

MEMORANDUM

TO: Pam Ahlin, Executive Director

FROM: Daniel Wagoner, Interim Patients' Rights Advocate *DW*

RE: A.D. 658

DATE: 5/19/08

Our office has received several complaints from individuals within the past month regarding *the right to keep and use personal possessions as space permits except items and materials listed as Contraband*.

According to many of these complaints, individuals have had all of their electronic possessions confiscated due to alleged "misuse of electronics".

In many of these complaints, individuals are getting their DVD Players, Laptops, and/or radio's confiscated because they were found either;

- With 'burned' CD/DVD discs,
- With excess CD/DVD discs,
- With video pornography,
- Recording music/movies onto a blank disc,

Upon investigation into these matters, I have found that the authority these non-Contraband items are confiscated under is Coalinga State Hospital Administrative Directive 658- Individual's Use of Electricity and Electrical Devices.

Per A.D. 658, any "misuse" of an electrical device may result in all of an individual's electronic equipment getting confiscated for 30, 60, or 90 days,

or until "his Wellness and Recovery Team determines that he is ready to adhere to hospital regulations".

As you may be aware, California Code of Regulations, Title 9 Section 884(1) grants all individuals residing at Coalinga State Hospital *the right to keep and use personal possessions except items and materials listed as Contraband by the facility*. Per the latest Contraband List dated 9/13/07, DVD Players, Laptop Computers, and radios are not specifically listed as Contraband.

If an individual's personal laptop computer contains Contraband within the software of the computer, it is understandable that his laptop would be confiscated as Contraband. However, once the Contraband is removed from his computer, he once again has the right to keep and use it and should be permitted to do so.

It should be noted that 'burned' or copied music/movies, as well as legal video pornography, are not on the current Contraband list and do not meet the Title 9 definition of Contraband by presenting a safety and security risk to the facility.

Therefore, when an individual is in possession of items that are not specifically listed as Contraband by the facility, unless a formal Denial of Rights is completed that has met "Good Cause" criteria, individuals have the right to keep and use those personal possessions.

Per Title 9 Section 884, "Good Cause" only exists when,

- The exercise of the right would be injurious to the individual; **or**
- There is evidence that the right, if exercised, would seriously infringe upon the rights of others; **or**
- The facility would suffer serious damage if the right is not denied; **or**
- The exercise of the right would compromise the safety and security of the facility and/or the safety of others; **and**
- There is no less restrictive way of protecting the interest specified.

Per Coalinga State Hospital A.D. 658, an individual's right to keep and use his electronic possessions that are not Contraband can be denied when an individual's Treatment Team has determined that he has "misused" his

electronic equipment. The examples of "misuse" that have been brought to the attention of our office have included,

- Recording music,
- Recording movies,
- Watching or possessing video pornography.

These above examples do not meet "good cause" criteria which is required for a Denial of Rights per Title 9 Section 884. Therefore it would appear as though A.D. 658 is permitting Coalinga State Hospital to deny individuals' their right to keep and use personal possessions not because the possessions themselves are Contraband, and not because there is "good cause" to deny them their possessions, but because their Wellness and Recovery Team has determined that they have 'misused' their possessions.

The intention of this letter is to inform you, as Executive Director, that this Administrative Directive, A.D. 658, includes policies and procedures within it that conflict with patients' rights granted by Title 9 Section 884, and appears to be punitive in it's nature by confiscating and holding individuals' personal electronic possessions because they have violated policy or "misused" their possessions.

It is the recommendation of our office that Coalinga State Hospital considers revising A.D. 658, and only prevents individuals from exercising their right to keep and use personal possessions if the possessions themselves are Contraband or if "good cause" exists and through the formal Denial of Rights Process.

Thank you for your time and attention to this matter, and please feel free to contact our office if you feel as though we can be of further assistance.

CC: Applicable residents on unit
Michele Mudgett, Director Office of Patients' Rights