

CHAPTER 334E
RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

Section

- 334E-1 Informed consent
- 334E-2 Rights of in-patients
- 334E-3 Investigation procedures
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" **[§334E-1] Informed consent.** (a) Before any nonemergency treatment for mental illness can commence, informed consent, as required by section 671-3 and as defined by the Hawaii medical board pursuant to the authority vested in it by that section, shall be obtained from the patient, or the patient's guardian, if the patient is not competent to give informed consent.

(b) A signed consent form reflecting the proceeding shall be obtained and maintained as part of the patient's record. [L 1980, c 272, pt of §1; am L 2008, c 9, §3]

Case Notes

Where defendant doctor never properly established at trial the "therapeutic privilege exception" to the requirement that informed consent be obtained before starting patient on antipsychotic medication, trial court erred in refusing to instruct jury concerning the tort of negligent failure to provide informed consent. 98 H. 470, 50 P.3d 946.

" **§334E-2 Rights of in-patients.** (a) Any patient in a psychiatric facility shall be afforded rights; and any psychiatric facility shall provide the rights to all patients; provided that when a patient is not able to exercise the patient's rights, the patient's legal guardian or legal representative shall have the authority to exercise the same on behalf of the patient. The rights shall include, but not be limited to, the following:

- (1) Access to written rules and regulations with which the patient is expected to comply;
- (2) Access to the facility's grievance procedure or to the department of health as provided in section 334-3;
- (3) Freedom from reprisal;
- (4) Privacy, respect, and personal dignity;
- (5) A humane environment;
- (6) Freedom from discriminatory treatment based on race, color, creed, national origin, age, and sex;
- (7) A written treatment plan based on the individual patient;
- (8) Participation in the planning of the patient's treatment plan;
- (9) Refusal of treatment except in emergency situations or where a court order exists;
- (10) Refusal to participate in experimentation;
- (11) The choice of physician if the physician chosen agrees;
- (12) A qualified, competent staff;

- (13) A medical examination before initiation of non-emergency treatment;
- (14) Confidentiality of the patient's records;
- (15) Access to the patient's records;
- (16) Knowledge of rights withheld or removed by a court or by law;
- (17) Physical exercise and recreation;
- (18) Adequate diet;
- (19) Knowledge of the names and titles of staff members with whom the patient has frequent contact;
- (20) The right to work at the facility and fair compensation for work done; provided that work is available and is part of the patient's treatment plan;
- (21) Visitation rights, unless the patient poses a danger to self or others; provided that where visitation is prohibited, the legal guardian or legal representative shall be allowed to visit the patient upon request;
- (22) Uncensored communication;
- (23) Notice of and reasons for an impending transfer;
- (24) Freedom from seclusion or restraint, except:
 - (A) When necessary to prevent injury to self or others; or
 - (B) When part of the treatment plan; or
 - (C) When necessary to preserve the rights of other patients or staff;
- (25) Disclosure to a court, at an involuntary civil commitment hearing, of all treatment procedures which have been administered prior to the hearing;
- (26) Receipt by the patient and the patient's guardian or legal guardian, if the patient has one, of this enunciation of rights at the time of admission.

(b) All the rights of in-patients are to be qualified by reasonableness in view of the circumstances.

(c) The department of health shall investigate any complaints brought to them concerning this section, except as provided in subsection (d). The department shall report in writing its findings and recommendation to the originator of the complaint, no later than thirty days from the date the complaint is submitted.

(d) The office of the ombudsman shall be responsible for all investigations of complaints against any public psychiatric facility, as provided under chapter 96. [L 1980, c 272, pt of §1; am L 1982, c 200, §1; gen ch 1985]

" **[§334E-3] Investigation procedures.** (a) In an investigation pursuant to section 334E-2(c), the department of health may:

- (1) Make inquiries and obtain information as deemed necessary;
- (2) Enter without notice to inspect the premises of a psychiatric facility; provided that such entry shall be authorized by the department in writing and that such authorization shall be furnished upon entry to the person in charge of the facility; and
- (3) Hold private hearings.

(b) The department of health shall maintain secrecy in respect to all matters including the identities of the complainants or witnesses, except so far as disclosures may be necessary to enable it to carry out duties and to support recommendations. [L 1987, c 158, §1]

" **[§334E-4] Powers.** Subject to the privileges which witnesses have in the courts of this State, the department of health in an investigation pursuant to section 334E-2(c) may:

- (1) Compel at a specified time and place, by a subpoena, the appearance and sworn testimony of any person who the department of health reasonably believes may be able to give information relating to a matter under investigation; and
- (2) Compel any person to produce documents, papers, or objects which the department of health reasonably believes may relate to a matter under investigation.

The department of health may bring suit in an appropriate state court to enforce these powers. [L 1987, c 158, §2]

" **[§334E-5] Penalty for obstruction.** A person who wilfully hinders the lawful actions of the department of health pursuant to an investigation carried out under section 334E-2(c), or wilfully refuses to comply with its lawful demands, may be fined up to \$1,000. [L 1987, c 158, §3]