

CURRENT ISSUES IN HOSPITAL RIGHTS PROGRAMS

Session 5
3:30 PM- 5 PM
Wednesday, October 2, 2002
2002 Recipient Rights Conference

Presented By
Alexander T. Dukay, Licensing Officer
Psychiatric Programs
MDCIS/BHS
P.O. Box 30664
Lansing, Michigan 48909
Phone: 5177241-3844
E-Mail: ATDukay@Michigan.gov

JOHN ENGLER
GOVERNOR

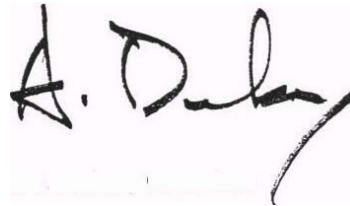
State of Michigan
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
Lansing

NOELLEA. CLARK
Director

August 16, 2002

TO: Hospital Presidents/CEOs
Licensed Psychiatric Hospitals/Units

FROM: Alexander T. Dukay, Licensing Officer
Psychiatric Programs



SUBJECT: Membership Composition of Recipient Rights Advisory Committee

Section 758 of the Michigan Mental Health Code [MCL 330.1758] specifies that unless otherwise provided by contract with the local community mental health services program, each licensed hospital shall appoint a recipient rights advisory committee. For your information, please find enclosed INTERPRETATIVE GUIDELINE 02.1 concerning the composition of the recipient rights advisory committee required by MCL 330.1758.

The purpose of INTERPRETATIVE GUIDELINE 02.1 is to provide clarification as to whether the hospital director or designee, psychiatric program staff, or the rights advisor may be voting members of the hospital's recipient rights advisory committee.

INTERPRETATIVE GUIDELINE 02.1 was developed in consultation with the Office of Recipient Rights, Michigan Department of Community Health.

Please review the membership composition of your hospital's recipient rights advisory committee. If after review you determine that the membership of your recipient rights advisory committee does not conform to the provisions of INTERPRETATIVE GUIDELINE 02.1, by October 31, 2002 please take appropriate follow-up action to revise the membership composition of your committee.

For your information, the Office of Recipient Rights, Michigan Department of Community Health, is offering a training program for rights advisory committees and appeals committees on September 19, 2002 at the Hilton Hotel in Novi, Michigan.

Registration information for the September 19, 2002 training conference may be requested from Ms. Nancy Bogart, Office of Recipient Rights Training Office, 248/349-1800, Extension 2212.

There is no registration fee for the scheduled conference. There may be an administrative cancellation fee if the cancellation notice is received less than 48 hours prior to the scheduled conference.

If you should have any questions regarding INTERPRETATIVE GUIDELINE 02.01, you may contact me at ATDukay@Michigan.Gov or 517/241-3844.

cc: Recipient Rights Advisor
Psychiatric Program Director

G. MENNEN WILLIAMS BUILDING • 5TH FLOOR • P.O. BOX 30664 . LANSING, MICHIGAN 48909
www.michigan.gov • (517) 241-2626

495-RRAC.MEM

Michigan Department of Consumer and Industry Services
Bureau of Health Systems - Division of Licensing and Certification
Licensed Psychiatric Programs

Section 758 of the Michigan Mental Health Code [MCL 330.1758] specifies that "unless otherwise provided by contract with the local community mental health services program, each licensed hospital shall appoint a recipient rights advisory committee. At least 1/3 of the membership shall be primary consumers or family members and, of that 1/3, at least 2 shall be primary consumers." No other direction or limitation as to who may serve on the recipient rights advisory committee is specified at MCL 330.1758.

The purpose of INTERPRETATIVE GUIDELINE 02.1 is to provide clarification as to whether the hospital director or designee, psychiatric program staff, or the rights advisor may be voting members of the hospital's recipient rights advisory committee.

Please contact the psychiatric licensing office [517/241-3844 or ATDukay@Michigan.Gov] if there should be any questions regarding INTERPRETATIVE GUIDELINE 02.1.

INTERPRETATIVE GUIDELINE 02.1
RECIPIENT RIGHTS ADVISORY COMMITTEE MEMBERSHIP COMPOSITION
LICENSED PSYCHIATRIC HOSPITAL/UNIT

One of the responsibilities of the recipient rights advisory committee is to serve in an advisory capacity to the hospital director [or designee as applicable] and the director of the office of recipient rights [MCL 330.1758(e)].

In its advisory capacity, it would not be appropriate for the hospital director [or designee as applicable] and rights advisor to sit on the committee as a voting member.

The recipient rights advisory committee may invite the hospital director [or designee as applicable] to attend all or part of a rights advisory committee meeting to speak to issues that are of interest to the committee.

The recipient rights advisor serves as a resource to the committee and may be utilized by the committee for the provision of recipient rights reports, training and consultation.

Another responsibility of the recipient rights advisory committee is to protect the office of recipient rights from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions [MCL 330.1758 (c)].

The appearance of potential undue influence arises when the membership of the recipient rights advisory committee includes psychiatric program management/clinical staff.

The recipient rights advisory committee may invite psychiatric program staff to attend all or part of a recipient rights advisory committee meeting to speak to issues that are of interest to the committee.

State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Bureau of Health Systems

G. Mennen Williams Building, 5th Floor
P.O. Box 30664
Lansing, MI 48909

March 14, 2001

TO: Presidents/CEOs
Licensed Psychiatric Programs

FROM: Alexander T. Dukay, Licensing **Officer**
Licensed Psychiatric Program



SUBJECT: Act No. 505 of the Public Acts of 2000

Attached is a copy of Act No. 505 of the Public Acts of 2000. This Act is effective March 28, 2001.

Please forward a copy of this communication and attachment to your psychiatric program administrative and clinical leadership staff, patient rights advisor mental health professional staff, and other interested parties.

Act 505 of the Public Acts of 2000 [Act 505] amends the Michigan Penal Code to extend fourth-degree criminal sexual conduct (CSC) penalties to sexual contact by a "mental health professional" with a client or patient.

Fourth-degree CSC is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$500, or both.

"Mental health professional" means that term as defined in Section 100b(14) of the Mental Health Code (an individual who is trained and experienced in the area of mental illness or developmental disabilities and is one of the following: a physician, psychologist, or registered professional nurse licensed to practice in Michigan; a certified social worker, social worker, or social worker technician registered in Michigan; a licensed professional counselor licensed to practice in Michigan; or a licensed marriage and family therapist).

Under the Penal Code, a person is guilty of fourth-degree CSC if he or she engages in sexual contact with another person under specified circumstances. Act 505 adds a situation in which the actor was a mental health professional and the sexual contact occurred during or within two years after the period in which the victim was the mental health professional's client or patient, and the victim was not his or her spouse.

The Act amends the definition of "sexual contact", which currently includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification. "Sexual contact" is expanded to include that intentional touching if it were done for sexual arousal or gratification, done for a sexual purpose, or done in a sexual manner for revenge, to inflict humiliation, or out of anger.

As a reminder, please note that CSC is included in the definition of "criminal abuse" [Section 700(a) (iii) of the Mental Health Code. As provided by Section 723 of the Mental Health Code. "A mental health

Presidents/CEOs

Page 2

March 14,2001

professional...or person employed by or under contract to... a licensed facility... who has reasonable cause to suspect the criminal abuse of a recipient immediately shall make or cause to be made, by telephone or otherwise, an oral report to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the State Police."

Please revise the psychiatric program's abuse/neglect reporting policy/procedure to include the amendatory provisions of Act 505.

Applicable hospital policies/procedures, guidelines, and orientation/in-service protocols regarding staff patient relationships and staff conduct should also be revised to reflect the amendatory provisions of Act 505.

If you should have any questions regarding Act 505, please call me at 517/241-3844.

THE MICHIGAN PENAL CODE

Act 328 of 1931

AN ACT to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefore; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;--Am. 1991, Act 56, Eff. Jan. 1, 1992 .

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.520a Definitions.

Sec. 520a.

As used in this chapter:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
 - (iv) It is attributable to 1 or more of the following:
 - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (d) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (e) "Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (f) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.
- (g) "Mentally incapable" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (h) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (i) "Mentally retarded" means significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
- (j) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (k) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- (l) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- (i) Revenge.
 - (ii) To inflict humiliation.
 - (iii) Out of anger.
 - (m) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.
 - (n) "Victim" means the person alleging to have been subjected to criminal sexual conduct.
- History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 2000, Act 505, Eff. Mar. 28, 2001 .

750.520e Criminal sexual conduct in the fourth degree; misdemeanor.

Sec. 520e.

- (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:
- (a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.
 - (b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:
 - (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
 - (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.
 - (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
 - (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.
 - (v) When the actor achieves the sexual contact through concealment or by the element of surprise.
 - (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - (d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.
- (e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. This does not indicate that the victim is mentally incompetent.**
- (2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 1988, Act 86, Eff. June 1, 1988 ;--Am. 1994, Act 213, Eff. Oct. 1, 1994 ;--Am. 1996, Act 155, Eff. June 1, 1996 ;--Am. 2000, Act 227, Eff. Oct. 1, 2000 ;--Am. 2000, Act 505, Eff. Mar. 28, 2001 .