

12.5 Restrictions on Patient Rights

Generally. Some statutory rights of patients in an inpatient facility may be limited or restricted under certain prescribed conditions. When discussing an upcoming commitment hearing, counsel may decide not to discuss these rights and the conditions under which they may be limited or restricted unless the client asks about them. The information may be confusing and may divert the client's attention from the issues and decisions to be made in regard to the commitment hearing.

The client more often will contact counsel after a limitation or restriction is imposed. Counsel will need to review the client's patient records, talk with the client, and talk with the appropriate qualified professionals to determine if the limitation or restriction is within the statutory guidelines. If it is not, counsel should talk with the attending physician, the client advocate, or other appropriate persons to address the violation of rights. At state psychiatric hospitals, the violation may be reported to the Human Rights Committee if resolution cannot be reached.

If the restriction or limitation is allowed by statute, counsel should discuss further with the client the circumstances surrounding the limitation or restriction of rights. If the limitation or restriction appears to have been properly imposed, counsel should explain to the client the requirements of the statutes and discuss, perhaps in conjunction with the treatment team, a plan for the client to work toward easing or eliminating the limitation or restriction of a statutory right.

The statutory rights discussed below may be restricted or limited as prescribed by statute. Non-restrictable rights are not included in this discussion.

Forced medication of involuntary patients. Treatment, except for that requiring express written consent, may be given to a person under involuntary commitment in some circumstances despite the refusal of the client, the client's legally responsible person, the health care agent named pursuant to a valid health care power of attorney, or a valid advance instruction. Treatment may be forcibly administered

“in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

- (1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;
- (2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.”

G.S. 122C-57(e).

The following treatment cannot be given without the express written consent of a competent, capable client: electroshock therapy; experimental drugs or procedures; or surgery other than emergency surgery. G.S. 122C-57(f).

Physical restraint or seclusion. A client, however committed or admitted, may be physically restrained or secluded “only when there is imminent danger of abuse or injury to the client or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment.” G.S. 122C-60(a).

Restrictable rights of adults. Certain rights of adult clients enumerated by statute may be limited or restricted by a qualified professional. These are the right to: make and receive confidential telephone calls; receive visitors during times specified by statute; meet by mutual consent with others under appropriate supervision; make visits outside the facility unless committed or admitted in regard to certain criminal proceedings; be outside and have access to exercise facilities several times a week; keep and use personal clothing and possessions legally permitted, unless the person is being held to determine capacity to proceed in criminal court; participate in religious worship; keep and spend a reasonable sum of money; retain a driver’s license, unless otherwise prohibited by Chapter 20 of the North Carolina General Statutes (*see supra* § 12.4); and have personal storage space for private use. G.S. 122C-62(b).

The qualified professional responsible for the client’s treatment plan must write in the client’s record detailed reasons for the restriction or limitation. The restrictions must be reasonable and related to the client’s treatment needs. They shall be effective for no more than thirty days and must be reviewed every seven days, but may be renewed by written statement of the qualified professional in the client’s record. G.S. 122C-62(e).

Restrictable rights of minors. Certain rights of minors enumerated by statute may be limited or restricted by a qualified professional. These are the right to: make and receive telephone calls; send and receive mail and have access to writing materials, postage, and staff assistance when necessary; receive visitors at times specified by statute under appropriate supervision; receive special education and vocational training in accordance with federal and state law; be outside daily and participate in play, recreation, and physical exercise on a regular basis; keep and use personal clothing and possessions legally permitted, unless the person is being held to determine capacity to proceed in criminal court; participate in religious worship; have individual storage space; keep and spend a reasonable sum of money; and retain a driver’s license, unless otherwise prohibited by Chapter 20 of the North Carolina General Statutes (*see supra* § 12.4). G.S. 122C-62(d).

The qualified professional responsible for the client’s treatment plan must write in the client’s record the detailed reasons for the restriction or limitation. The restrictions must be reasonable and related to the client’s treatment needs. They shall be effective for no

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