

CHAPTER 13: Patients' Rights Complaints

COMPLAINT PROCESS/PROCEDURE

The purpose of a complaint process is to ensure people receiving mental health services, and other interested persons, have the tools and the means to file a formal complaint. The complaint procedure provides a written document that describes the resolution process that will be followed based on the nature of their concern.

Advocates have the responsibility for receiving, tracking, referring, obtaining responses for, and/or investigating complaints that identify or support a right has been abused, punitively withheld, or unreasonably denied.

Many issues can be resolved without filing a complaint. People receiving mental health services are encouraged to speak directly with their treatment staff and/or providers to address concerns related to their rights. However, individuals also have the right to file a formal complaint at any time.

Complaints should be able to be filed with the Patients' Rights Advocate several ways:

- Complete a "Complaint Form" created for this purpose
- Write a letter to the Advocate explaining what happened and identifying how that supports an action of abuse, unreasonable denial or punitive withholding of an identified right
- Telephone the Advocates' Office or have a call made on their behalf
- If a person is unable to complete a written form, letter or otherwise file a complaint, they may request the Advocate to contact them for assistance
- Have another person make contact with the Advocate on the person's behalf
- Talk with the advocacy staff during the routine site/unit visits

Complaint forms or paper for the purpose of filing complaints should be made available to people receiving mental health services. A supply of forms and envelopes should be in a location accessible to all people receiving services. Staff should provide complaint forms and/or an envelope upon request, as well as a pen or something else to fill out the complaint form.

Staff should not screen the complaint or inquire about the contents of the complaint. The complaint process is intended to be a confidential track, separate from other documentation or records created in the course of services.

For advocates who receive a high volume of complaints, it may be helpful to prioritize complaints. Complaints that are time-sensitive should be treated as a first priority. Patients' Rights complaints which are not time-sensitive should be a second priority, to be addressed after time-sensitive complaints have been handled. Complaints that do not fall under the area of Patients' Rights or are outside the scope of the Advocates' services should be a third priority.

APPEALS

The complaint process has four levels. The first level is filing the complaint with the Patients' Rights Advocate. If the person is not satisfied with the action taken, then the complaint may be referred to the next level. All documents that have been given and/or received during the complaint process must be included each time the complaint is referred or appealed to the next level. A referral or an appeal may be filed directly, or the Patients' Rights Advocate may provide assistance upon request.

The second level of the complaint process is with the Director of Mental Health in the county the client is receiving services in. This appeal must be made within 5 working days from the resolution or close date of the complaint. A response to the appeal will be provided within 10 working days from the appeal request.

The third level of the complaint process is with the California Office of Patients' Rights. A Patients' Rights Specialist and/or the Director will review the appeal and provide a recommendation for resolution. The California Office of Patients' Rights will provide a decision in writing. Appeals to the California Office of Patients' Rights should be addressed to:

California Office of Patients' Rights
1831 K Street, Sacramento, CA 95811

The fourth and final level of the complaint process is with the Department of Health Care Services. All documents that have been given and/or received during the entire complaint process must be included in an appeal for it to be accepted. A final decision will be provided in writing. Information about how to appeal to DHCS will be provided in the appeal response by COPR. Contact information can also be found on the DHCS website, including a contact email address. (CCR Title 9, section 864)

RESPONSIBILITIES AND AUTHORITY

County Patients' Rights Advocates shall have access to all clients and other recipients of mental health services in any mental health facility, program, or service. This shall be at all times needed to investigate or resolve specific complaints. (WIC Section 5530)

Advocates have authority to investigate issues if a client is unable or unavailable to register a complaint. County patients' rights advocates may conduct investigations if there is probable cause to believe that the rights of a past or present recipient of mental health services have been, may have been, or may be violated. (WIC Section 5522)

CRIMINAL, ABUSE, NEGLECT, LICENSING VIOLATIONS

There may be some situations where an investigation should be handled by or turned over to others who have greater access, authority, and/or resources to conduct an appropriate investigation. Nothing in the laws outlining the authority of advocates shall be construed to restrict or limit the authority of the State to conduct the reviews and investigations it deems necessary for personnel, criminal and litigation purposes.

Where it is suspected that a licensing regulation may have been violated, referral of a complaint to licensing agencies may be appropriate. The Department of Public Health, Department of Health Care Services, and Department of Social Services have the statutory authority to investigate complaints of care facilities.

Where a crime is suspected, the matter should be referred to local law enforcement. In the case of abuse or neglect of a dependent or elder adult, the dependent adult abuse reporting statutes identify the Patients' Rights Advocates as mandated reporters. (WIC Section 15610.17 [r])

Reporting of abuse or neglect and timelines for reporting depend on the type of abuse and where it occurred. When there is a timeline for reporting abuse, this will generally be no more than 24 hours from being aware of the alleged abuse. Abuse will generally need to be reported to at least the local ombudsmen and/or the local law enforcement agency. You can contact COPR for additional information about the various types of mandated reporting and specific timelines to report.

BEGINNING THE JOURNEY INTO THE INVESTIGATION

Investigation refers to the part of the complaint process where you gather facts and identify evidence. Investigation is different from other kinds of advocacy. During the investigation stage of the process, the Advocate must remain objective until you have fully completed all stages of the investigation process. Although you may suspect a problem, it is especially important to be thorough and objective while getting the facts. Collect the information now, develop your positions, solutions and recommendations later.

Once you receive the complaint or report of an incident, contact the client or victim for additional information or clarification of the information you received. There are many directions to take from here. You may find it is beneficial to review the documentation before interviewing any additional parties. It gives a baseline to work from when interviewing and in the preparation of any questions.

THINGS TO REMEMBER WHEN STARTING THE INVESTIGATION

- Be sure to obtain proper authorization or the release of information from your client or their legal representative.
- When preparing to investigate, identify a focal point. From there you can brainstorm what kinds of documents are relevant to the issues and make a list.
- Once you have a list, determine what records are pertinent and the source from which you will request them.
- Know how to assert your statutory access without resorting to threats. If you are told ‘no’, don’t give up. Ask for the reason of the denial in writing. When all else is not going well; get imaginative, exhaust alternative ways of getting the items you need, use your contacts, and negotiate.
- Don’t forget to get the following information needed for your investigation:
 - Victim (Patient)/Complainant and Relationship to Victim (If other than the Patient)
 - Contact information of victim (and of complainant if other than patient)
 - Information about victim/patient’s commitment or hold status
 - Demographic information needed for internal data tracking (e.g. Age, Sex, Ethnicity, etc.)

- Location where incident occurred, including address and facility name (if applicable)
- When the incident occurred (including time of day or shift)
- Description of Incident/What happened/Sequence of events
- Who was involved
- How and Why the incident occurred (including factors contributing to the occurrence)
- Direct witnesses; including their name, contact information, and relationship to the victim or incident
- Synopsis of what witness states (or is expected to state) they observed

REVIEWING THE MEDICAL RECORDS OR DOCUMENTATION

Documentation review is a comprehensive assessment of records for what is documented, or not documented. Documentation review should include a comparison of these records with other available information and standards. Comparable standards could be laws, regulations, policies, professional guidelines, or facility/program protocols. Advocates should also compare information they find with anything that should be expected/routine protocol, common sense, and best practices.

It is important to know the organizational structure of a facility or program. This will assist you in getting the information you need and in understanding their 'Chain of Command'. When you have questions on actions taken or not taken, you will know who is held accountable. Knowing the applicable policies, procedures and practices will assist you when it is time to analyze the incident.

Begin with the section of the chart that is most pertinent to the issue you are addressing. For example; if you are looking into a complaint over 'lack of medical care', you could first look to the Physicians' Progress Notes or Physicians Orders. The Nursing Care/Treatment Care plan or Physical Profile is another place you could look for information related to this complaint. In reviewing these areas, you will probably be cross-referenced to other areas of the chart. Meanwhile, be looking for consistency or inconsistency with the documentation, care plans and how or if they were administered.

If you have the time, review the entire chart. You often find bits of information that you might not know exist or was misfiled. By doing this you can find others who have had input into the care of the client and may prove useful to interview.

Tips for Documentation Review

- Remember most of what you are reviewing is confidential, treat it that way. Never write on an original document. Always keep a 'working copy' for your use.
- Familiarize yourself with the forms used. Find out if they are State, Facility, Program, or Unit forms. This will shed some light on the authority of the forms used and the practices that apply. This may also assist you in analyzing the daily routines of the unit. Look for when are the forms used, how or who uses them, and if you find this form in every chart or at particular times.
- Legibility is often a problem. Ask someone to decipher it for you if needed. People who work with it on a daily basis often can read it. Familiarize yourself with abbreviations. Ask for a list of them. Most facilities have a breakdown.
- All documents should have a date, source or author. If it is not actually listed on the document, try to determine them by cross-referencing.
- Compare and contrast documentation that was generated during the same time period. Look for consistency or inconsistency.
- Look for what is 'missing' - (e.g. blanks on forms, incomplete follow through on documentation).
- Look for 'patterns' - Are similar incidents occurring around the same time, place, with the same staffing or other clients?
- Organize your information in a way that works for you. You should avoid handling the same document repeatedly.

GOAL OF AN INTERVIEW- FACT FINDING

With the information gathered, you can now structure your interview questions to check for consistency and cross-referencing. Using the documents to structure your interview questions gives you a reference point. You can set up your questions to bring out the inconsistencies you have identified in the chart or other documents you are using.

Interviewing in general refers to the questioning of persons, who may possess desired information or who may contribute information of evidentiary nature.

Interview Preparation

- Be aware of your surroundings when conducting an interview. The time, place and atmosphere affect your interview. Often removing a witness or victim from the work area will allow them to relax and speak freely.
- Consider the functional level of the person(s) you are about to interview.
- Prepare a list of questions in advance. Use your 'complaint', policies, practices and documentation to formulate your questions.
- Initial questions or 'ice breakers'

The first few questions asked should be designed to establish rapport and to determine if the person is going to be cooperative, if they have useful information, and if they have ulterior motives or appear to be generally honest and reliable. If these questions and response indicate there is value in the continuing of your interview, then your next set of questions should be directed at establishing facts of the 'incident' or 'complaint'.

Basic Guidelines in Interviewing

- Get names, titles, and work locations of everyone you talk to. Start with the line staff, then work your way up keeping in mind the chain of command.
- Be patient, firm and persistent. Be calm, polite and professional. Most people put a lot of credibility in a person who possesses these traits. Should your interviewee become rude, defensive or sarcastic during your questions; stay calm and polite or continue your questions or interview at another time.
- Ask for clarification when needed, and don't accept someone else's conclusion or assumption.
- Use interviews for 'discovery' and learn as many facts from them as possible. Information that may not seem important at the moment may serve useful later.
- Don't be afraid to play dumb in order to get information. By presenting yourself as ignorant or 'in need of educating' on a subject, you may put the other person at ease.
- When working with an administrator, seek their acknowledgement that they are ultimately responsible for the actions taken or not taken by their employees. Try to enlist their support or assistance in addressing or correcting the issue or complaint.

- Get promises in writing if you reach a favorable agreement. This can also work if the final decision is not favorable to you or your position.
- Follow up on commitments or ‘promises’, and try to pin down a date when it will be in effect. Then set a follow up plan for yourself, and have a plan ready in case the ‘promise’ wasn’t met.

Interview Process and Techniques

Initial Intake Process

Most often the initial contact is with the complaining party who has identified concerns about possible rights violation(s). Arrange for a specific place and time to meet and discuss the specifics of the complaint. Find an environment that is private and where you can eliminate possible disruptions. Allow adequate time to focus on understanding of all of the issues.

Two important rules for the Advocate to follow are to ask the right questions and to listen to what the interviewee is saying.

Note Taking

Notes should be taken during the information gathering stage. The note taking should not interfere with communication climate of the interview. To ensure accuracy, the notes should be reviewed with the person before concluding the interview.

Taping an interview is ideal, but may be rejected by or inhibit the speaker. Always ask if you can tape first. Take very good notes and include as many important quotations as you can. An ideal situation (but rarely available) is two Advocates at an interview. This allows for one note-taker while the other concentrates on asking questions; both can think about how to rephrase or follow up on questions.

Review Notes: As soon after the interview as possible, review your notes to ensure accurate reporting and document for observations.

Listening

Listen with the intent of understanding and avoid judgmental listening. Judgment should be held in check until you have gathered all of the facts on which to base your conclusion. Prejudging only interferes with the Advocate’s ability to be impartial and represents an impediment to objective understanding.

There are five levels of listening:

1. Ignoring: Not really listening at all.

2. Pretending: Meaning "Yeah. Uh-huh. Right."
3. Selective Listening: Hearing only certain parts of the conversation.
4. Attentive Listening: Paying attention and focusing energy on the words that are being said.
5. Empathetic Listening: The highest form of listening, meaning listening with the intent to understand. Meaning "seeking first to understand". It is an entirely different paradigm. This level of listening is rarely practiced.

Empathy is not sympathy. It is getting into the other person's frame of reference; trying to see issues as they see them. Empathic listening involves much more than registering, reflecting, or even understanding the words that are said.

Interviewing

Interviews are usually informal, but should be planned to maximize the limited time available in the interview. This means drafting a set of questions to follow and thinking out how and when to raise sensitive issues. It also means having a sense of what your interview subject actually knows and how to tailor the questions to get at the information. Different types of personnel offer different information. The perspective will often vary between professionals and auxiliary staff as well.

Another important rule for Advocates is to ask follow-up questions. Your goal is to obtain factual information to assist the person with reaching a resolution.

An interview occurs in three stages; each of which has its own purpose and techniques.

1. The opening or setting the tone,
2. Development and exploration, and
3. The closing.

More on Setting the Tone

The Advocate's success is dependent on counseling knowledge and skills, but also to a great extent on personality, attitude and character. The goal should focus on establishing trust, objectivity and the ability to conduct the interview efficiently and professionally. The Advocate brings a set of personal values and beliefs to the interview, which can affect the ability to understand the person's situation. Personal biases must be set aside to ensure objectivity, fairness and establish credibility.

It is crucial for the Advocate to develop an environment that helps with communication. This means being impartial and nonjudgmental. Part of the prevailing tone is communicated by the interest the Advocate takes in what the individual is saying and by the understanding you show towards their feelings and attitudes. Therefore, it is important to be aware of how you are communicating. Your facial expressions, body gestures, and tone of voice can support, deny, confirm or reject any statement by the interviewee.

More on Development and Exploration

Successful interviews are carefully structured and planned. By repeating or restating key statements, you elicit a more exact definition of the problem. This technique may also allow the interviewee to perceive the problem or issue with more clarity.

By summarizing, you can provide the interviewee with additional feedback on those areas already discussed. This will provide the interviewee an opportunity to add relevant information. More importantly, the Advocate can ensure that specific information provided was consistent with your written documentation.

Questions should be phased carefully. You can use questions to guide the discussion in a productive direction. Leading or very direct questions or those designed to elicit specific responses may be ineffective if the interviewee is emotionally upset. Open-ended questions are usually more productive and may assist in eliciting the person's feelings about a particular issue.

Types of Questions

- Open-ended: Require sincere expression of ideas or opinions.
 - How did you feel when that happened?
 - What would you like me to help with? / What do you think would resolve this issue?
 - What do you think the person's reasons were for doing this?
- Reflective: Helps to keep the interview going.
 - Sounds like it made you angry when
 - By management, whom do you mean?
 - You think this happened because of your disability.
 - What makes you think that?

- Directive: Enlarges the area of discussion or agreement.
 - After that, what was the next thing that happened?
 - Tell me what bothers you the most about
 - You think you would feel better if Mr./Ms.---- treated you differently. What should he/she change specifically?
- Clarifying: Choose the words the interviewee has used that sound like they may have meaning or useful information underneath the surface such as: felling harassed, cooperation, feeling threatened, being a good client, etc.
 - Please tell me to the best of your knowledge, what you remember about the incident?
 - Can you give me more specific details on what was said? And by whom?
 - What did that statement mean to you?
 - What did you observe at that specific time?
 - Why do you think that happened? / What do you mean when you said?
 - Can you give an example of what you mean by that statement?
 - What did you do next? / Is there anything that you would like to tell me?
 - Did I understand you to say that...?
 - Can you tell more? / Could you help me understand? / Can you clarify that for me?
 - I want to know how it seems from your point of view. / I need more information. / I am confused about....

Ask one question at a time. Multiple questions may distract and repeat or rephrase the question. If the answer is inaccurate, attempt to reconcile the issue on the basis of known facts.

ANALYSIS OF THE INVESTIGATION

Once all information is gathered from all sources, you can analyze the facts identified and then compare the standards and practices. With this done, you will be able to draw conclusions about the incident.

For example:

- Was it a violation of law or regulations, was any one person responsible or was it a systems error?
- Do policies need to be addressed or is it a supervisory issue with one employee?

Once the investigation has been completed, the Advocate must review and analyze the information. These steps will help you in this process:

- Review information from interviews, documents, or other evidence for consistency. Give special attention to information that indicates complex, unusual, irregular, suspicious events.
- Distinguish facts from opinion, theory, or speculation. Identify areas where information is corroborated, consistent, conflicting, or contradicted.
- Follow up with sources to clarify or fill in gaps in information.
- Develop a chronology of events based on information from interviews, documents, and other sources.
- Identify consistent themes/patterns and remaining issues.

NEGOTIATING TO REACH A RESOLUTION

Negotiation is a mutually agreed upon resolution of a problem. You begin with a well-developed and documented issue as a foundation for negotiation. Although the Advocate has laws and regulations to work with, negotiating skills in presenting, analyzing and resolving the problem are also important when a problem arises.

NEGOTIATION TIPS

- Be calm, sincere and courteous. Try to discard your own anger or fears from the discussion.
- Be firm and persistent, as negotiation is a trying task. If you feel confident in your position, stay on track and don't give in easily or early. Don't hesitate to insist on a full hearing, to present your full argument.
- If you are presenting a legal point, bring copies of the related law or statute for reference and discussion.
- Ask for explanations when given conclusions without detailed descriptions. Assumptions are often made based on personal incorrect perceptions, so

don't be afraid to ask questions and obtain documents that provide information needed to dispute those assumptions.

- Continue to seek resolution, and if you are unable to reach an agreement at one level, be prepared to appeal to the next authority level. If an agreement can be reached, obtain the patient's assistance in implementing the agreement(s). If an agreement cannot be reached, indicate politely but firmly, that you plan to pursue the issue.
- Get it in writing; when negotiated commitments are made, request a confirming letter from the person. Additionally, a follow-up letter to close the case or identify any continuing issues, including your intent to pursue, or any other related issues should be written by the Advocate.
- Having written documentation can provide a reliable source of information for developing your defense strategies later. Never assume your agreements will be implemented because a promise was made. Completed work by the Advocate includes following up and periodic monitoring to ensure continued compliance.

REPORTING YOUR FINDINGS/OUTCOME

At the conclusion of the complaint investigation, Advocates should be prepared to put a summary of their work in writing.

Writing, whether in the form of correspondence, memoranda or formal complaints, is a very effective way to convey information and initiate a resolution process. Writing can be used to record concerns, document and clarify facts, reference legal requirements and clinical standards, set forth a position, confirm an understanding, disseminate information, create a record, give notice, request relief, and prompt a written response.

In most writings that involve resolution of specific complaints, you should present facts and legal analysis. The content and appearance of your writing reflects upon the Advocate, your employer and the person you represent. It can strongly suggest the presence, or absence, of credibility.

In an investigative report it is important to incorporate and fully cover the following items, depending on the circumstances of the specific complaint. An investigative report should often include:

- Personal client(s) identification information, as necessary
- Identification of all related and/or involved parties and facility

- Specific facts giving rise to the complaint
- Chronology of events (including specific dates and times)
- Factual evidence including documentation, testimony, statistical analysis and personal observations. Documentation should include witness statements, related correspondence, applicable facility, county and/or state policies
- Reference to applicable statutes, regulations, law and/or state policies
- Constructive recommendations for resolutions (this approach can establish credibility and show a willingness to resolve the problems)

WRITING COMPETENCY

Your writing should be tailored to the particular audience you wish to address, taking into account their values. Advocates write to people who differ from themselves or the American mainstream in ways that affect how the audience may receive the message. These differences can make communication even more complex. The ability to accurately assess another's perspective is always limited and requires learning ways to guard against becoming a prisoner of your own preconceptions.

When writing, you must consider your audience and be aware of your objectives. Since many writings have more than one audience, you also must be able to predict their effects on secondary audiences. Give special attention to the tone and scope of your letter or report. Always keep in mind the reason you are writing, and the person or group of people who will be reading and/or relying on what you have written.

Before you begin writing, try to develop your thoughts. Think through each portion of your report from beginning to end, and then write. Organizing your report will mean arranging your thoughts and connecting ideas in a document and within its individual paragraphs. Sentences should be grouped into paragraphs, and paragraphs linked throughout the document. You should have transitions that act as bridges throughout this structure connecting paragraphs, sentences, clauses, and words helping readers develop and keep a train of thought.

Sentences should be short, and should contain familiar words that help readers grasp and retain ideas. You should structure sentences according to Standard English usage rules. Writings that conform to language mechanics help the reader understand what you are saying and grasp it more quickly. Avoid using figures of speech and excess words that do not carry significant meaning.

The lead section of your writing should turn the reader to your most important, general idea and direct the reader to the one idea that brings all other ideas and details into focus. It may also describe the way your main idea will be developed. The conclusion of your writing should show the reader you have done what you set out to do.

PERSUASIVE WRITING

Persuasive writing is writing to persuade, convince, or compel change of ideas, positions, or outcomes. This type of writing will differ from the writing you do back to clients. Persuasive writing includes preliminary statements, factual statements, point headings, and arguments to compel a favorable outcome for your client.

The preliminary statements will be made at the beginning of your writing and should summarize your arguments within a factual context. It should point your readers to your most important ideas and directs them to the one idea that brings all other ideas and details into focus. It shows your conclusion, with the intent on helping readers make sense of what will follow.

Factual statements contain two types of facts; facts that create a context for what happened, and facts drawn from the law which you intend to rely on. A compelling statement of facts tells a story. Writing a persuasive story involves not only listing the facts, but thinking about how to frame the facts in a way that makes it seem your conclusion is the only possible result based these facts. While you cannot characterize facts or draw inferences from the facts in your statement, you can allow logical inferences to emerge in readers' minds as their own response to your writing.

Point headings can be especially helpful when arguments can be divided into points, and each point alone is an independent ground for relief. Each point can become a heading, and each heading can be further divided into sub-headings. The sub-headings can then each include an important logical step of your argument. Read together, the point headings and sub-headings should give your reader an outline of your argument. You should word point headings and sub-headings clearly and powerfully, asserting the idea and showing how that idea fits into your position.

Arguments that compel a favorable conclusion should follow point headings and subheadings. Headings contain a synopsis of the first paragraph of the argument that follows. Begin your argument by giving your conclusion, followed by a brief statement of the rule to support the conclusion, then a detailed analysis of the facts, and finally any cases you can reference to support your argument. Be sure

to address the other side's principal allegations and in ways that support arguments you have already made.

FINAL REVIEW OF YOUR WRITING PRODUCT

Cut out lengthy substantive discussion. Eliminate clutter, redundancies, and windy phrases. Edit for consistency, and make sure you include necessary references to people, policies, and laws. Have someone else do a read through to check for spelling, typos, punctuation, and citations. We often do not see our own mistakes.

In addition to proofreading for errors, read through your writing again while asking yourself questions such as;

- Did you write appropriately to your reader/audience?
- Did you express each thought with precision, clarity, and economy?
- Are your thoughts presented in an organized manner?
- Did you perceive and respond to the implicit and explicit communications of others?
- Does your writing advance immediate and long-term objectives?
- Was your use of language mechanics correct?

For additional tips on writing competency, persuasive writing, and writing in plain language contact COPR at coprinforequest@disabilityrightsca.org.