

1 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP  
DANIEL H. WILLICK (SBN 058643)  
2 445 S. Figueroa Street, 31st Floor  
Los Angeles, California 90071-1602  
3 Telephone: (213) 612-7800  
Facsimile: (213) 612-7801

4 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP  
5 ROBERT J. SULLIVAN (SBN 040577)  
915 L Street, Suite 1000  
6 Sacramento, California 95814  
7 Telephone: (916) 442-8888  
Facsimile: (916) 442-0382

8  
9 Attorneys for Plaintiffs

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO

12 UNION OF AMERICAN PHYSICIANS AND ) Case No: 05CS00655  
13 DENTISTS, etc., et al.; )  
14 Plaintiffs and Petitioners, ) **PEREMPTORY WRIT OF MANDATE**  
15 vs. )  
16 WILLIAM GAUSEWITZ, etc., et al.; )  
17 Defendants and Respondents; )  
18 )  
19 ) Department: 20  
PSYCHOLOGY SHIELD; ) Judge: The Honorable Jack Sapunor  
20 )  
Intervenor. ) Date Action Filed: May 6, 2005  
21 )  
22 )

23 To William Gausewitz, Director, Office of Administrative Law, State of California;  
24 Office of Administrative Law, State of California; Sandra Shewry, Director, Department of Health  
25 Services, State of California; Department of Health Services, State of California; Defendants and  
26 Respondents, and to Psychology Shield, Intervenor:  
27  
28

1 WHEREAS, Petitioners served and filed herein their duly verified petition for a writ of mandate  
2 which seeks to invalidate amendments to the following regulations adopted by Respondents Department  
3 of Health Services, State of California and to invalidate approval of the Office of Administrative Law,  
4 State of California, of amendments to the following Regulations (a true and correct copy of said  
5 Regulations showing the amendments being attached hereto as Exhibit 1): sections 70577(e) and (j)(2),  
6 70717(c) and (f)(2), 71203(a)(3)(B), 71517(b) and (e), and 71545(b) of the California Code of  
7 Regulations, title 22 (the "Regulations");

8 WHEREAS, a hearing was held herein on the verified petition on February 17, 2006;

9 WHEREAS, it appears to this Court that Petitioners have no other plain, speedy, and adequate  
10 remedy in the ordinary course of law;

11 THEREFORE, you, William Gausewitz, Director, Office of Administrative Law, State of  
12 California; Office of Administrative Law, State of California; Sandra Shewry, Director, Department of  
13 Health Services, State of California; and Department of Health Services, State of California are hereby  
14 commanded, immediately after receipt of this writ and no later than May 1, 2006, to set aside  
15 the approval of Respondent Office of Administrative Law of the amendments to the Regulations and to  
16 withdraw the amendments to each of the Regulations, and thereby to reinstate each of the Regulations to  
17 the wording which existed prior to the approval of Respondent Office of Administrative Law of the  
18 amendments which have been set aside by this peremptory writ of mandate and the accompanying  
19 judgment.

20 Respondents are further commanded to make and file a return to this writ immediately and, in  
21 any event, on or before May 1, 2006, showing what you have done to comply with this writ.

22 Witness the Honorable Jack Sapunor, Judge of the Superior Court.

23  
24 \_\_\_\_\_  
Honorable Jack Sapunor,  
Judge of the Superior Court

25  
26 Attest my hand and the seal of this Court this 14 day of March, 2006.



\_\_\_\_\_  
L. ELDER  
Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUBMITTED BY:**

Date: March 3, 2006

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

By: *Daniel H. Willick*  
Daniel H. Willick  
Attorneys for Plaintiffs and Petitioners

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_, 2006

\_\_\_\_\_  
Julie Weng-Gutierrez, Deputy Attorney General,  
Attorneys for Defendants and Respondents

Date: \_\_\_\_\_, 2006

\_\_\_\_\_  
Arthur R. Chenen of Stephan, Oringer, Richman,  
Theodora & Miller, P.C., Attorneys for Intervenor

1 **SUBMITTED BY:**

2

3 Date: March 3, 2006

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

4

5

By: *Daniel H. Willick*  
Daniel H. Willick  
Attorneys for Plaintiffs and Petitioners

6

7

8 **APPROVED AS TO FORM:**

9

10 Date: \_\_\_\_\_, 2006

Julie Weng-Gutierrez, Deputy Attorney General,  
Attorneys for Defendants and Respondents

11

12

13

14 Date: March 7, 2006

*Arthur R. Chenen*  
Arthur R. Chenen of Stephan, Oringer, Richman,  
Theodora & Miller, P.C., Attorneys for Intervenor

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **SUBMITTED BY:**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Date: March 3, 2006

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

By: *Daniel H. Willick*  
Daniel H. Willick  
Attorneys for Plaintiffs and Petitioners

**APPROVED AS TO FORM:**

Date: March 6, 2006

*Julie Weng-Gutierrez*  
Julie Weng-Gutierrez, Deputy Attorney General,  
Attorneys for Defendants and Respondents

Date: \_\_\_\_\_, 2006

\_\_\_\_\_  
Arthur R. Chenen of Stephan, Oringer, Richman,  
Theodora & Miller, P.C., Attorneys for Intervenor



(1) Amend Section 70577 as follows:

**Section 70577. Psychiatric Unit General Requirements.**

*(a) through (d) remain unchanged.*

(e) Psychological services shall be provided by clinical psychologists within the scope of their licensure and subject to the provisions of Section 1316.5 of the Health and Safety Code. Staff physicians shall assume responsibility for those aspects of patient care which may be provided only by physicians.

~~(1) Facilities which permit clinical psychologists to admit patients shall do so only if there are staff physicians who will provide the necessary medical care to the patients.~~

~~(2) Only staff physicians shall assume responsibility for those aspects of patient care which may be provided only by physicians.~~

*(f) through (i) remain unchanged.*

(j) Restraint of patients.

(1) Restraint shall be used only when alternative methods are not sufficient to protect the patient or others from injury.

(2) Patients shall be placed in restraint only on the written order of the physician or clinical psychologist, acting within the scope of his or her professional licensure. This order shall include the reason for restraint and the type of restraint to be used. In a clear case of emergency, a patient may be

000007

placed in restraint at the discretion of a registered nurse and a verbal or written order obtained thereafter. If a verbal order is obtained it shall be recorded in the patient's medical record and be signed by the physician or clinical psychologist on his or her next visit.

(3) Patients in restraint by seclusion or mechanical means shall be observed at intervals not greater than 15 minutes.

(4) Restraints shall be easily removable in the event of fire or other emergency.

(5) Record of type of restraint including time of application and removal shall be in the patient's medical record.

*(k) through (m) remain unchanged.*

NOTE: Authority cited: Section ~~208(a)~~ and 1275 and 100275, Health and Safety Code. Reference: Sections 1255, 1276 and 1316.5, Health and Safety Code; CAPP v. Rank (1990) 51 Cal. 3d 1.

(2) Amend Section 70717 as follows:

**Section 70717. Admission, Transfer and Discharge Policies.**

*(a) and (b) remain unchanged.*

(c) Patients shall be admitted only upon the order and under the care of a member of the medical staff of the hospital who is a licensed health care practitioner acting within the scope of his or her professional licensure lawfully ~~authorized to diagnose, prescribe and treat patients.~~ The patient's condition and provisional diagnosis shall be established at time of admission by the member of the medical staff who admits the patient, subject to the rules and regulations of the hospital, and the provisions of Section 70705(a).

(1) Patients admitted to the hospital for podiatric services shall receive the same basic medical appraisal as patients admitted for other services. This shall include the performance and recording of the findings in the health record of an admission history and physical examination which shall be performed by persons lawfully authorized to do so by their respective practice acts.

*(d) and (e) remain unchanged.*

(f) No patient shall be transferred or discharged solely for the purposes of effecting a transfer from a hospital to another health facility unless:

(1) Arrangements have been made in advance for admission to such health facility.

(2) A determination has been made by the patient's physician or clinical psychologist, acting within the scope of his or her professional licensure, that such a transfer or discharge would not create a medical hazard to the patient's physical or mental health.

(3) The patient or the person legally responsible for the patient has been notified, or attempts have been made over the 24-hour period prior to the patient's transfer and the legally responsible person cannot be reached.

*(g) through (j) remain unchanged.*

Note: Authority cited: Section ~~208(a)~~ and 1275 and 100275, Health and Safety Code. Reference: Sections 1276, 1285, 1315 and 1316.5, Health and Safety Code; CAPP v. Rank (1990) 51 Cal. 3d 1.

(3) Amend Section 71203 as follows:

**Section 71203. Medical Service General Requirements.**

(a) The medical service shall consist of the following organized and staffed elements:

(1) Psychiatric component.

(A) Psychiatrists or clinical psychologists within the scope of their licensure and subject to the rules of the facility, shall be responsible for the diagnostic formulation for their patients and the development and implementation of each patient's treatment plan.

(B) A psychiatrist shall be available at all times for psychiatric emergencies.

(2) General medicine component.

(A) All incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through the use of outside resources in accordance with Section 71513 of these regulations.

(B) Incidental medical services include but are not limited to:

1. General medicine and surgery.
2. Dental.
3. Radiological.
4. Laboratory.
5. Anesthesia.
6. Podiatry.

000011

7. Physical therapy.

8. Speech pathology.

9. Audiology.

(3) Psychological component.

(A) Psychological service shall be provided by clinical psychologists within the scope of his/her licensure and subject to the provisions of Section 1316.5 of the Health and Safety Code.

~~(B) Facilities which permit clinical psychologists to admit patients shall do so only if there are staff physicians who will provide the necessary medical care for the patients.~~

~~(C)~~ (B) Only Sstaff physicians shall assume responsibility for those aspects of patient care which may be provided only by physicians.

(4) Social service component.

(A) Social service shall be provided by social workers under the direction of the medical staff.

*(b) through (e) remain unchanged.*

Note: Authority cited: Section ~~208(a)~~ and 1275 and 100275, Health and Safety Code. Reference: Sections 1276, and 1316.5, Health and Safety Code; CAPP v. Rank (1990) 51 Cal. 3d 1.

(4) Amend Section 71517 as follows:

**Section 71517. Admission, Transfer and Discharge Policies.**

*(a) remains unchanged.*

(b) Patients shall be admitted only upon the order and under the care of a member of the medical staff of the hospital who is a licensed health care practitioner acting within the scope of his or her professional licensure lawfully authorized to diagnose, prescribe and treat patients. The patient's condition and provisional diagnosis shall be established at time of admission by the member of the medical staff who admits the patient subject to the rules and regulations of the hospital, and the provisions of Section 71505(a).

*(c) and (d) remain unchanged.*

(e) No inpatient shall be transferred or discharged for purposes of effecting a transfer, from a hospital to another health facility, unless arrangements have been made in advance for admission to such health facility and the person legally responsible for the patient has been notified or attempts over a 24 – hour period have been made and a responsible person cannot be reached. A transfer or discharge shall not be carried out if, in the opinion of the patient's physician or clinical psychologist, acting within his or her scope of professional licensure, such transfer or discharge would create a medical physical or mental health hazard.

*(f) through (h) remain unchanged.*

R-49-01  
February 17, 2005.

Note: Authority cited: Sections ~~208(a)~~ and 1275 and 100275, Health and Safety  
Code. Reference: Sections 1276, 1315, 1316 and 1316.5, Health and Safety  
Code; CAPP v. Rank (1990) 51 Cal. 3d 1.

000014

(5) Amend Section 71545 as follows:

**Section 71545. Restraint of Patients.**

*(a) remains unchanged.*

*(b) Patients shall be placed in restraint only on the written order of the physician or clinical psychologist, acting within the scope of his or her professional licensure. This order shall include the reason for restraint and the type of restraint to be used. In a clear case of emergency, a patient may be placed in restraint at the discretion of a registered nurse and a verbal or written order obtained thereafter. If a verbal order is obtained it shall be recorded in the patient's medical record and be signed by the physician or clinical psychologist on his or her next visit.*

*(c) and (d) remain unchanged.*

NOTE: Authority cited: Sections 1275 and 100275, Health and Safety Code.

Reference: Sections 1255, 1276 and 1316.5, Health and Safety Code; CAPP v.

Rank (1990) 51 Cal. 3d 1.

000015

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of , State of California. I am over the age of 18 and am not  
4 a party to the within action; my business address is Nossaman, Guthner, Knox & Elliott, LLP 445 S.  
5 Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

6 On March 9, 2006, I served the foregoing document(s) described as **PEREMPTORY**  
7 **WRIT OF MANDATE** on interested parties in this action by placing ( ) the original (X) a true copy  
8 thereof enclosed in a sealed envelope as follows:

9 **Julie Weng-Gutierrez, Esq.**  
10 **Deputy Attorney General**  
11 1300 I Street, Suite 125  
12 P. O. Box 944255  
13 Sacramento, CA 94244-2550

14 **Arthur Chenen, Esq.**  
15 **Stephan, Oringher, Richman, Theodora**  
16 **& Miller, P.C.**  
17 2029 Century Park East, Sixth Floor  
18 Los Angeles, CA 90067-2907

19 ( ) **(By U.S. Mail)** I am readily familiar with my employer's business practice for collection  
20 and processing of correspondence for mailing with the United States Postal Service. I am  
21 aware that on motion of the party served, service is presumed invalid if postal  
22 cancellation date or postage meter is more than one day after date of deposit for mailing  
23 in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed  
24 in the United States Mail at Los Angeles, California.


25 ( ) **(By Facsimile)** I caused said documents to be transmitted by facsimile machine to the  
26 number indicated after the address(es) noted above, then deposited said envelope for  
27 collection and processing of mail according to my firm's practice for mail handling  
28 outlined above.

( ) **(By Overnight Express)** I served a true and correct copy by Overnight Express or other  
overnight delivery service, for delivery on the next business day. A true and correct copy  
of the Overnight Express or other overnight delivery service airbill is attached hereto.

(X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that  
the foregoing is true and correct.

( ) **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this  
court at whose direction the service was made.

Executed on March 9, 2006 at Los Angeles, California.

  
Diana L. Ament