

OREGON STATE HOSPITAL

PORTLAND -- SALEM

POLICIES AND PROCEDURES

SECTION 7: Patient Rights

POLICY: 7.008

SUBJECT: Abuse of Hospitalized Patients, and Reporting Allegations of Abuse of Non-Hospitalized Children, Adults and Elderly Persons

POINT

PERSON: NENA STRICKLAND

APPROVED: GREG ROBERTS
SUPERINTENDENT



DATE: Oct. 28, 2011

I. POLICY

- A. It is the policy of Oregon State Hospital (OSH) that every individual is deserving of safe, respectful and dignified treatment provided in a therapeutic environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors shall conduct themselves in such a manner that individuals are free from abuse.
- B. An employee, volunteer, contractor, or contractor's employee of Oregon State Hospital shall only be subject to disciplinary or other appropriate action up to and including dismissal if found responsible for:
 - 1. Abusing a patient.
 - 2. Failing to report an alleged incident of abuse; or
 - 3. Refusing to give information or giving untruthful information during an investigation of alleged abuse.
- C. In all situations where abuse or the failure to report an alleged incident of abuse has been substantiated, the consequences shall be commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, and may include consideration of previous conduct of record (Official Personnel File).
- D. Any employee dismissed for violating the abuse policy shall not be rehired in any capacity, nor shall the person be permitted to visit or otherwise have contact with individuals in any manner.

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- E. Any volunteer found violating the abuse policy shall be denied visitation or any other contact with individuals.

Any contractor found violating the abuse policy shall be at risk of immediate termination of the contract. Any employee of the contractor found in violation of the abuse policy may be excluded from the grounds and may be referred to the appropriate law enforcement or regulatory agency.

Any visitor found in violation of the abuse policy shall be excluded from the grounds and may be referred to the appropriate law enforcement agency or subject to other appropriate actions as determined by the Superintendent or designee.

II. DEFINITIONS

- A. "Abuse" means any act or absence of action by a staff, contractor, volunteer or visitor inconsistent with prescribed treatment and care that violates the well-being or dignity of the Individual.

Listed below are examples of the types of conduct which constitute abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

1. **Physical Abuse:** Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care.
2. **Verbal Abuse:** Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, remarks intended to provoke a negative response by the individual, or nicknames not requested by the individual or which are demeaning or ridiculing.
3. **Abuse by Failure to Act:** This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual

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either by failing to provide authorized and prescribed treatment or by failing to intervene when a individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated.

4. **Sexual Abuse:** Examples include:

- a. Contact of a sexual nature between staff, contractor, volunteer or visitor and individuals;
- b. Failure to discourage sexual advances toward staff, contractor, volunteer or visitor by individuals; and
- c. Permitting the sexual exploitation of individuals or use of individual sexual activity for staff, contractor, volunteer or visitor entertainment or other improper purpose.

5. **Condoning Abuse:** Permitting abusive conduct toward an individual by any other staff, individual, or person.

6. **Statutory Terms of Abuse:** As defined in ORS 430.735 any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury and sexual harassment or exploitation, including but not limited to any sexual contact between an employee and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

- B. Self-Defense: At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees are expected to use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. As defined in OAR 407-045-000, abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force, provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designated as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, that conduct then becomes abuse.

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- C. "Child Abuse" as defined under ORS 418.775. Examples include physical injury to a child which has been caused by other than accidental means; sexual exploitation; neglect; maltreatment of a child.
- D. "Elder Abuse" as defined under ORS 124.050. Examples include physical injury caused by other than accidental means; neglect which leads to physical harm; abandonment; willful infliction of physical pain or injury.
- E. "Abuse of Any Adult Receiving Developmental Disability or Mental Health Services" as defined under ORS 430.735 means physical injury or death caused by other than accidental or natural causes, willful infliction of physical pain or injury, or sexual harassment or exploitation.
- F. "Nursing Home Abuse" as defined under ORS 441.630. Examples include physical injury other than accidental, neglect resulting in physical harm, failure to provide direct patient care including food, failure to maintain required staff.
- G. An "Alleged Abusive Act" should be considered to have occurred for the purpose of these procedures if:
1. A staff member has reasonable cause to believe abuse has been committed, or
 2. Information has been reported by any patient or other person to a staff member which, if true, would constitute abuse.
- H. "Administrator" means the Assistant Department of Human Services Director for Seniors and People with Disabilities and the Office of Mental Health and Addiction Services or their designee.
- I. "Department" means Seniors and People with Disabilities or Office of Mental Health and Addiction Services, organizational units within the Department of Human Services.
- J. "Derogatory" means an expression of a low opinion or a disparaging remark.
- K. "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.
- L. "Employee" means an individual employed by the state and subject to rules for employee conduct.

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- M. "Inconclusive" means the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.
- N. "Individual" means a person who is receiving services in a residential training center for people with developmental disabilities or at a state hospital for people with mental illness.
- O. "Not Substantiated" means the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.
- P. "Office of Investigations and Training (OIT)" means the Department of Human Services office responsible for the investigation of allegations of abuse made at state hospitals .
- Q. "Individual" means a patient or resident of Oregon State Hospital.
- R. "Staff" means employees, contractors and their employees, and volunteers.
- S. "Substantiated" means the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.
- T. "Superintendent" refers to the chief executive officer of OSH who serves as the designee of the Administrator to receive allegations of abuse concerning individuals and his or her designee.
- U. "Visitor" means all other persons not included, as staff who visit the facility for business purposes or to visit individuals or staff.

III. PROCEDURES

- A. Any person who witnesses or has information about an alleged abusive act that has occurred at Oregon State Hospital must immediately report the incident directly to the Office of Investigations and Training (Weekdays 8 a.m.-5p.m. 503-945-9495. Weekdays, 5 p.m-10 p.m. and Weekends noon-10 p.m 503-559-1201) . The Superintendent must also be notified via hand delivered memorandum, email, LAN, telephone call or in person. Report during regular work hours to the Superintendent (503-945-2870) or via the Assistant to the Superintendent (503-945-2852). Report after hours to the Superintendent via the Oregon State Hospital Communication Center (503-945-2800). Regardless of the manner of reporting, a written report also

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must be submitted which includes details of the incident, date of the report, and name of the reporter.

- B. If any staff has knowledge of an Oregon State Hospital patient that gives them reasonable cause to believe that a child, elderly person, past nursing home resident, or adult currently receiving services at Oregon State Hospital has been the victim or perpetrator of abuse, and that the abuse took place when the person was not a patient at Oregon State Hospital, that staff must report that information to the Superintendent, using the following steps:
1. The staff who has knowledge of such abuse shall immediately consult with the Program Director to determine if a report is required.
 2. The staff and Program Director shall complete the Abuse Report Form as part of this consultation;
 3. The staff and Program Director shall determine whether the alleged abuse comes within the definition of child abuse under ORS 419B.005, patient abuse under ORS 441.630, or elderly abuse under ORS 124.050 and, if so, ensure that reports are forwarded to the Superintendent within 24 hours.

Reporting Requirements

1. Any person acting in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).
2. The identity of the person reporting alleged abuse is confidential. The Office of Investigations and Training shall reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individual, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

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Preliminary Procedures

1. Once a report of alleged abuse is made, the following steps shall be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:
 - a. No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent shall notify the Office of Investigations and Training (OIT) of the report of alleged abuse. OIT shall determine whether the allegation, if true, would fit within the definition of abuse. This determination shall be made in consultation with the Superintendent. The determination must be made within 24 hours of receipt of the report of abuse unless an extension of time to obtain necessary information is granted by the OIT Director or Deputy;
 - b. If the allegation is determined to not fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;
 - c. The Superintendent with OIT shall further ensure that if the allegation meets the definition of elder abuse under ORS 124.050 it has been reported to the appropriate agency.
2. Immediately and no later than 24 hours after determining that the allegation comes within the definition of abuse under this policy or other applicable laws, the Superintendent shall:
 - a. Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal or other services necessary to prevent further abuse;

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- b. Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;
- c. Make a report to any other appropriate agencies, e.g. Seniors and People with Disabilities Division (SPD) or Alcohol and Mental Health Services Division (AMH)..
- d. Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that shall be used to investigate and resolve the matter, as well as the facility's responsibility to provide appropriate protective services;
- e. Contact the Administrator of the Department if the individual has sustained serious injury.

Investigation by the Office of Investigations and Training

1. Investigation of allegations of abuse shall be thorough and unbiased. An investigation of the allegation shall be conducted by the Office of Investigations and Training (OIT).
2. OIT shall conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT shall also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.
3. All records necessary for the investigation shall be available to OIT for inspection and copying. OIT shall collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs and videos.
4. If the facts in the case are disputed and a law enforcement agency does not produce an investigation report, OIT shall determine the manner and methods of conducting the investigation.
5. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also perform its own

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investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Abuse Investigation Report

1. OIT shall complete its investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation unless other laws or regulations require a shorter time frame. The investigation must be complete within 30 calendar days unless the Administrator grants an extension. The Administrator may grant an extension when a key party is unavailable, new evidence is discovered, the investigation is complex (e.g. large numbers of witnesses need to be interviewed, taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required) or for some other mitigating reason. The Administrator shall specify the length of the extension.
2. The Superintendent along with OIT is responsible for reviewing the OIT and/or law enforcement investigation report. The Superintendent and OIT shall also review and discuss and other relevant reports or information.
3. OIT shall determine whether the evidence does or does not substantiate the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Administrator grants an extension for some other mitigating reason. Any determination not made within the 15 day period must be made as soon as reasonably possible thereafter.
4. Once this review is complete, a final report shall be prepared by OIT, which includes:
 - a. A statement of the alleged incident being investigated, including the dates(s), location(s) and time(s);

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- b. An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;
 - c. A summary of findings and conclusion concerning the allegation of abuse;
 - d. A specific finding of substantiated, inconclusive or not substantiated
 - e. A plan of action necessary to prevent further abuse of the individual;
 - f. Any additional corrective action required by the hospital or residential training center and deadlines for the completion of these actions;
 - g. A list of any notices made to licensing agencies;
 - h. The name and title of the person completing the report; and
 - i. The date it is written.
5. If the allegation of abuse is substantiated, the Superintendent shall direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources is involved, as necessary to comply with laws related to employee rights, additional investigation maybe conducted.
 6. If the allegations are found to be inconclusive; the Superintendent may request a review by the Human Resources Department to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.
 7. The Superintendent shall ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.
 8. The Superintendent shall ensure that a copy of the law enforcement investigation report is forwarded to OIT.

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Disclosure of Investigation Report and Related Documents

1. Investigation reports prepared by OIT are subject to the following:
 - a. Portions of the abuse investigation report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.
 - b. Notwithstanding subsection (a) of this rule, the Department and OIT shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department and OIT shall also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).
 - c. Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized persons or entities, as required by state or federal law.
 - d. When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.
2. The OIT report shall be disclosed by OIT or the Superintendent to:
 - a. The Administrator of the Department; and

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- b. Any person designated by the Superintendent for purposes related to the proper administration of the hospital such as assessing patterns of abuse or to respond to personnel actions and may be disclosed at the Superintendent's discretion;
 - c. The individual involved;
 - d. The guardian of an adjudicated incapacitated person; and
 - e. The person or persons who allegedly abused the individual.
 3. Copies of all reports shall be maintained by the Superintendent in a place separate from personnel files of employees. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.
 4. Upon completion of the report the Superintendent shall immediately give notice to:
 - a. The individual or guardian;
 - b. The employee, volunteer, contractor, or contractor's employee or other person accused of abuse; and
 - c. The Administrator of Health Services,stating whether the allegation was substantiated, unsubstantiated, or inconclusive.

IV. TRAINING AND EDUCATION

- A. Each individual must be informed upon admission and his or her guardian, if any, or his or her family shall also be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.
- B. All staff shall be provided a copy of this rule, either at the commencement of their employment, and/or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

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- C. A clear and simple statement of the title and number of this policy and how to seek advice about its content shall be prominently displayed in areas frequented by individuals at Oregon State Hospital.

A summary of this Policy and Procedures shall be posted outside the Oregon State Hospital – Salem Communication Center, in the lobby of the Administration Building for Oregon State Hospital – Salem, and in the reception area at Oregon State Hospital – Portland. The complete copy shall be provided to any member of the public upon request.

- D. No hospital employee or other person shall retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

Any state hospital employee or other person who retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

V. REFERENCES

OAR 943-045-0250 through 943-045-520, Abuse Reporting and Protective Services in Community Programs and Community Facilities; Abuse of Individuals living in State Hospitals and Residential Training Centers.

OAR 407-045-0000, Review of Substantiated Physical Abuse when Self-Defense is Asserted

ORS 124.050, Elder Abuse;

ORS 419B.005, Child Abuse;

ORS 441.630, Nursing Home Abuse;

ORS 430.735, Abuse of Adults Receiving Developmental Disability or Mental Health Services;

ORS 179.505, Confidentiality;

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OSH Policies and Procedures 8.019, Staff Response to Alleged Criminal Acts,
Including the Introduction of Contraband;

Oregon Health Authority Policy AS-100-03, Disclosure of Information

Replaces OSH Policy and Procedure 7.008, *Abuse of Hospitalized Patients, and
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and Elderly Persons*, dated 12/17/ 2002.