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*California's protection and advocacy system*

### **Notice of Illegal Detention Conditions at Psychiatric Hospitals**

***Disability Rights California (DRC)<sup>1</sup> is currently investigating the treatment of Immigration and Customs Enforcement (ICE) detainees with mental disabilities who are transferred to private psychiatric hospitals for acute psychiatric care.***

DRC has a legal right of access to facilities in order to investigate incidents of abuse and neglect of individuals with mental illness.<sup>2</sup> Our investigation of ICE detainees treated at Alvarado Parkway Institute (API), a private psychiatric hospital in La Mesa, California has revealed the following illegal conditions:

- All ICE detainees are assigned two guards per person;
- All ICE detainees are kept with both ankles shackled to the bed, 24 hours per day, during the entire course of their stay at API, except to use the toilet or shower;
- All ICE detainees are kept in virtual isolation (except for 20 to 50 minutes of individual therapy each day) and are denied all opportunities for socialization, group therapy, phone calls, visitors (except for attorneys or patients' rights advocates), and watching television;
- The only opportunity for exercise provided ICE detainees at API is "at bedside" with shackles on.
- Family and friends are never informed of the ICE detainees' whereabouts.

DRC has been informed that API is no longer accepting nonemergency detainees from ICE; however, ICE is demanding that its detainees who are brought into the emergency room be accepted into treatment at API and at other psychiatric hospitals in San Diego County. ICE claims that the Emergency Medical Treatment and Active Labor Act (EMTALA) mandates that hospitals admit an emergency room patient until such patient is stabilized.<sup>3</sup> However, regardless of EMTALA, ICE has no legal justification for insisting that the detainees be kept in the conditions outlined above.

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<sup>1</sup> Disability Rights California (DRC) is a statewide non-profit organization that works to advance the rights of Californians with Disabilities and is specifically authorized by federal statute to take appropriate legal action to protect the rights of individuals with mental illness who are receiving care or treatment in the state.

<sup>2</sup> See Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAMII), 42 U.S.C. § 10805(a)(1)(A)

<sup>3</sup> See 42 USC §1395dd et seq; 42 C.F.R. §489.24.

**California law, the LPS Act guarantees certain rights to all persons involuntarily detained for psychiatric treatment.**<sup>4</sup> These rights include the right to see visitors each day, the right to reasonable access to a telephone to make and receive calls, and to send and receive unopened correspondence.<sup>5</sup> These rights may only be denied for good cause where the professional person in charge of the facility has good reason to believe that the exercise of the right would be either injurious to the patient, infringe on the rights of others, or cause the facility to suffer serious damage.<sup>6</sup> In addition, there must be no less restrictive way of protecting these interests.<sup>7</sup> A right shall not continue to be denied when good cause for its denial no longer exists.<sup>8</sup> When a right has been denied, staff shall employ the least restrictive means of managing behavior which led to the denial.<sup>9</sup> The reason used to justify the denial of right must be related to the specific right denied.<sup>10</sup>

Certain rights of mental health patients may not be denied, even for good cause. These rights include the right to treatment that is least restrictive of the personal liberty of the individual; a right to dignity, privacy and humane care; and a right to be free from unnecessary or excessive physical restraint or isolation, abuse, or neglect; a right to social interaction; and a right to physical exercise and recreational opportunities.<sup>11</sup>

California regulations authorize the use of restraints only “as a measure to protect the patient from injury to self or others.”<sup>12</sup> Restraints may be used “only when alternate methods are not sufficient to protect the patient or others from injury.”<sup>13</sup> Under these regulations, restraints at psychiatric health facilities “shall only be used upon a physician's or clinical psychologist's written or verbal order, except under emergency circumstances.”<sup>14</sup> “Under emergency circumstances, behavioral restraint may be applied and then an order obtained as soon as possible, but at least within one hour of application.”<sup>15</sup> Moreover, “orders for behavioral restraint and seclusion shall be in force for not longer than 24 hours.”<sup>16</sup>

These patients’ rights are applicable to ICE detainees at contracted private psychiatric hospitals, as they are to all mental health patients in state licensed LPS designated hospitals in California. The immigration status of the patient is *irrelevant*.

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<sup>4</sup> Cal. Welf. & Instn. Code § 5325 et seq.

<sup>5</sup> *Id.* at § 5325(c)-(e).

<sup>6</sup> *Id.* at § 5326; Cal. Code Regs, tit. 9, §865.2

<sup>7</sup> *Id.* at §865.2(a)(4).

<sup>8</sup> *Id.* at §865.5.

<sup>9</sup> *Id.* at §865.2 (a)(4).

<sup>10</sup> *Id.* at § 865.2(b).

<sup>11</sup> Cal. Welf & Instn. Code §5325.1(a)-(c), (g), (h).

<sup>12</sup> Ca. Code Regs. tit. 22 §77103(a).

<sup>13</sup> *Id.* at §71545(a).

<sup>14</sup> *Id.* at §77103(b)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at §77103(d).

Finally, ICE has no power to impose unconstitutional or otherwise unlawful conditions or restrictions on ICE detainees at private psychiatric hospitals. First, the United States Constitution fully applies to all persons in ICE custody and requires that ICE detainees be afforded due process at all times. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Due process requires minimally adequate treatment and freedom from unnecessary physical restraints. *Youngberg v. Romeo*, 457 U.S. 307 (1982). Because they are civilly confined, ICE detainees may not be subjected to restrictions that bear no relation to legitimate security concerns, such as the blanket ban all socialization and visits for ICE detainees at some private psychiatric facilities. See *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). This is in contrast to convicted prisoners who may constitutionally be punished with the deprivation of visitation and other associational rights. *Overton v. Bazzetta*, 539 U.S. 126, 131-32 (2001).

Moreover, ICE's own detention standards require "due process in compliance with all laws" with respect to ICE's use of private psychiatric hospitals. See ICE / DRO Detention Standard, Medical Care (V)(K)(4).<sup>17</sup> EMTALA does not affect or change applicability of any of these laws or rights.

For the foregoing reasons, California psychiatric hospitals that deny patients their lawful rights, illegally use restraints, or otherwise violate the law in their treatment of ICE detainees, *even where directed to do so by ICE*, are placing themselves in jeopardy of losing both their LPS designation and state licenses. In addition, they may be subject to private litigation or other legal action.

If you have any information that may be relevant to DRC's investigation, or you have any questions or concerns, please contact attorney Ann Menasche or Bernadette Bautista at 619-239-7861.

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<sup>17</sup> [http://www.ice.gov/doclib/PBNDs/pdf/medical\\_care.pdf](http://www.ice.gov/doclib/PBNDs/pdf/medical_care.pdf)