

CHAPTER 14. ABUSE OF PATIENTS/RESIDENTS

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Authority

The provisions of this Chapter 14 issued under sections 302, 341, 342, 351, 724, 901, and 902 of the Public Welfare Code (62 P. S. §§ 302, 341, 342, 351, 724, 901, and 902); sections 201(2) and (8) and 202 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. §§ 4201(2) and (8) and 4202); and sections 105, 112, and 113 of the Mental Health Procedures Act (50 P. S. §§ 7105, 7112, and 7113).

Source

The provisions of this Chapter 14 adopted July 12, 1985, effective July 13, 1985, 15 Pa.B. 2569.

§ 14.1. Scope.

(a) *Applicability.* This chapter is applicable in institutions operated by the Department, regardless of the type of facility, patient/resident composition, or services provided. Facilities covered include Youth Development Centers, Youth Forestry Camps, Restoration Centers, State general hospitals and State-operated institutions for the mentally ill and mentally retarded. In those institutions serving children covered by the Child Protective Services Law (11 P. S. §§ 2201—2224) the facility shall also comply with the Departmental reporting procedures applicable to this act and the procedures of § 7084, Administrative Manual, relating to management of incidents and deaths. Nothing in this chapter may be construed to limit or affect an employe's existing appeal rights under Civil Service statutes or collective bargaining agreements.

(b) *Definitions.* For purposes of this chapter, Department refers to the Department of Public Welfare of the Commonwealth.

§ 14.2. Policy.

(a) It is inherent in the nature and dignity of an individual that he be accorded certain human rights. The presence of a handicap in no way lessens these rights. Employes of the Department are duty bound to recognize the rights of a patient/resident who has been entrusted to the Department for care and treatment. Employes are subject to a continuing obligation to deal with a patient/resident in the most humane manner possible.

(b) An employe may not commit an act of physical or emotional abuse against a patient/resident, inmate, or trainee in an institution under the direct ownership and operation of the Department. Violation of this standard will subject an employe to disciplinary action, including possible dismissal.

§ 14.3. Employe's obligations.

(a) An employe has a primary duty to respect the rights of a patient/resident, to treat them with dignity and to prevent others from violating their rights. An employe witnessing or having knowledge of an act of abuse to a patient/resident is obligated to report it to an appropriate individual designated by the Superintendent/Director. Failure to do so will be considered a serious violation of an employe's responsibility concerning the care of patients/residents and may subject the employe to disciplinary action.

(b) The disciplinary action to be taken in situations involving the falsification of records relating to an act of abuse or the reporting of it will depend upon the specific circumstances involved. Similarly, the disciplinary action to be taken against employes who have reported an incident of patient/resident abuse and later refuse to testify with respect to the incident, as well as an employe who refuses to answer reasonable questions regarding duties as they relate to patient care will depend upon the specific circumstances involved.

(c) An employe has an obligation to be familiar with and adhere to this policy. With cooperation from employes at all levels, it is possible to guarantee the patient/resident the respect and dignity that are their right as fellow human beings.

§ 14.4. Obligations of the Department.

(a) The Department has an obligation to see that the rights of both the patient/resident and the employe are protected by following established policies and procedures and by carrying out personnel actions in a fair and consistent manner without undue delay.

(b) The Department also has an obligation, through training and opportunity for discussion, to assure understanding of policies by employes. The Department recognizes its responsibility to provide employes with training to prevent or allay situations which would result in more restrictive measures for the patient/resident without early intervention or redirection.

(c) It is the responsibility of the Superintendent/Director to notify immediately an employe charged with abuse of the nature of the alleged abuse, when and where it is alleged to have occurred, and the name of the patient/resident alleged to have been abused, and to follow the procedure of § 14.8 (relating to investigation of abuse).

§ 14.5. Definition of abuse.

(a) An abusive act is an act or omission which may cause or causes actual physical or emotional harm or injury to a patient/resident, or an act which willfully deprives a patient/resident of his rights as defined by the Department. An act of abuse directed against a patient/resident is prohibited and is cause for disciplinary action including dismissal, and possible criminal prosecution.

(b) Questions may arise as to what actions constitute abuse of a patient/resident. An action which may cause or causes actual physical or emotional harm or injury, which is not caused by simple negligence, constitutes abuse. An action such as striking or kicking a patient/resident, restraining a patient/resident improperly or without authorization, and other actions which can be seen as causing physical pain to a patient/resident are strictly forbidden. An act such as teasing, humiliating, degrading or intentionally ignoring a patient/resident, may constitute abuse and will be dealt with no less severely than acts causing physical injury.

(c) Nonaction which results in emotional/physical injury is viewed in the same manner as that caused by improper or excessive action. Actions in which employes engage with patients/residents shall have as their legitimate goal, the healthful, proper and humane care and treatment of the patient/resident.

§ 14.6. Patient/resident discipline.

This chapter in no way prohibits the concept of discipline, thoughtfully and properly applied for a patient/resident. An approved form of discipline described, planned and documented in the treatment programs, such as those outlined in therapy programs and behavior shaping programs, is not considered abuse. Self-discipline is a necessary skill that people must learn, and is one which responsible employes cannot ignore.

§ 14.7. Restraint and self-defense.

(a) Occasionally, an employe may be called upon to defend himself or others from a patient/resident. This is a time when an employe shall show maximum self-control and self-discipline to insure that he uses only the minimum amount of force necessary in a given situation.

(b) When an employe is called upon to restrain a patient/resident under proper restraint procedures, the least amount of force necessary, applied intelligently, will not only insure that a patient's/resident's rights are not violated but, more appropriately, assist that patient/resident in regaining self-control.

(c) An employe should attempt to prevent patient/resident behavior leading to a situation in which restraints or other physical action will be necessary by recognizing indications of impending hyperactivity or assaultiveness and intervening in a positive, constructive manner. Examples are involving the patient/resident in other activities, removing the source of over-stimulation, giving the patient/

resident a chance to get away or to relax. These actions and actions of self-defense shall be undertaken with maximum self-control and discipline, and should involve the least force necessary.

(d) Prudent self-defense that does not seek to cause harm to the patient/resident will, inevitably, not only protect the employe from harm, but will make it easier to control and calm the patient/resident who is disturbed. An employe who feels the necessity of defending himself in an assertive, forceful manner should be cognizant of the requirement to be able to demonstrate that alternative action was not reasonably available and that the minimum amount of force necessary was used.

§ 14.8. Investigation of abuse.

The Superintendent/Director is responsible to receive and investigate reports of abuse, but may designate persons to receive and investigate the reports. When abuse is reported, the following procedures shall be followed:

(1) The Superintendent/Director or designee interviews and secures information in writing concerning the reported incident from the reporting party and the involved patient/resident where possible, and other possible witnesses. The employe involved shall be interviewed and a signed written statement about the incident secured from him. An employe may be accompanied by a representative during the interview. An employe suspected of abuse or believed to be a witness to an act of abuse who refuses to answer reasonable questions may, on that basis, be subject to disciplinary action.

(2) If the circumstances of the alleged abuse are satisfactorily explained by the employe to the facility director, the investigation is terminated. The employe's record may not contain a record of the alleged incident or investigation.

(3) If the initial investigation produces evidence indicating that an employe committed or contributed to the alleged abuse, the investigation is continued. During the period of investigation, the employe, depending on the nature of the offense and circumstances shall be reassigned to one of the following:

- (i) Permitted to remain on duty, but assigned to non-patient related duties, if available, as determined by institutional management.
- (ii) Suspended pending investigation.

(4) After the investigation, the Superintendent/Director determines within a time consistent with Departmental regulations whether an incident of abuse has taken place and takes appropriate personnel action.

(5) In those institutions serving children covered by the Child Protective Services Law (11 P. S. § 2201—2224), the facility shall also comply with the Departmental reporting procedures applicable to this act.

Cross References

This section cited in 55 Pa. Code § 14.4 (relating to obligations of the Department).

§ 14.9. Categories of abuse.

(a) *Minor abuse.* An act or omission which may cause or causes non-serious emotional or physical harm or injury to the patient/resident, where it is reasonable to believe that harm or injury would result.

(b) *Serious abuse.* An act or omission which may cause or causes serious emotional or physical harm or injury, where it is reasonable to believe that harm or injury would result.

(c) *Negligent abuse.* An act or omission which causes emotional or physical injury to the patient/resident, done carelessly and unintentionally, and which falls markedly below the reasonable standards of conduct expected of employees in performing their jobs.

(d) *Violation of this title.* An act intentionally done, which violates regulations relating either to patient's/resident's rights or to his care, where failure to so observe the regulation may lead to the patient/resident receiving emotional or physical injury or harm.

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(278322) No. 320 Jul. 01

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