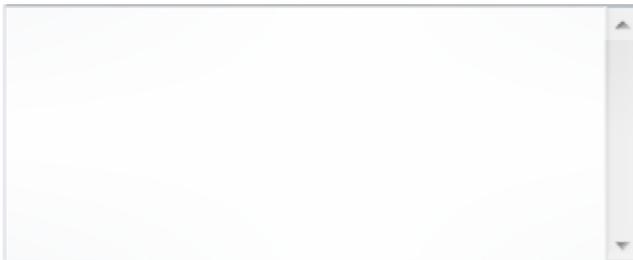


WIC Code 5520 - (d) *

(d) To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights. Is this being done in your county? If so how?



If not, what are the barriers to implementation?



Describe any suggestions you have about how the process can be improved.

WIC Code 5520 - (e) *

(e) To exchange information and cooperate with the patients' rights program. Is this being done in your county? If so how?

If not, what are the barriers to implementation?

Describe any suggestions you have about how the process can be improved.

Do you assist with Medi-Cal grievances and appeals? If so, please describe your roll and how you carry it out. *

Do you assist with Medi-Cal fair hearings? If so, please describe your roll and how you carry it out. *

On behalf of the Patients' Rights Committee, thank you for participating in this survey. Your answers will be extremely helpful in the future direction of the committee. If you have any other comments you would like to make, please use the space below.

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Summary

WIC Code 5520 - (a)

yes we investigate any and all complaints.

To the best of my knowledge, various patient's rights advocates visit licensed health and community care facilities to help consumers.

Yes. County PTS RTS office handles complaints/grievances concerning locked facilities as well as PTS RTS issues in licensed programs. We are the "external" option for clients to access should they choose not to utilize the internal, facility complaint process. We have a confidential, toll free number they can call or they can mail us a county grievance form or letter; our address and contact information is available to clients numerous points in the inpatient process (at admission, on the back of the state issue PTS RTS handbook, on posters and on the county grievance forms on the units). We ensure these informing materials are in place during investigation and monitorings we conduct throughout the year at all LPS Inpatient Hospitals and SNF/STPs. Awareness of our services is also provided through the various educational trainings we provide and our involvement in coalitions, subcommittees, etc.

Somewhat, complaints are followed up on by Patients' Rights advocates in our county, although they are not always available and have little support from community care licensing when violations are found. Often, Board and Care homes give up their licenses and reopen as Room and Boards. This has become an increased problem in our county.

I am not aware if this is or is not being done

Yes to an extent. It is our duty to receive these complaints from residents of our licensed residential facilities (Skilled Nursing Facilities/Special Treatment Program x 2), and investigate. We are also mandated to report abuse allegations to Adult Protective Services, local Law Enforcement agencies, and California Department of Public Health. With regards to our Adult Residential Facilities (ARF's or Board and Care Facilities) we will cross report to the Regional Community Care Licensing Division for investigation.

This has been done in Sacramento County. When a complaint is received, an advocate visits the facility and speaks with the consumer and staff concerning the situation. abuse patients with no oversight.

It is my understanding that Consumers Self Help handles the patient complaints. by patients rights advocate I don;t know

Yes. We receive phone complaints and investigate when we are out at the hospitals or board and care homes

If not, what are the barriers to implementation?

Barrier to investigating in both SNF/STP's and ARF's is lack of staff. We also lack the authority to protect in cases of alleged abuse, therefore, we report to the agencies that yield the authority to protect.

Honest conversations regarding the 5150 law and it's implementation through the judge advocates.

N/A not enough staff time dedicated to patients rights issues

Patients' Rights advocates spend the majority of their time representing clients at certification review hearings and have little time available for other monitoring responsibilities or investigations. Patients' Rights has no authority to correct violations.

Describe any suggestions you have about how the process can be improved.

The providers and programs in our county need to have a clear understanding of our role in regards to the complaint, grievance and investigation process. They do not seem to understand we are not an enforcement agency, although we will notify (and empower our clients to notify) the appropriate enforcement agency relevant to the issue in question. Additionally, sometimes facilities are not very forthcoming with the external complaint options (via PTS RTS) redirecting the client to utilize only the internal process. Education is key in addressing these areas. If there was a way clients could submit their concerns via a webpage or internet (email) it would be helpful as a majority of clients seem to be pretty tech savvy. Clients also need to have realistic expectations of what types of outcomes our office can provide for their complaints and grievances.

We have a lot of mental health consumers living in non-licensed facilities, such as Room & Board houses. It would be helpful if the statute was expanded to cover those homes as well.

Remove the PRA from the Department - this should be an independent person who is not easily influenced by or silenced by the administration.

Increased number of advocates, the current methodology does not seem sufficient for some counties. Increased autonomy and authority for patients' rights to act on violations through fines, and loss of priveledges.

Parents should be able to advocate on behalf of their adult children, especially when the adult child has impaired insight. Sometimes the parents see things the patient can't acknowledge.

County Patients' rights should have clear guidelines to how our office should respond to residents' allegations of abuse. This would cut down in the duplication of investigations and clarify the assignment of investigating to the appropriate authoritative entity.

I usually feel we have no power to make much of a change but I find that when you approach a situation with the idea of a resolution and not with a blaming attitude most times good results happen. I find most of the time the denial of rights is justified and only lasts for a short time. Most of the people I work with know better as we have worked hard at training them when we are there doing hearings. I have developed a good working relationship with the hospitals and B&C homes so a phone call is often all that is needed. increase staff for staff to provide training to staff and clients at all mental health provider and county locations

WIC Code 5520 - (b)

Yes. Our LPS facilities are monitored by our Patients' Rights office for compliance with MH Patients' Rights, some LPS legal processes, and observed quality of care on a semi-annual basis. Our office also monitors Certification Review Hearings on a quarterly basis in the facilities where we do not provide the patient representation. We do not monitor Riese Hearings, LPS Conservatorship investigations and proceedings, or Writ Hearings.

NO. The PRA is given 10 hours a week - barely enough time to deal with the hearings on the inpatient unit. NO outside facility has been visited or audited in years, possibly decades.

basic services - although not enough staff to implement full compliance, training and support

Not sure if it's being done, but it definitely should be.

We have a chart monitoring form we use to find out if rights are being protected by hospital staff.

We do monitor hospital charts in Sacramento County as well as Yolo County using a form to check for required documentation in the chart as well as to ensure no rights have been violated.

year; once a quarter, we monitor the LPS facilities' Certification Review Hearing process; every 2 years, we do a thorough review of the LPS facilities during the LPS Re-Designation process. We developed specific monitoring forms that encompass all the PTS RTS related issues within our jurisdiction. The facility and re-designation monitorings include random chart reviews, walk-through of the facility, observation of groups/admission/ discharge, observation of staff, interviews with clients and staff and policy reviews. A final report is provided to the facility with recommendations that would bring them into compliance.

I'm not sure.

Somewhat, due to our county's interpretation of HIPAA as well as other private facilities we are only given limited access to client records for monitoring purposes. We are required to get a release of information in writing from clients prior to monitoring their charts. This requirement limits access to records of clients who may be unable to give consent and discharged clients.

I believe, from what I have observed and heard that the mental health facilities are being monitored and patient rights booklets are being given out.

I don't know

Yes certainly in Sacramento county, Yolo and San Joaquin not so much. They are not as open to our suggestions. But we continue to work with them.

If not, what are the barriers to implementation?

N/A

County counsel's interpretation of the law and HIPAA requirements as interpreted by the county and private facilities in our county.

Knowledgeable oversight staff and easy to find inspection documents.

Our staff is limited and we lack sufficient training/or expertise to scrutinize these legal processes.

money, desire for the truth and lack of motivation or necessity. not enough staff

San Joaquin is very resistive basically because no one has held them accountable. We are working with them and it will take some time but I hope in the near future they will get on board with following a more open relationship with us. They are very standoffish and at times rude. They don't understand why we would want to see a chart for someone having a hearings.

Describe any suggestions you have about how the process can be improved.

increase staffing and community training

Monitoring outpatient service providers for compliance with statutory and regulatory rights provisions would be helpful to ensure patients' rights in those settings were being observed.

I feel facility monitorings should be done quarterly, however our office does not really have the staff or time to do so. I also think facilities should be required to submit a plan of correction to our office following receipt of a monitoring report. Currently, it seems the facilities are not taking action to address the recommendations made. I also feel county QM, contracts and medical services should become more involved in monitoring, even if it is not collaboratively with our office. It is important to understand that while many advocates are licensed therapists, in a role as a PRA, we must act within the ethical principles of advocacy and address PTS RTS issues only. Generally, it seems our office is doing a lot of work during monitorings and follow up meetings (debriefings) but we really have little power to force change, hence the entities that do (contracts, QM) should be involved.

Increased clarification of access to records for monitoring with enforcement ability.

I think the Dept of Mental Health people need to be on the same page throughout each county. I don't understand why other counties do things so different then us here in Sacramento.

Make visits and oversight mandatory and provide funding (i.e. designate a certain % of MHSA funds or something).

It is my personal view that every County Patients Right Advocacy Office should employ an attorney to best monitor these legal processes to scrutinize the performance of the Court, patients' attorney, and County Counsel. I also believe this person should be an independent legal advisory, and not an employee of the County they monitor.

WIC Code 5520 - (c)

no

Seldom, training and education about mental health law and patients' rights to mental health providers is done at the request of the providers and is very seldom requested.

Not to my knowledge.

Yes. To the best of our ability, our office has provided trainings for MH Patients' Rights related topics to service staff in our LPS facilities and County MH Outpatient clinics. Our Peer Family Advocate conduct general MH Patients' Rights trainings to the inpatients in our County LPS facility.

This is being done in Sacramento County on a by request basis at various inpatient facilities, board & care homes and medical schools.

We do staff trainings at hospitals and other locations when asked to do them.

We do some esp at the county level. we have been asked to speak to the new interns at the county hospital on several occasions. I have spoken to nursing students at the request of the teacher. I get approached by doctors about questions they have and advice they want. I would like to see us do a group for the patients to let them know their rights and how better to utilize the services offered.

No. The posters that advertise the PRA phone number do not even explain when or for what issues the PRA should be called. Yes, the "official" posters are displayed- these are WAY too wordy and legal for anyone to take in, particularly someone with mental illness issues in a crisis or severe state.

I know there are many organizations, such as NAMI and private organizations, that put on educational conferences and meetings open to the public that address patients rights and mental health laws. These open meetings bring more awareness to providers, family members and mental health consumers.

Yes. We have a role in the monthly new hire orientation for the county, annually we do an LPS law and PTS RTS law for all the LPS designated facilities, we provide training at collaborative, committees, and when requested from programs or clinics. Quarterly, we are involved in the 5150 Writer training provided by the county, the process by which no law enforcement are training and certified to initiate 5150/5585 holds. We provider training to all DBH interns (BSW, MSW, MFT and Ph.D.) as well as residents at our teaching LPS facilities. We frequently collaborate with the Superior Court, Office of the Mental Health Court Counselors to provide training to providers as well. Additionally, when we trend an issue we will offer training to the provider/program/facility and provide trainings at the annual State Office of Patients' Rights Training in Sacramento. We also have Peer Family Advocate on staff in our office that does PTS RTS education groups in our county LPS designated facility for patients 1x a week.

If not, what are the barriers to implementation?

N/A

removed from my position and a new PRA without any motivation or desire to do anything different from what has been done for years and years was hired. Btw, the status quo in our county is pretty much --- do nothing. Show up at hearings, be quiet, go away, file the paperwork.

the police need to be given lots of training and there needs to be a Crisis service team on call 24/7

Time is a barrier. Desire is a barrier. Taking the initiative is a barrier. staffing time
Time is a major barrier to proper implementation. The six advocates in Sacramento County represent patients at over 500 hearings a month. That leaves little time for providing training.

We lack a sufficient amount of staff to provide ongoing trainings on all pertinent LPS MH Patients Rights topics to all of our inpatient facilities (staff and inpatients).

Describe any suggestions you have about how the process can be improved.

increase staffing

It would be good for our office to have a policy and procedure manual outlining duties. developing a training manual also would be good. Meeting with staff at the various hospitals on a regular basis would be good. Stepping outside the box would be good. Some facilities are more inclined and open to trainings than others. It would be good for our office to do a review of the trainings the facility received annually or at the 5150 Re-Designation Process. As part of the facilities' contract with the county, I feel they should be required to have PTS RTS training (staff/providers) at least annually. I also think it would be helpful to the clients we serve if our office could do PTS RTS groups in all the LPS designated facilities and SNF/STPs , not just at the county facility.

It would be helpful to dedicate staff for this purpose of training and patient outreach. Our County has a sufficient number of facilities (inpatient/involuntary) to justify this need. see above.

Perhaps a video training session could be produced that would allow the staff and/or students to watch information on patients' rights and then contact local advocates for questions.

Training requirements.

WIC Code 5520 - (d)

Yes. We do this via the monitoring & review processes via chart reviews and interviews with clients. Additionally, when preparing to represent clients at their Certification Review Hearings, we review their charts to ensure they signed an acknowledgment of receipt of the state PTS RTS handbook and were told of their right to contact the county PTS RTS office and how to contact our office. When interviewing clients during hearing preparation, we also ask them if they received that information. When clients call our office, we frequently direct them to their PTS RTS handbook or PTS RTS posters on the unit; sometimes they state they did not receive them and we then contact the facility to ensure they do. We also give the facilities the contact information for the state so they can order PTS RTS handbooks and posters as well as give them a template to print out labels with our office's contact information to be placed on all PTS RTS handbooks and posters. even remember where they put the booklet. It is a huge shame of a system. Inform people of their rights while you are taking away their freedom because they are "out of their right mind."

Yes. This is done through our monitoring efforts in our LPS facilities and Locked Residential Facilities (x 2 SNF/STP). It is reviewed in their compliance with posting signage from DHCS (MH Patients' Right Posters) and their documentation of providing the LPS MH Patients' Rights Handbook at admission. We also survey patients on the receipt of the LPS Handbooks and their knowledge of MH Patients' Rights when interviewing them as a component of our Monitoring process.

In Sacramento, in my experience, the HIPPA laws are always available no matter if it is medical or psychological facilities a person is entering.

Not sure.

Superficially, I believe that clients are given information about their rights although it is unclear if any efforts are made to ensure that clients understand the information they are being given.

Signs are posted and brochures are given to patients at admission. I don't know

Yes handbooks are given out at time of admission. Posters are up with our information at the Hospitals and B&C homes.

Posters with rights are put up in hospitals and board and care homes

no - except on initial contact with patient -

We inspect each Board and Care facility once a year and provide the residents with booklets concerning their rights/responsibilities. In hospital settings, patients are provided with the booklet containing information about their rights. We often frequently mail out booklets upon request.

If not, what are the barriers to implementation?

N/A

No one in the administration or on staff really wants the patients to know their rights because then they would have to follow actual law and provide real services and treatment and maybe even show some respect and treat each person as an individual.

More opportunities to dialogue with clients about their rights and what to do if they believe their rights are being violated.

No major barrier.

If a patient has severe psychosis, they likely won't benefit from a brochure.

Describe any suggestions you have about how the process can be improved.

increase staffing

Parents need to be involved in all processes in order to ensure their adult child's rights are being protected, as well.

My only suggestion would be that our County employ enough Patients' Rights Advocates to be a significant and steady presence in all of our LPS and locked MH residential facilities.

Again, there has to be oversight on the county that is real and in-depth. There has to be a reason for the administration and staff to be forced to make changes to a very broken system that is hurting and damaging people left and right. Currently, it is incredibly prejudiced and biased against those with severe mental illness and with any sort of history in the system. No one is given a second chance,; hope is not provided or evn felt and the conditions at the inpatient units are dismal.

None

Regular and ongoing meetings through out the county that clients can attend to get additional information. Provide information about when and where these meetings are held at the time they are given the information.

Not all facilities have a specific form that the client's sign to acknowledge they received their PTS RTS handbook and the county PTS RTS contact information. I think this should be a requirement. Sometimes staff tells us that the client was not receptive to receiving that information at admission (which we understand occurs). We advise them to documents their continued effort to comply with this requirement over the next day or two.

If we were able to do trainings at the other LPS and SNF/STP facilities it would be beneficial to the clients, staff and also, give us a better awareness of how the units are running. However, staffing would not allow us to do this regardless of the facilities willingness to have us.

WIC Code 5520 - (e)

I'm not sure what the Patients' Rights Program is.

Yes, to the degree possible and when appropriate. Since I have been an advocate (last 7 years) we really have only consulted with State PTS RTS 2x outside of the annual trainings and sending DOR, ETC, and S & R reports. We do communicate frequently with other county PTS RTS programs via the state run list serve, as well as via our involvement in CAMHPRA (California Association of Mental Health Patients' Rights Advocates).

Rarely due to staffing Not sure.

Yes mostly. Sacramento county yes, Yolo and San Joaquin somewhat. I do not know.

I don't know We send all advocates to yearly patients' rights trainings.

At times this is done, however, often facilities and the county insist that the patient give a written informed consent which may or may not be available at the time of exchange.

No. I do not even know if the new PRA is on the listserv - no one told me about it , I just found it by doing web searches when I was provided little to no training or mentoring and I wasn't allowed to provide any sort of transition to the next PRA.

Yes. We participate in the all County Patients' Rights Advocate list-server. We exchange information and respond to request for information whenever possible. We also post questions to gain clarity on subjects pertinent to MH Patients Rights. We also participate in the annual State (CA) Office of Patients Rights training (PRAT) by sending at least one representative to this training.

Not sure

If not, what are the barriers to implementation?

Barriers are time and openness. N/A

No one seems to care about the program as long as the state review each year of paperwork passes. No one ever looks deeper.

Interpretation of laws and regulations regarding patients' rights access to records and information.

staffing time

Describe any suggestions you have about how the process can be improved.

increase staffing We should be out there setting up meetings offering trainings etc

Increased clarification about access to information. Increased authority of patients' rights advocates to enforce the laws and regulations.

we have consulted with them, they really do not directly answer our questions; rather they answer them as an attorney would-being philosophical and avoidant. While I understand that most of them are attorneys (which is not a bad thing) I do feel they should be more clear in their answers, provide more than 1 annual training (in which most presenters are PRA from various counties, not state PRA). It seems most of what we know, we had to learn via our own experience and research, particularly since when I started there really wasn't much of a PTS RTS office. The dissemination of information is not good from the state down to county advocates.

It would be appreciated that our State Office of Patients' Rights (COPR) provide more frequent training opportunities in closer proximity to our home stations. COPR should provide more outreach to all Counties.

Do you assist with Medi-Cal grievances and appeals? If so, please describe your roll and how you carry it out.

no No. NO

I have at times guided people on the phone. mostly given phone numbers and encouragement. No

No, the county takes care of that.

We provide consumers with the County grievance form. That is the extent of our involvement.

I do not assist with Medi-Cal grievances or appeals.

Do you assist with Medi-Cal fair hearings? If so, please describe your roll and how you carry it out.

no No. no I do not assist with hearings. NO No

We did them many years ago, but not now.

Only if requested to assist by the client, which has only happened once about 7 years ago.

No we do not

On behalf of the Patients' Rights Committee, thank you for participating in this survey. Your answers will be extremely helpful in the future direction of the committee. If you have any other comments you would like to make, please use the space below.

I big problem is the staffing calculations allowances that state DMH issued years ago which only requires 1 full time PRA for every 500,000 people in the population. In counties that have a large number of psychiatric facilities, this simply does not provide enough staff to adequately fulfill all the requirements in 5520. In our county, we have 6 LPS facilities and we should really be representing clients at their Certification Review Hearings in all the facilities. However, because of this staffing ratio, that is not physically possible. Additionally, we have 2 large SNF/STP facilities. There is a great variety from county to county in the PRA duties; for example, in some counties, PRAs do not represent clients at Certification Review Hearings, in others not only do they do those hearings, but also Reize (Medication Capacity Hearing) representation. The required number of advocates should really be based upon the number of facilities and the duties the advocates in that county are charged with, not a straight population ratio.

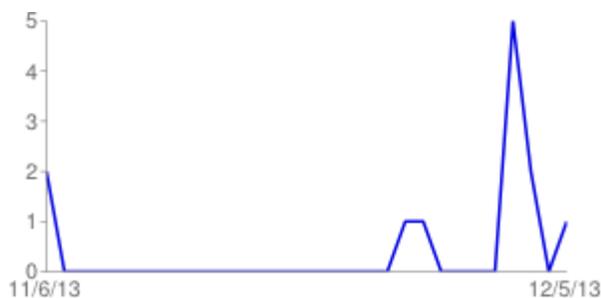
Currently, it seems as though patients' rights is more of an addendum to the county mental health system rather than an integral part. I think if patients' rights advocates had increased authority and enforcement capabilities that would change.

Is it a patient's right to live on the street or a park bench and refuse medication or help due to fear of being institutionalized? Do they have the right to be free as they get wet and run out of money? They seem to have the right to fly into rages and be kicked out of any shelter they rent. I have a daughter with schizo-affective disorder. She is very often delusional, but can talk normal for short periods of time. If she got abusive the Berkeley police might kill her in an attempt to subdue her. Nothing seems to be available in Alameda Co. for helping these hard to help people.

I am very concerned about the PRA program and the ways patients' rights are being ignored in Butte County. Any assistance to overhaul the system would be greatly appreciated.

Yeah - go forth and conquer

Number of daily responses



X INFORMATION

TAB SECTION: B

___ ACTION REQUIRED:

**DATE OF MEETING:
1/15/2014**

PREPARED BY: Michael Gardner

**DATE MATERIAL
PREPARED:
12/9/2013**

AGENDA ITEM: *Review and Discuss the PRC Presentation to the Full CMHPC Meeting*

ENCLOSURES:

OTHER MATERIAL RELATED TO ITEM:

ISSUE:

The Patients' Rights Committee is scheduled to have a presentation to the entire CMHPC in the near future. The committee will discuss what is to be presented and how that will be carried out.



Notes from July 17, 2013 call for Patient's Rights Committee

Present:

Walter Shwe

Daphne Shaw

Dan Brzovic

Richard Krzyzanowski, Los Angeles

Adam Nelson

Guests: Daniel Czarnecki, NAMI

Absent:

Cindy Claflin

Carmen Lee

It was confirmed that the CALMHBd/C does want to collaborate and participate on the survey of the counties for compliance with WIC 5520.

David Czarnecki talked about his role with NAMI. He is fairly new and he indicated that the organization's public policy platform is posted on their website although he could not speak on it specifically. The group indicated they would like to ask NAMI to participate in the information collection to help balance potential bias. He indicated the Committee should make a specific request, addressed to Jessica with a cc to him.

There was discussion and clarification about what is patient's rights, the scope and breadth of it. The members agreed there seems to be 3 areas of patient's rights; 1) involuntary treatment, 2) treatment (which includes access, medical necessity, mental health parity and privacy laws), and 3) Medi-Cal grievance process. It was determined that the focus of the committee will be in the 1st and 3rd areas. The committee feels area #2 falls under the scope of the Advocacy committee.

It was decided that Dan will provide a training to the committee for the 1st and 3rd areas using Powerpoint during the next meeting on August 21, 2013 at 10:30am. The training will take about an hour including questions and discussion. The agenda and Powerpoint will be prepared in advance for posting 10 days prior to the meeting.

Under new business, Dr. Nelson presented information about the Health Care Patient Navigator program and that Sonoma State University offers a certification program at their campus. Pam Coppola (sp?) is the representative for the program.

Additionally, it was confirmed that Google offers a survey tool which is free and easy to use. The group agreed to try the Google survey in lieu of Survey Monkey.

There was no public comment.



Patient's Rights Committee
Meeting Highlights
August 21, 2013
10:30 a.m. to 12:00 p.m.

Members Present

Daphne Shaw, Chairperson
Richard Krzyzanowski
Dan Brzovic
Adam Nelson
Carmen Lee
Walter Shwe
Cindy Claflin

Staff Present

Jane Adcock
Tracy Thompson

Update on WIC 5520 Project

NAMI Response and Invite to CAMHPRA

- Staff reported that there has not yet been any response to either invite. Staff will follow up with Jessica Cruz at NAMI and keep committee members updated.

Training: Patient's Rights

Dan Brzovic, Committee Member, Associate Managing Attorney of Disability Rights California, provided training with a power point presentation to committee members on Patients' Rights and Patients' Rights Advocacy in California.

Dan Brzovic advised that the training contains a collection of specific provisions that talk about what Patient's Right's offices are required to do. Brzovic began by discussing Patients' Rights Laws and Regulations and then discussed Patients' Rights Advocacy.

Patients' Rights Laws and Regulations

Welfare and Institutions Code (W&IC) § 5325 outlines the rights of all persons with mental illness:

- *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.*

This is the heart of the civil rights statute for people who have a diagnosis of mental illness

Currently, California has two distinct and separate sets of patients' rights for mental health; Lanterman-Petris-Short (LPS) as identified in Welfare and Institutions Code §§ 5325, 5325.1, most commonly used in the County facilities and California Code of Regulations, Title 9 §§ 880 – 892 used only in the Department of State Hospital facilities. Within each set of rights there are two categories: rights that are non-deniable and rights that are subject to denial.

Specific rights that cannot be denied under W&IC § 5325.1:

- *(a) 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.*
- *(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
 - *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.*
- *(e) A right to religious freedom and practice.*
- *(f) A right to participate in appropriate programs of publicly supported education.*
- *(g) A right to social interaction and participation in community activities.*
- *(h) A right to physical exercise and recreational opportunities.*
- *(i) A right to be free from hazardous procedures.*

W&IC § 5331 is entitled No Presumption of Incompetence and is an important overarching provision that applies to all people in the state regardless of their condition

- *No person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily or involuntarily received. Any person who leaves a public or private mental health facility following evaluation or treatment for mental disorder or chronic alcoholism, regardless of whether that evaluation or treatment was voluntarily or involuntarily received, shall be given a statement of California law as stated in this paragraph.*

Psychiatric facilities must also uphold the following specific legal rights of patients. These rights may only be denied when "good cause" exists: W&IC Code § 5325

- *Each person shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities:*

- (a) To wear his or her own clothes;
- to keep and use his or her own personal possessions including his or her toilet articles; and
- to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.
- (b) To have access to individual storage space for his or her private use.
- (c) To see visitors each day.
- (d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
- (e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.
- (f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment. (Deniable only in accordance with Section 5326.7 procedures.)
- (g) To refuse psychosurgery. (Non-deniable.)
- (h) 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. (Non-deniable.)

LPS Patients' Rights (Good Cause) W&IC § 5326, 9 CCR § 865.2:

- Rights may be denied for good cause when the professional person in charge of a facility or his or her designee has good reason to believe:
 - (1) That the exercise of the specific right would be **injurious to the patient/resident**; or
 - (2) That there is evidence that the specific right, if exercised would **seriously infringe on the rights of others**; or
 - (3) That the **institution or facility would suffer serious damage** if the specific right is not denied; and
 - (4) That there is **no less restrictive way** of protecting the interests specified in (1), (2), or (3).
- (b) The reason used to justify the denial of a right to a patient/ resident must be related to the specific right denied. A right shall not be withheld or denied as a punitive measure, nor shall a right be considered a privilege to be earned.
- (c) Treatment modalities shall not include denial of any right specified in Section 861 of this article. Waivers signed by the patient/ resident or by the responsible relative/ guardian/ conservator shall not be used as a basis for denying Section 861 rights in any treatment modality.

State Hospital Patients' Rights (Section 880 Regulation) Forensics facilities within the State Hospitals felt that there were additional security concerns and opted to create their own set of regulations. These regulations are designed as the LPS regulations are designed and have undeniable rights and rights that are deniable only for good cause. However, Section 880 Regulations are much tighter and more narrowly defined. 5325.1 is a statute that continues to apply to the State Hospitals.

- *Similar to LPS Patients' Rights, **except:***
 - *(1) A right to keep and use personal possessions as space permits, **except items and materials that are listed as contraband by the facility. Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility. Each patient shall receive a copy of the contraband listing upon admission.***
 - *(4) A right to personal visits during regularly scheduled visiting days and hours. The right to have visits shall not be denied **except as is necessary for reasonable security of the facility and the safety of persons. The length and frequency of visits and the number of persons permitted to visit a patient at the same time may be limited consistent with safety, security, and to ensure that all patients have a fair opportunity to have visitors.***
 - *(8) A right to have access to legal reference material. Limitations on the time, duration, frequency, and method of access shall be specified by formal facility policy to ensure opportunity for access by all patients. **(Deniable right.)***
 - *(10) A right to social interaction. The formation of supervised patient leisure time activity groups that promote educational, social, cultural and recreational interests of participating patients shall be permitted, except for activities that pose a threat to safety and security. **(Deniable right.)***

Good cause for denying a patient the exercise of a right exists when the facility director determines that:

- *(1) The exercise of the specific right would be injurious to the patient; or*
- *(2) There is evidence that the specific right, if exercised, would seriously infringe on the rights of others; or*
- *(3) The facility would suffer serious damage if the specific right is not denied, or;*
- ***(4) The exercise of the right would compromise the safety and security of the facility and/or the safety of others; and***
- *(5) That there is no less restrictive way of protecting the interests specified in Subsections (c)(1) through (4) of this Section.*

State Hospital Patients' Rights Contraband W&IC § 7295:

- *(a) To ensure its safety and security, a state hospital that is under the jurisdiction of the State Department of State Hospitals, as listed in Section 4100, may develop a list of items that are deemed contraband and prohibited on hospital grounds, and control and eliminate contraband on hospital grounds.*
- *(b) The State Department of State Hospitals shall develop a list of items that shall be deemed contraband at every state hospital.*
- *(c) A state hospital shall form a contraband committee, comprised of hospital management and employees designated by the hospital's director, to develop the list of contraband items. The committee shall develop the list with the participation of patient representatives, or the patient government of the hospital, if one is available, and the Office of Patients' Rights.*

- (i) For the purposes of this section, **“contraband”** means materials, articles, or goods that a patient is prohibited from having in his or her possession because the **materials, articles, or goods present a risk to the safety and security of the facility.**

Medi-Cal Grievance System: The appeals process is for services not covered by Medi-Cal or not medically necessary. **The committee may want additional training specifically on Medi-Cal if needed.**

- (a) An MHP shall develop problem resolution processes that enable a beneficiary to resolve a problem or concern about any issue related to the MHP's performance of its duties under this Chapter, including the delivery of specialty mental health services.
- (b) The MHP's beneficiary problem resolution processes shall include:
 - (1) A grievance process;
 - (2) An appeal process; and
 - (3) An expedited appeal process

Patients' Rights Advocacy

The Calif. Office of Patients' Rights (COPR) Disability Rights California (DRC) provide patient right's advocacy services in the State Hospitals and conduct investigations of abuse and neglect.

Within the Patient's Right's advocacy system there are two parts: statewide patient rights advocacy and county patient rights advocacy. Originally, statewide patient rights advocacy was operated by the Department of Mental Health (DMH) the State Hospitals. However, this raised some conflict of interest issues. The DMH decided to contract out for statewide patient's right's advocates.

- *The State Department of State Hospitals and the State Department of Health Care Services shall contract with a single nonprofit agency that meets the criteria specified in subdivision (b) of Section 5510 to conduct the activities specified in paragraphs (1) to (4), inclusive. These two state departments shall enter into a memorandum of understanding to ensure the effective management of the contract and the required activities affecting county patients' rights programs:*
 - (1) Provide patients' rights advocacy services for, and conduct investigations of alleged or suspected abuse and neglect of, including deaths of, persons with mental disabilities residing in state hospitals.
 - (2) Investigate and take action as appropriate and necessary to resolve complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding abuse, and unreasonable denial, or punitive withholding of rights guaranteed under this division that cannot be resolved by county patients' rights advocates.
 - (3) Provide consultation, technical assistance, and support to county patients' rights advocates in accordance with their duties under Section 5520.
 - (4) Conduct program review of patients' rights programs.
- (b) The services shall be provided in coordination with the appropriate mental health patients' rights advocates.
- Daphne Shaw: Does COPR do much around #4 above (Conduct program review of patients' rights programs)? **Answer: This is something the committee can and should look at.**

- (c)(1) *The contractor shall develop a plan to provide patients' rights advocacy services for, and conduct investigations of alleged or suspected abuse and neglect of, including the deaths of, persons with mental disabilities residing in state hospitals.*
- (2) *The contractor shall develop the plan in consultation with the statewide organization of mental health patients' rights advocates, the statewide organization of mental health clients, and the statewide organization of family members of persons with mental disabilities, and the statewide organization of county mental health directors.*
- (3) *In order to ensure that persons with mental disabilities have access to high quality advocacy services, the contractor shall establish a grievance procedure and shall advise persons receiving services under the contract of the availability of other advocacy services, including services provided by the protection and advocacy agency specified in Section 4901 and the county patients' rights advocates specified in Section 5520.*
- *Non-LPS patients shall be informed of and provided with a written procedure for filing complaints or appeals alleging violations of any right(s) contained in Sections 883 and 884. The written procedure shall contain the following information:*
 - (a) *Notification that any patient who believes a patients' right listed in this Article has been abused, punitively withheld, or unreasonably denied may file a complaint with the Patients' Rights Advocate.*
 - (b) *The contact name of the Patients' Rights Advocate assigned to address patients' rights complaints, their telephone number and contact times.*
 - (c) *A statement that the Patients' Rights Advocate shall take action to investigate and address patients' rights complaints within two working days.*
 - (d) *A statement that if the complainant is not satisfied with the response and/or action taken pursuant to Subsection (c) of this Section, the complainant may, within ten working days, request that the complaint be referred to the facility director for review and response.*
 - (e) *A statement that the facility director shall take action to review the patients' rights complaint and issue a response within fifteen working days.*
 - (f) *A statement that if the complainant is not satisfied with the response of the facility director, the complainant may, within thirty working days, request that the complaint be referred to the Office of Patients' Rights for review and response.*
 - (g) *A statement that if the complainant is not satisfied with the response of the Office of Patients Rights, the complainant may request, within thirty working days, that the complaint be referred to the Director of the Department.*
- Jane Adcock: Now that mental health has split, are there two contracts? *Answer:* There is still one contract. The State Department of State Hospitals and the State Department of Health Care Services are both included but I am not sure how things are divided.
 - *The patients' rights program shall serve as a liaison between county patients' rights advocates and the State Department of Health Care Services*

- Jane Adcock: Has the California Office of Patients' Rights (COPR) published any annual reports with the number of complaints? *Answer*: COPR does have those kinds of reports.

County Patients' Rights Advocates

- *Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocates. The duties of these advocates shall include, but not be limited to, the following:*
 - *(a) To receive and investigate complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding abuse, unreasonable denial or punitive withholding of rights guaranteed under the provisions of Division 5 (commencing with Section 5000).*
 - *(b) To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions.*
 - *(c) To provide training and education about mental health law and patients' rights to mental health providers.*
 - *(d) To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.*
 - *(e) To exchange information and cooperate with the patients' rights program.*
- *(a) The Patients'/Residents' Advocate shall:*
 - *(1) Ensure that the rights listed in Section 5325 of the Welfare and Institutions Code and in Section 861 remain posted in all facilities where posting is required pursuant to Section 860.*
 - *(2) Ensure that all incoming patients/residents are notified of these rights.*
 - *(3) Assist in training staff of facilities specified in Section 860 regarding patients'/residents' rights.*
 - *(4) Investigate complaints of patients/residents or their responsible relatives, and, if necessary, act as advocate for patients/residents.*
 - *(5) Act as advocate in behalf of patients/residents who are unable to register a complaint because of their mental or physical condition.*
 - *(6) Act as local consultant in the area of patients'/residents' rights.*
 - *(7) Act as liaison to the Patient Rights Specialist, Department of Health.*
- *(a) The list of rights that shall be posted, provided, or explained to the patient/resident pursuant to Section 862 shall contain:*
 - *(1) Notification that any patient/resident who believes a right of his/hers has been abused, punitively withheld, or unreasonably denied may file a complaint with the Patients'/Residents' Advocate.*
 - *(2) The name of the Patients'/Residents' Advocate who has been assigned to handle such complaints, his telephone number, and the times during which he may be contacted.*
- *(b) When a complaint is received by the Patients'/Residents' Advocate he shall, within two working days, take action to investigate and resolve it.*

- (c) If the complainant expresses dissatisfaction with the action taken, the matter shall be referred, within five working days, to the local mental health director if the complaint originated in the mental disabilities program or to the regional center director if the complaint originated in the developmental disabilities program.
- (d) If the complaint cannot be satisfactorily resolved by the local mental health director or by the regional center director within ten working days, it shall be referred to the Patients' Rights Specialist, Department of Health, whose responsibility it shall be to make a decision in the case. Appeal from the decision of the Patients' Rights Specialist may be made to the Director of State Department of Health, or his designee.
- (e) This section shall not apply to state mental health hospitals. The complaint procedures for Lanterman-Petris-Short individual patients in state mental health hospitals shall be the same as those that apply to Non-LPS patients as set forth in Title 9, California Code of Regulations Section 885.
- (a) The Patients' Rights Specialist shall, with the assistance of the Patients'/Residents' Advocate, conduct an annual review of the patients' rights program in each local mental health program and regional center.

(b) The Patients' Rights Specialist shall submit a report of the annual review to the local mental health director or the regional center director, as appropriate, with a copy to the Mental Disabilities Services Branch Chief, or the Developmental Disabilities Branch Chief, as appropriate

The Mental Health Planning Council Patients' Rights Committee statute:

- There shall be a five-person Patients' Rights Committee formed through the California Mental Health Planning Council. This committee, supplemented by two ad hoc members appointed by the chairperson of the committee, shall advise the Director of Health Care Services and the Director of State Hospitals regarding department policies and practices that affect patients' rights. The committee shall also review the advocacy and patients' rights components of each county mental health plan or performance contract and advise the Director of Health Care Services and the Director of State Hospitals concerning the adequacy of each plan or performance contract in protecting patients' rights. The ad hoc members of the committee shall be persons with substantial experience in establishing and providing independent advocacy services to recipients of mental health services.
- Carmen Lee: If a Patient's Right's advocate is employed by county, is there ever a conflict of interest in resolving issues at the county level? *Answer: Yes that can become a problem. That is an issue the committee may want to look at.*
Carmen reported that the California Network has disbanded and is currently trying to restructure a new coalition in Alameda County.
- Jane Adcock: It would be useful for the committee to request a copy of the contract from DHCS to look at the scope of work. We may also want to check into any recent annual reports the California Office of Patients' Rights (COPR) has submitted. *Answer: Dan Brzovic suggested looking at reports for the last five to ten years.*
- Daphne Shaw: Dan mentioned many times that the committee should look at certain items. Would it be possible to can you compile those for the committee? *Answer: Dan Brzovic advised that it may also be helpful for members to look over the regulations and then have a meeting to discuss this in a more focused way.*
- Adam Nelson: There are two areas that the committee may want to focus on:

1. There are some specific requirements that are codified in the regulations. It would be easy to go through the regulations and come up with a minimum standard checklist and disseminate to various county agencies for feedback. We could do something similar for the State Hospitals as well.
 2. In terms of the grievance process, can Dan Brzovic advise us on specific parts of regulations that various Systems of Care have been historically struggling with or have been shown to be less than adequate? Can we use these as points for our attention?
Answer: Dan advised that the committee could look at specific rights that fall by the wayside and particular duties of COPR and PR programs.
- Jane Adcock: The annual reports may also help identify areas that come up over and over.
 - Richard Krzyzanowski: It is a great idea for members to attend the annual training next year. Regarding the issue that Carmen raised about a possible conflict of interest problem within the counties: the committee may want to look at coming up with something that is more systematic and codified to safeguard integrity. *Answer:* Dan Brzovic advised that most programs have done a good job of resisting pressures.

Members expressed gratitude to the Dan Brzovic for the training today.

- Daphne Shaw: *When the Patient's Right's Committee has their full day to present to the Planning Council in April, we might think about imparting this training in some fashion.*

New Business

No new Business today

Public Comment

No public comment today

Meeting Adjourned

The next Patient's Right's Committee Conference Call is scheduled for September 18, 2013 at 10:30 a.m.

Call in # 1-866-831-0091

Participant code 1629962



Summary Notes of Patients' Rights Committee Meeting September 18, 2013 10:30 a.m.

Committee Members in Attendance

Daphne Shaw Adam Nelson Richard Krzyzanowski Walter Shwe

Daphne called the meeting to order at 10:30 am and the participants introduced themselves.

The committee first discussed the upcoming tour of the California Health Care Facility in Stockton taking place on October 16. Discussed how this compares to a tour the PC did several years ago and how disturbing some of the delivery of services methods were observed at that time (consumers in 'cages' and receiving services). Everyone who is participating is looking forward to the tour.

The discussion moved on to the 7 points that were developed earlier for the committee. These points came out of the presentation that was made to the PRC at the meeting in August. The 7 points are attached to these minutes for reference. Item #2 concerned members of the committee especially since it is unknown what the COPR is currently performing in the realm of patients' rights. It was tasked to staff to try and investigate and report back to the committee.

Item #4 was next with questions about any contract that the DHCS may have concerning patients' rights. Staff will try to get this information and report to committee. Staff will also find out if any documents submitted to DHCS from COPR are available for review.

The PRC then discussed the efforts of collaboration and any progress made. The committee has received support from Jessica Cruz at NAMI and assurances that her organization would be willing to work with the committee in the future. Developing a survey and having NAMI help distribute it seemed reasonable to the committee. Adam once again mentioned the survey tool offered by Google and suggested that staff investigate the option. Further collaboration efforts were discussed but nothing was finalized.

The committee raised the question of "why did the Legislature feel there was a need to create this oversight committee"? Was there an unmet need or something else? Staff will investigate and try to discover and report back to the committee any findings.

Discussion then focused on the workshop/training that the committee received from Dan at the last meeting in August. Everyone agreed that it was educational and informative and thought that a similar training for the entire CMHPC would be valuable. Discussion then began on the type of training that would work best for the CMHPC. Small groups, PC buy-in to the training, etc. were all mentioned and discussed. It was decided that the committee would think about the project and develop it at future meetings including the length, mechanism of delivery, and other pertinent issues.

The committee chair (Daphne) then reminded everyone again that the committee meeting for October had been cancelled and the next meeting of the group would take place in November.

There were no public comments, and the meeting ended at 11:05 am.

Submitted by Michael Gardner, Staff CMHPC



Summary Notes of Patients' Rights Committee Meeting December 18, 2013 10:30 a.m.

Committee Members in Attendance

Richard Krzyzanowski Walter Shwe Dan Brzovic

Others participating – Tamara Jones, Cameron from LA, Michael Gardner

After waiting to see if other committee members would join the meeting, Michael Gardner called the meeting to order at 10:40 a.m. and the participants introduced themselves. It was agreed that other members probably forgot about the meeting in their holiday plans.

The committee discussed the lack of respondents in the initial PRC survey that was sent out. It was decided to keep the survey open until Friday January 10, 2014 to allow time for more participants. The results would then be gathered and shared at the committee meeting in San Diego on January 15, 2014.

Discussion then moved to the full council presentation that the PRC would facilitate. It was unknown by the participants if this would occur in April or June 2014. The presentation has been confirmed to be training similar to the one the PRC received by from Dan Brzovic. Dan suggested that perhaps Richard Krzyzanowski could assist him in the planning and execution of the material. Richard readily agreed and Dan and Richard agreed to start working together to plan the presentation and would begin collaborating through phone calls.

The public member who was on the call in line was asked to introduce herself and explain her interest. She indicated that she saw the meeting notice on the CMHPC website and was interested in getting more information and getting more involved in the process. The committee thanked her for participating and informed her that the CMHPC would be holding one of our quarterly meetings in her area (LA) in April. She indicated that she was interested and would monitor our website for information and would definitely try to attend.

There was no new business and there were no more public comment.

The committee adjourned at 10:55 a.m.

Submitted by Michael Gardner, Staff CMHPC