

<b>State of New York</b> <b>OFFICE OF MENTAL HEALTH</b> <hr/> <b>OMH</b> <b>OFFICIAL POLICY MANUAL</b>	<b>Date Issued</b>	<b>T. L.</b>	<b>Section #</b>
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	<b>Section</b>		
	Patient Care		
	<b>Directive</b>		
	Patient Search		

**A. POLICY STATEMENT**

1) **Purpose:**

A basic responsibility of each State-operated psychiatric inpatient facility is to maintain effective supervision of the facility in order to ensure the safety of patients, staff and visitors. In certain circumstances, this responsibility may necessitate searching patients, their living areas and/or their personal effects. The purpose of this policy directive is to ensure that such searches are justified and are conducted with proper respect to ensure each patient's privacy and dignity.

This policy directive applies only to searches of inpatients in State-operated psychiatric centers, which are generally safety interventions. This directive does not apply to evidentiary searches which relate to or are part of a criminal investigation. **Searches which relate to or are part of a criminal investigation must be coordinated with local lawenforcement officials in accordance with OMH Policy QA-530-Reporting Requirement for Events Which May Be Crimes, and in consultation with the office of the Executive Director, the facility safety department and, when appropriate, Counsel's Office.**

2) **Applicability:**

This policy directive is applicable to all Office of Mental Health operated inpatient psychiatric facilities and Office of Mental Health research facilities with the exception of Central New York Psychiatric Center.

**B. RELEVANT STATUTES AND STANDARDS**

Mental Hygiene Law, Section 7.25

Mental Hygiene Law, Article 33

14 NYCRR Part 15 Admission and Retention of Patients

14 NYCRR Part 27 Quality of Care and Treatment

C. **DEFINITIONS:**

For the purpose of this policy directive:

- 1) Attending physician means the physician who has primary responsibility for the patient's treatment, or a physician who is acting on behalf of the physician who has primary responsibility for the patient.
- 2) Contraband means an item or substance which has the potential to cause harm to self or others, or interferes with patient safety and treatment, including but not limited to, items forbidden by the facility or program rules.
- 3) Generalized suspicion means that there is a reasonable basis to suspect that contraband is present within a specified group of patients and/or their belongings, but there is no reasonable basis to know which particular patient or property is involved. "Reasonable basis" in this context does not mean mere suspicion or belief, but one or more articulable facts which logically or credibly support the suspicion or belief.
- 4) Individualized suspicion means that there is a reasonable basis to suspect that a search of a specified patient and/or his or her belongings will reveal the existence of contraband.
- 5) Search means the examination of a patient's living area, belongings or person for the purpose of locating and removing contraband. The five types of searches are as follows:
  - a) Body search means a search in which a patient disrobes under the direct observation of two staff of the same gender as the patient, and, where necessary, with the assistance of a staff member. This search may also involve inspection of the patient's removed clothing and any items contained therein.
  - b) Cavity search means a search in which a physician conducts a visual and/or physical examination of a patient's rectal and/or vaginal cavities.
  - c) Forensic patient means a patient who was committed under a court order pursuant to the Criminal Procedure Law or Correction Law, regardless of any subsequent conversion to civil status, or who remains subject to an order of conditions pursuant to section 330.20 of the Criminal Procedure Law. NOTE: This category does not include persons committed pursuant to Article 730 of the Criminal Procedure Law whose criminal charges have been dismissed.
  - d) Frisk search means a search in which a staff member of the same gender runs his or her hands over the clothed portion of a patient's body. This type of search may also involve the removal of the patient's shoes, socks, coat and hat; visual inspection of the patient's mouth and ears; and

inspection of the patient's hair, items in the patient's pockets, and any other articles in the patient's possession.

- e) Metal detector search means a search:
  - (i) in which a patient passes through a fixed structure;
  - (ii) in which a hand-held mechanism is passed over a patient's clothed body;  
or
  - (iii) in which an individual is seated in a chair which contains a mechanism for the purpose of determining the presence of any metal contraband contained in or beneath the patient's clothing.
  
- f) Room/property search means a search in which a staff member examines a patient's belongings and/or sleeping quarters.

#### **D. BODY OF DIRECTIVE**

This policy directive consists of two sections:

- 1) **Principles**
- 2) **Procedures**

##### 1) **Principles**

- a) Searches shall be conducted only when necessary to promote legitimate institutional objectives, such as patient or facility safety, and only when alternative, less-intrusive measures have been considered and/or attempted. Searches should always be conducted by at least two staff members and, except for room, property and metal detector searches, at least one of the staff members must be a member of the clinical staff. Frisk and body searches are to be conducted by, and cavity searches observed by, staff of the same gender as the patient. Searches shall never be used as punishment.
  
- b) In assessing the need to conduct a search, the impact of the procedure on the patient's clinical condition shall be considered. In particular, clinical consideration should be given before conducting frisk, body or cavity searches of patients with trauma histories or clinical conditions which may be adversely affected by the search. Any potential risk to his or her condition shall be weighed against the objective of the search.
  
- c) The type and scope of any search shall be reasonably related to the objective of the search, the certainty of the presence of contraband, and the risk presented by the contraband.

- d) Searches shall be conducted with respect for patients' dignity, and in a manner which is as private and minimally intrusive as clinically indicated. For each case, the more intrusive the search, the more compelling the required justification.
- e) Where possible and appropriate, patients shall be informed of the intended search procedure, and efforts shall be made to enlist their consent and cooperation. Information provided shall include the reason for the search and the type of search to be conducted.
- f) Where possible and appropriate, staff shall attempt to resolve a patient's concerns regarding a proposed search in a clinically appropriate manner before proceeding with the search.
  - i) If the patient physically resists a search, no physical force shall be used to overcome his or her resistance without the authorization of the attending physician, provided however that if the patient's behavior makes him or her a serious danger to self or others, restraint or seclusion may be employed in accordance with OMH Policy PC-701.
  - ii) In determining the appropriateness of searching an objecting patient, staff shall balance the degree of harm threatened by the patient's continued possession of the suspected contraband against the potential for psychological and physical dangers that may result in overruling the patient's objection.
  - iii) To the extent practicable, the attending physician's authorization to search an objecting patient shall be based on his or her on-site assessment of the patient.
- g) Without compromising any discipline and gender requirements for staff involved in a search procedure as set forth in this policy directive, patient preference for staff participants may be accommodated to the extent practicable. In addition, if requested and clinically appropriate, a person chosen by the patient may be permitted to witness the search.
- h) Room and property searches shall be conducted in a manner which is as minimally disruptive as possible. To the extent practicable, patients' belongings shall be maintained in, or restored to, their original state and position, and, to the extent clinically appropriate, patients may be permitted to observe the search.
- i) Since this policy directive cannot foresee all possible situations, staff must exercise good judgment concerning the degree of risk presented by the contraband, and the need for prompt action. In those situations where documented by the level of risk

and where there is insufficient time to obtain the required authorizations or the appropriate number or gender of participating staff members, staff should stabilize the situation and seek the participation of a supervisor as soon as practicable.

## 2) **Procedures**

### a) **General Search Procedures**

- i) Upon admission, patients shall be informed as to what is considered contraband and the restrictions on possession of contraband. They shall also be informed of the possibility of being the subject of a search for contraband and upon request shall be provided with a copy of this policy, including a list with examples of prohibited items or substances. Parents or legal guardians of a minor shall also be informed of the possibility of the minor being searched in accordance with this policy directive.
- ii) At least two staff members shall be present during any search of a patient's room, property or person. Typically, one staff member will conduct the search and the other will observe. Except for room, property and metal detector searches, at least one of the staff members involved must be a nurse, nurse practitioner, physician's assistant or physician.
- iii) Unless otherwise specified, when prior authorization of the patient for conducting a search is obtained, it may be in either written or verbal form. Receipt of any verbal authorization shall be documented in writing by a nurse, nurse practitioner or physician's assistant on the patient order sheet. (See sections D)2)b)ii) and D)2)b)iii)).
- iv) Patients shall be issued a receipt for any items removed from their possession as a result of a search, and a related inventory shall be completed.
  - 1) Any illegal items confiscated during a search shall be documented and delivered immediately to a safety officer for appropriate disposition.
  - 2) Contraband which is personal property of the patient and is not illegal or a perishable item shall be stored for later return to the patient.
  - 3) Contraband which is not illegal and not the patient's personal property shall be disposed of, as appropriate.
- v) If a patient who is a minor is the subject of a non-routine frisk or a body search or a cavity search, his or her parent, guardian, or other personal representative shall be notified as soon as possible after the conduct of the

search. In the event of a search conducted pursuant to the special search procedures identified in paragraph (b)(i)(2) or (b)(ii)(2) below, parents or guardians need only be notified at the time the physician's order authorizing such searches is issued; they need not be notified each time a search occurs in accordance with the order.

- vi) If there is reason to believe that contraband is related to the commission of a crime, the safety department shall be promptly notified. As determined appropriate, members of the safety department may participate in the search procedure. However, in no event shall their participation supersede any requirements for the participation of clinical staff members. **(NOTE: If the search relates to or is part of a criminal investigation (as opposed to facility safety or management), then the safety department shall contact local law enforcement officials and determine how best to proceed. As previously indicated, such searches shall not be subject to this policy and shall be subject to OMH Policy Directive QA-530 - Reporting Requirements for Events Which May Be Crimes.)**
  
- vii) Except as provided below, searches conducted pursuant to this directive shall be documented in the patient's clinical record, noting the date, type of search, reason for the search, authorization, staff participants, whether patient was informed of the purpose and intent of search, patient's cooperation with and response to the search, a description of any identified contraband and its disposition (e.g., "turned over to Safety Department;" "stored," etc.), and individuals to whom notice was provided and by whom.
  - (1) Facility-wide metal detector searches are not required to be documented.
  - (2) Searches involving an entire ward may be documented using a ward log, or its equivalent. The scope of the search shall be directly related to the reason for the search and documented accordingly. Such documentation must include the date, type of search, reason for the search, authorization, staff participants, and a description of any identified contraband.
  - (3) Searches conducted pursuant to the special search procedures identified in paragraph (b)(i)(2) or (b)(ii)(2) below shall be documented in the patient's clinical record, noting the date, type of search, staff participants, or confirmation that the patient was informed of the purpose and intent of the search, patient's

cooperation with and response to the search, a description of any identified contraband, disposition of contraband and individuals to whom and by whom notice was provided.

viii) Notifications:

(1) If a search results in the discovery of contraband, the following notifications shall be made immediately, or as soon as practical thereafter:

- (A) Unit Supervisor (e.g., the unit chief, treatment team leader, charge nurse, or nurse administrator), and
- (B) Safety Department (if not already involved).

(2) If sufficiently serious (e.g., would constitute a crime or present a serious risk to self or others), the following individuals shall also be notified immediately:

- (A) Risk Manager, or
- (B) Administrator on Duty, if Risk Manager is not available.

ix) If the circumstances of the search meet incident reporting requirements or otherwise suggest evidence of a crime, facilities shall follow the procedures mandated by other applicable policies, including but not limited to: OMH Policies QA-510 (Clinical Management and Incident Management Plans) and QA-530 (Reporting Requirements for Events Which May Be Crimes).

b) Special Search Procedures

i) **Metal detector searches and room/property searches** may be conducted in the following circumstances:

(1) with a specified patient, based on individualized suspicion, or a specified group of patients based on generalized suspicion. The prior authorization of the unit supervisor is required.

(2) with a specified patient, in the absence of evidence of contraband, pursuant to a physician's written order if:

- (A) the order addresses a specific problem, as identified in the patient's treatment plan, and is reviewed at least monthly by the treatment team;

- (B) the patient has a history of possessing the identified contraband and has had a recent opportunity to obtain such contraband; and
    - (C) the patient has been informed of the standing order and has been advised that opportunities to obtain contraband may be followed by a search.
  - (3) on a unit or program basis, if employed uniformly with all patients, and if the rationale and use are described in the facility's written policy or the search is otherwise authorized by the facility director, or designee.
- ii) **Frisk searches** may be conducted in certain circumstances, as described below. The staff member conducting the search must be the same gender as the patient. Frisk searches may be conducted:
  - (1) with a specified patient, based on individualized suspicion or a specified group of patients based on generalized suspicion, if the suspected contraband constitutes a threat to the safety and security of the facility and/or the safety and well-being of the patient or any other person. The prior authorization of the unit supervisor is required.
  - (2) with a specified patient, in the absence of evidence of contraband, pursuant to a physician's written order, if:
    - (A) the order addresses a specific problem, as identified in the patient's treatment plan, and is reviewed monthly by the treatment team;
    - (B) the patient has a history of possessing the identified contraband and has had a recent opportunity to obtain such contraband; and
    - (C) the patient has been informed of the standing order and has been advised that opportunities to obtain contraband may be followed by a search.
  - (3) in circumstances specified below, without obtaining prior authorization, for the purpose of conducting an inventory of patient property and removing any contraband. Such circumstances are limited to the following:



- (A) upon admission to the psychiatric center, including a psychiatric emergency program;
- (B) upon return from authorized or unauthorized leaves;
- (C) upon transfer to a secure care ward;
- (D) prior to the initiation of seclusion or mechanical restraints, in compliance with OMH Policy PC-701, section E. 2) k);
- (E) after a patient at a forensic facility or a forensic patient has received a visitor; or
- (F) after a patient at a forensic facility or a forensic patient has been outside of the secure perimeter.

iii) **Body searches** may be conducted:

- (1) with a specified patient, based on individualized suspicion, if the suspected contraband could constitute a serious threat to the safety and security of the facility and/or the safety and well-being of the patient or any other person. The prior authorization of the unit supervisor is required.
- (2) in circumstances specified below, without obtaining prior authorization, for the purpose of conducting an inventory of patient property and removing any contraband. Such circumstances are limited to the following:
  - (A) upon admission to the psychiatric center, including a psychiatric emergency program;
  - (B) upon return after escape or unauthorized leave;
  - (C) upon transfer to a secure care ward.
- (3) For all body searches, the staff members conducting and observing the search must be the same gender as the patient.

iv) **Cavity searches** may be conducted with a specified patient, based on individualized suspicion, if there is a reasonable basis to suspect that the patient to be searched has secreted contraband in a rectal or vaginal cavity,

the nature of which could constitute an imminent and serious threat to the safety and security of the facility and/or the safety and well-being of the patient or any other person.

- (1) Cavity searches may be conducted only with prior authorization of the patient's attending physician and the clinical director, or his or her designee.
- (2) The staff member conducting the search shall be a physician.
- (3) The staff member(s) observing the search shall be the same gender as the patient and, preferably, shall be a registered nurse, licensed practical nurse, nurse practitioner or physician's assistant.

**NOTE: If the search relates to or is part of a criminal investigation, it must be coordinated with local law enforcement officials in accordance with OMH Policy QA-530 - Reporting Requirement for Events Which May Be Crimes, and in consultation with the Office of the Executive Director, the facility safety department and, when appropriate, Counsel's Office.**