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A. Policy Statement


State-operated psychiatric inpatient facilities provide treatment to persons with severe and persistent mental illness. The goal of hospitalization is to provide active treatment to persons to enable them to return to the community with appropriate aftercare services.

Facilities operated by the Office of Mental Health (OMH) treat a wide range of individuals, some with histories of sexual offenses or predatory behaviors and others who may be vulnerable to exploitation. Patients have a statutory right to be free from abuse from staff or other patients. The Office of Mental Health is committed to providing a safe, secure and therapeutic environment for all patients (as well as staff and other persons) while they are on the premises of facilities directly operated by the Office.

While it is recognized that there are sexual aspects to the lives of all individuals, (including persons with psychiatric diagnoses), a hospital must provide a therapeutic environment for all patients. As such, it is not an appropriate setting for sexual activity. It is therefore the expectation of OMH that patients will not engage in such activity while on the premises of the hospital or when under the supervision of OMH staff. It is also expected that staff will proactively communicate hospital policy on sexual activity (through community meetings and counseling of patients) and will intervene when they believe any kind of sexual contact may be taking place.

Although sexual activity in a hospital setting can compromise a therapeutic environment, education about appropriate, healthy and safe sexual behavior should be an integral component of the rehabilitation process. In this respect, it is the expectation of OMH that hospitals will strive to provide such education when clinically appropriate. Education need not be limited to anatomy and physiology, but can incorporate issues such as respect for self and others, sexual and platonic relationships, intimacy, commitment, feelings, and many other aspects of relationships between two people. In addition, in the context of the widespread and increasing prevalence of HIV, HPV, hepatitis, and other sexually transmitted diseases, all patients should receive education about avoidance of high-risk behavior that might lead to the transmission of HIV infection or other sexually transmitted diseases. Information should also be provided regarding the appropriate context for sexuality as patients consider their next phase of treatment.

This policy directive is applicable to all persons who are receiving services in a State-operated psychiatric hospital and all residents of secure treatment facilities established pursuant to Article 10 of the Mental Hygiene Law. It is effective immediately. Staff training, patient education, and the placement and supervision of patients must incorporate the principles described in this directive.

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B. Relevant Statutes and Standards


Mental Hygiene Law Section 33.02
 14 NYCRR Section 27.6 (or successor regulation governing family planning services)
 OMH Official Policy Directive PC-050
 OMH Official Policy Directive QA-410
 OMH Official Policy Directive QA-510
 OMH Official Policy Directive QA-515
 OMH Official Policy Directive QA-530

C. Definitions For purposes of this policy directive:


- 1) *Child* means:
 - (a) a patient of a State operated Children’s Psychiatric Center;
 - (b) a patient of a Children and Youth Unit of a State operated Psychiatric Center; or
 - (c) a patient of a State operated Psychiatric Center who is less than 17 years of age.
- 2) *Nonconsensual sexual contact* means any sexual contact that involves a patient who does not consent to such contact or who is not clinically competent to consent.
- 3) *Patient* collectively refers to patients of State operated hospitals and residents of secure treatment facilities established pursuant to Article 10 of the Mental Hygiene Law.
- 4) *Sexual activity or sexual contact* means any touching of the sexual or other intimate parts of a person's body with the intent of gratifying sexual desire of either party.

D. Body of the Directive

- 1) **Principles:**
 - (a) All Patients should be protected from harassment of any kind.
 - (b) Care must be taken to protect patients who are particularly vulnerable (e.g., persons who are acutely ill, very regressed or otherwise lack the capacity to consent to sexual activity) from psychological harm and exploitation through sexual contact.
 - (c) Care must be taken to protect patients from harm to their physical well-being which may be a result of sexual activity, such as exposure to sexually transmissible disease, HIV infection and unwanted pregnancy.

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- (d) Facilities must proactively seek to identify patients who may be at risk to be sexually aggressive or victimized. Each facility must have written criteria to identify those patients who may be victims of physical assault, sexual assault, sexual molestation, domestic abuse, or elder or child abuse and neglect, consistent with standards of The Joint Commission. It is also the expectation that all patients will be screened to determine risk of suicide or violence. For each patient who has a positive result from such screens, a risk assessment shall be conducted, taking into consideration each patient's strengths and needs, as well as the potential for being a victim or a perpetrator of sexually exploitative behavior or assault (this is a minimum requirement; risk assessments may be conducted with respect to any patient, as appropriate). The risk assessment should include:
- (i) when applicable, a review of the patient's criminal history pursuant to the procedures of OMH Official policy directive QA-410 (Access of Division of Criminal Justice Records) particularly in relation to a possible history of criminal sexual activity; and
 - (ii) a review of referral documentation (e.g., psychosocial history, psychiatric evaluation, previous risk assessments, etc.). The results of such assessment will be used in determining patient unit assignment, as well as bedroom location and assignment of roommate(s).
 - (iii) as needed, outside consultation may be available from other OMH facilities.
- (e) Limited physical contact as a means of expressing affection (e.g., hugs, greeting or farewell embraces) may be entirely socially appropriate. However, the same behavior may be deemed inappropriate for certain patients/residents depending upon their individualized risk factors.
- (f) Sexual activity is problematic in a hospital environment as it compromises the therapeutic environment. Private self-stimulation that does not involve another person and which does not otherwise serve to jeopardize the ability to provide a safe and therapeutic environment shall be addressed as clinically appropriate and is not subject to the reporting requirements of this directive.
- (g) In cases of nonconsensual sexual contact, the conduct may be criminal and subject to criminal prosecution. In such situations, the procedures of OMH Official policy directive QA-530 (Reporting Requirements for Events Which May Be Crimes) and OMH Official policy directive QA-510 (Clinical Risk Management and Risk Management Plans) must be followed.
- (h) A clinical determination with respect to a patient's ability to consent to sexual activity (i.e. "clinical competence") is relevant when ascertaining whether or not it


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is appropriate or necessary to refer an event involving sexual contact between patients to law enforcement. The clinical competence of a patient to consent to sexual contact or activity with another patient can be determined only by a licensed psychiatrist or psychologist, and must be documented in the patient's record in accordance with D)4)b) of this policy directive. In evaluating a patient's clinical competence to make decisions about sexual behavior, the following shall apply:

- (i) children, as defined in this policy directive, are not clinically competent to consent to sexual contact;
- (ii) adult patients who are medically incapacitated are not clinically competent to consent to sexual contact; and
- (iii) to ascertain whether or not adult patients who are not medically incapacitated are clinically competent to consent to sexual contact with another patient, consideration should be given to a patient's abilities with respect to his or her:
 - (A) knowledge about the nature of the sexual activity, about the attendant benefits and risks (e.g., pregnancy, disease) and about methods of reducing or eliminating the risk;
 - (B) intelligence to evaluate the knowledge and make a decision consistent with personal values and beliefs; and
 - (C) understanding that there is a choice of whether or not to engage in the behavior in question, and an ability to make the choice (i.e., to feel free to say yes or no).
- (i) Notwithstanding the provisions of this policy directive, secure treatment facilities established pursuant to Article 10 of the Mental Hygiene Law may establish additional policies pertaining to sexual behavior of residents in order to reflect appropriate clinical interventions and responses for the population served.

2) Education:


- (a) Each facility must make available the following to all adult patients in accordance with the characteristics of the patient population and the clinical condition of individual patients:
 - (i) education related to sexuality and sexual activity;
 - (ii) education and information related to the prevention and treatment of HIV infection and sexually transmissible diseases;

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- (iii) family planning information; and
 - (iv) education and guidance about how to form healthy relationships.
- (b) Facilities that serve children must consider their responsibility in providing age-appropriate and family-supported information, and must make such information available when clinically appropriate and in the best interests of the patient.

3) Incident reporting:

- (a) Any sexual contact must be immediately reported, documented and investigated in accordance with the requirements in OMH Official Policy directive QA-510 (Clinical Risk Management and Risk Management Plans) regardless of whether:
 - (i) it involves vaginal, anal, or oral intercourse, or touching of the sexual or other intimate parts of a person's body with the intent of gratifying sexual desire of either party;
 - (ii) it involves adult or minor patients; and/or
 - (iii) it is, or appears to be, consensual or nonconsensual.
- (b) Sexual contact between children is always a reportable incident and must immediately be reported to the Bureau of Quality Management in OMH's Central Office, pursuant to OMH Official Policy directive QA-510 (Clinical Risk Management and Risk Management Plans).
- (c) If the event is reported as nonconsensual sexual contact between adults (or staff have reason to believe it was nonconsensual) the events must be reported, documented and investigated in accordance with the requirements of OMH Official Policy directives QA-510 (Clinical Risk Management and Risk Management Plans) and QA-530 (Reporting Requirements for Events Which May be Crimes).
- (d) Sexual contact involving an OMH employee and a patient of an OMH facility, or any sexual contact involving a non-consenting patient which is allowed or encouraged by an OMH employee, is considered sexual abuse. Allegations of such conduct must be reported and investigated in accordance with OMH Official Policy directive QA-510 (Clinical Risk Management and Risk Management Plans) and, if applicable, QA-515 (Facility Responsibilities Regarding Child Abuse and Neglect) and/or QA-530 (Reporting Requirements for Events Which May be Crimes).

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- (e) Explicit and extreme public sexual activity, such as exposure of genitals, self-stimulation or genital contact, constitutes the crime of public lewdness and must be reported as an incident. Determining whether to refer the matter to law enforcement should take into account the patient's clinical condition, as evaluated by a psychiatric or psychological assessment.
- 4) Procedures:** If a staff member becomes aware of sexual activity involving a patient or patients, the following steps must be taken:
- (a) Staff with first knowledge shall:
- (i) intervene, if possible;
 - (ii) separate patients on the unit until an investigation can begin; and
 - (iii) notify supervisors.
- (b) Supervisory staff must ensure that a psychiatrist or psychologist assesses the patients to determine clinical competence to consent and to identify any physical or psychological harm. Such assessment of clinical competency must be documented in progress notes in the involved patient's clinical record by the professional who performed the assessment, as well as in the psychiatrist/psychologist's evaluation section of an incident report.
- (c) The Safety Department must be notified if:
- (i) one or more of the patients are not clinically competent to consent. The Safety Department must take statements and notify the State Police; or
 - (ii) both patients are clinically competent to consent, but the activity is reported as nonconsensual sexual contact between adults or staff have reason to believe it was nonconsensual. The Safety Department must take statements and notify the State Police.
- (d) If the sexual contact is considered consensual, and all patients involved are clinically competent to consent to sexual activity, the following steps are to be taken:
- (i) an incident report must be completed and the incident must be reviewed in accordance with OMH Official policy directive QA-510 (Clinical Risk Management and Risk Management Plans).
 - (ii) consideration must be given to separating the patients by transferring one or both of them to another unit, or to reassigning rooms of the patients

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involved so that they are further separated and more easily observed by staff.

- (iii) treatment plans of the patients involved must be reviewed to determine whether the goals/objectives stated therein should be revised to incorporate matters such as the following, when clinically appropriate:
 - (A) the inappropriateness of sexual activity in the hospital setting;
 - (B) strategies designed to manage or remediate sexually coercive or aggressive behavior;
 - (C) education related to sexuality and sexual activity;
 - (D) education and information related to the prevention and treatment of HIV infection and sexually transmissible diseases;
 - (E) family planning information; and/or
 - (F) education and guidance about how to form healthy relationships.