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# **Abuse and Neglect Investigation: Alaska Psychiatric Institute**

## **Patient Illegally Held at API Despite Not Having a Mental Illness**

**March 21, 2011**

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**The Disability Law Center of Alaska  
Community Integration Unit - Abuse/Neglect Investigation**

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## **I. General Information & Terms**

**The Disability Law Center of Alaska (DLC)** is a private, independent, not-for-profit agency, and is Alaska's federally mandated Protection and Advocacy (P&A) system. Under its federal mandates, two of which are the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act),<sup>1</sup> and the Developmental Disabilities Assistance and Bill of Rights Act (DD Act),<sup>2</sup> DLC has the duty and authority to investigate allegations of abuse and/or neglect involving individuals who experience a disability if the incident is reported to DLC, or if DLC determines there is probable cause that an incident of abuse and/or neglect occurred. Both the PAIMI and DD Acts give DLC the authority to access facilities, records, patients, staff and administration in order to complete its investigation.

**Alaska Psychiatric Institute (API)** is licensed as a specialized hospital, located in Anchorage, Alaska. API is licensed for 80-beds, is the State's only state-operated psychiatric hospital, and provides evaluation and treatment to individuals experiencing or suspected of experiencing a mental illness, regardless of their home-community within the state. The hospital is certified to receive Medicare and Medicaid funding, and is also accredited under the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). API is a Designated Evaluation and Treatment (DET) facility as identified by the State's Department of Health and Social Services.<sup>3</sup>

**Abuse** under PAIMI regulations "...means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue." 42 C.F.R. § 51.2.

**Complaint** under PAIMI and DD Act regulations "...includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by [DLC], including media accounts, newspaper articles, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with mental illness." 42 C.F.R. § 51.2 and 45 C.F.R. § 1386.19.

**Discharge Planning** is required by state and federal law prior to a patient's discharge from a hospital. Discharge planning requires that a hospital responsible for the patient's care and treatment create a plan that includes detailed information of the patients current mental health status, what is needed for continued care, appropriate community placement, and his ability for self-care. See 42 C.F.R. §§ 482.43 and 482.61-.62; 7 AAC 72.290.

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<sup>1</sup> Under the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. § 10801 *et seq.*, DLC is mandated to protect and advocate for the rights of people with mental illness.

<sup>2</sup> Under the Developmental Disabilities Assistance and Bill of Rights Act (PADD or the DD Act), 42 U.S.C. § 6000 *et seq.*, DLC is mandated to protect and advocate for the rights of individuals with developmental disabilities.

<sup>3</sup> See A.S. § 47.30.915.

**Ex parte involuntary commitment** refers to when a judge orders an emergency examination or treatment of an individual when “...there is probable cause to believe the [individual] is mentally ill and that condition causes the [individual] to be gravely disabled or to present a likelihood of serious harm to self or others.” A.S. § 47.30.700.

**Neglect** under PAIMI regulations “...means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff.” 42 C.F.R. § 51.2.

## **II. Factual Findings**

On December 14, 2010, the Disability Law Center learned there was a patient admitted to API who allegedly did not meet admission criteria as he had dementia, not a mental illness. Based on this report, the Disability Law Center initiated an abuse and neglect investigation as to whether the patient was properly in the facility.

Through its investigation, which included reviewing the patient's API records, the Disability Law Center determined that the patient was inappropriately held at API from December 4, 2010, when the ex parte order expired, through his return home on December 29, 2010. Upon his admission on December 1, 2010, the patient's recorded diagnoses showed that he did not suffer from a mental illness, but did have dementia.

The review of the patient's records revealed that from his initial admission to API on December 1, 2010, the patient did not meet admissions criteria. The patient was admitted to API on an ex parte order. API did not seek a 30 day commitment following the expiration of the ex parte order on December 4, 2010. Even though API records characterized the patient's admission to API as having been inappropriate, the records also show he signed in as a voluntary patient on December 7, 2010. The patient's API records further indicate that as of December 8, 2010, the patient could not be discharged because of the following note in his file: "[discharge] on hold per state attorney." This hold was in effect even though he had been evaluated by API and no further evaluation or treatment was deemed necessary, and even though he had signed in on a voluntary basis the day before.

On December 20, 2010, the Disability Law Center inquired whether the patient could leave the facility. The next day API, through its counsel, responded that the patient could not leave the facility as API had not fulfilled its discharge planning duties pursuant to state and federal law. The Disability Law Center responded that according to the patient's records plans had been made for the patient's discharge as early as December 8, 2010, including returning the patient to his home where his daughter resides, with involvement of the tribal council and the tribal safety officer. No further mental health treatment or follow-up is noted in his records. The Disability Law Center also informed API that the facility's belated concern about discharge planning was not legal authority to continue to hold the patient. Regardless, API continued to hold the patient at its facility.

On December 29, 2010, the Disability Law Center was informed by API through counsel that the patient was to be discharged and on the next flight back to his village.

On February 3, 2011, API responded to a draft of this report by saying that it stood behind its decision to admit the patient as a voluntary patient.

## **III. Determinations**

Under 42 U.S.C. § 15043(a)(2)(B) (PADD) and 42 U.S.C. § 10801(b)(2)(B) (PAIMI), unwarranted confinement in an institution is neglect. Based on the Disability Law Center's

investigation, it is determined that the patient was subject to neglect by being held without legal authority by API once the ex parte order expired.

Further, API should not have allowed the patient to sign in as a voluntary patient when he did not suffer from a mental illness and thus did not meet the statutory criteria for a voluntary admission found in AS 47.30.670. That statute provides “A person 18 years of age or older may be voluntarily admitted to a treatment facility if the person is *suffering from mental illness* and voluntarily signs the admission papers.” (emphasis supplied). When API knows, as API knew here, that a person is not suffering from mental illness, regardless of what other justifications it believes may exist, API should not allow the person to sign in voluntarily. API’s continuing to hold the patient when he wished to leave the hospital per a state attorney’s “hold” was not lawful as he did not meet the voluntary admission criteria and was not subject to a court order requiring he be held at the facility.

Finally, API’s claim that it could not release the patient because it had not completed discharge planning was an insufficient reason to continue to hold the patient and also constitutes neglect. *See id.* The patient’s records revealed that discharge planning was complete and no further evaluation or treatment was needed. Plans had been made for the patient’s return home. Given the important liberty interest the patient had to be free from unnecessary confinement in a psychiatric hospital<sup>4</sup>, even if API had not completed discharge planning, it would have been insufficient justification to continue to confine the patient at API when he did not suffer from a mental illness and there was no court order requiring his detainment.

#### **IV. Recommendations**

- Review API’s current tracking system for patients admitted to API pursuant to court orders and the orders’ expiration so that patients free to leave API – i.e., not involuntarily admitted under a court order – are scheduled for discharge, or sign in as voluntary patients if and only if they meet the statutory criteria.
- Adopt a policy that all patients at API must either be under a valid court order pursuant to Alaska’s Title 12 or 47 or be signed in as a voluntary patient.
- Adopt a policy that when a patient has been at API under a valid court order, but the order expires or is terminated by the Court, a patient will not be admitted as a voluntary patient unless he or she is suffering from a mental illness.
- Review with all staff as part of API’s training curriculum the criteria as set forth in AS 47.30.670 for voluntary admission to prevent future voluntary admissions to API that do not meet the statutory criteria.
- Review with all staff as part of API’s training curriculum how to assess whether a patient can understand his or her options – *i.e.*, whether he is competent – regarding signing in as a voluntary patient. Establish a review mechanism that staff can access and use when it

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<sup>4</sup> *See Wetherhorn v. API*, 156 P.3d 371, 384 (Alaska 2007).

is unclear whether a patient is competent or able to understand his or her rights and understand the implications of signing in as a voluntary patient.

- Review with all staff as part of API's training curriculum the hospital's ongoing duty to discharge plan from a patient's initial admission, as well as the statutory and regulatory requirements for discharge planning, including the requirement that discharge plans be in writing.