



## CALIFORNIA DEPARTMENT OF STATE HOSPITALS

### **Addendum to the Notice of Emergency and Finding of Emergency**

#### Contraband Search and Confiscation Emergency Regulations

#### **I. GENERAL**

On April 13, 2020, the Department of State Hospitals (DSH) submitted the Notice of Emergency and Finding of Emergency for the Rulemaking entitled “Contraband Search and Confiscation Emergency Regulations”, to the Office of Administrative Law for its review and approval.

In the course of its review, OAL noted that several modifications were required to correct errors. These modifications are described below.

#### **II. MODIFICATIONS**

##### **Modifications made to the Notice of Emergency and Finding of Emergency**

###### Evidence for the Emergency:

Government Code section 11342.545 defines emergency as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.” The existence of contraband in any state hospital facility poses a serious risk to the safety of both the patient population and the staff. The Department operates five state hospitals that treat acutely psychiatric patients. Items deemed contraband by the Department and each individual state hospital have been reviewed and included on the contraband list due to the risk posed by these items remaining in the hospital. Although the Department has published lists of what is considered contraband and therefore not-allowed in the facilities, contraband items continue to make their way into the facility. These items put the patient population and staff at risk for serious injury or harm, as contraband items have been used as weapons. In addition, the Department has found drugs in the facilities, which poses a very serious risk to any patient utilizing these items (as these drugs are not regulated and many of these patients are on prescribed medication that could have an adverse affect if combined with other drugs), as well as their peers and staff members, if the drugs alter the users behavior in a negative way.

Although the Department has peace officers on staff, these officers are not readily available to assist in contraband searches within the secured treatment areas of the facility. At the Department facilities, the non-peace officer staff are the ones that spend time with the patients and are in direct contact with the patients. Patients in the hospital are housed on units with non-peace officer staff; these staff are typically the first responders to any incident in the facility. As contraband poses such a serious risk to

both the patient population and staff within the facility, prompt removal of any contraband is necessary and essential. Since non-peace officer staff are the first line of defense against contraband in the facility, it is necessary that they conduct contraband searches and confiscation whenever they find contraband in the facility.

Although the Department has been aware of contraband within its facility for years, the need to regulate the ability of non-peace officer staff to conduct searches for contraband is new. Non-peace officer staff have historically called on peace officers when they suspect or know of contraband in the facility. It has become apparent to the Department that this is not sufficient in order to timely remove contraband from the facility in order to ensure that these contraband items do not harm anyone within the facility. Timeliness has become an emergent need within our facilities as the Department strives to make our facilities safer for both the patient population and our staff. In addition, during the COVID-19 event, to help increase social distancing, staff schedules are being staggered, to allow for operation of the facility and to continue to provide treatment in a safe manner. As a result, it is important to allow non-peace officer staff to also remove contraband when they are aware of it. Immediate removal of any contraband in the facilities is necessary and the Department needs to rely on our non-peace officer staff, our first responders, to handle immediate removal.

The COVID-19 pandemic has had many impacts on the Department, including preparation for potential treatment of infected patients. Part of this preparation included designating space at each Department facility to house and treat any infected patients. Due to the risk of spreading the illness, and in conjunction with orders from the Governor and public health entities, the Department established protocol for operating the COVID-19 units that includes limiting the number of non-essential personal from entering the designated COVID-19 treatment areas. In the event the Department must activate a COVID-19 treatment area, peace officer accessibility to that unit would be reserved for emergency situations. The Department's ability to utilize peace officers to conduct contraband searches in the COVID-19 treatment areas will be hindered by the hospital limiting the personnel in these treatment areas. It is essential that these regulations pass in order for non-peace officer staff to be able to conduct any necessary contraband searches of the COVID-19 treatment areas. If non-peace officer staff are unable to conduct these searches, the safety of patients and staff on these units will be at risk of serious harm, due to the inability to search for and remove any dangerous contraband.

#### Consequences of Failure to Address the Situation Through Emergency Regulations:

If non-peace officer staff are unable to conduct searches per these regulations in order to remove dangerous contraband from the facilities, removal of contraband from the facility is delayed. Peace officer staff is not always available and present where contraband is suspected. Non-peace officer staff are constantly in contact with the patient population and have the ability to immediately search and remove contraband from patients and their living spaces. Any delay in removal of contraband within the facility poses a risk of serious harm to the patient population and staff. In addition, non-peace officer staff have established congenial relationships with the patient population

that they work with, and their relationship with the patient may be a calming factor to assist in patient cooperation during non-peace officer staff searches. Patients can become hostile toward peace officer staff. If peace officers are the only staff members allowed to search for contraband within the facility, patients may become defensive and aggressive, causing a safety concern for the patient being searched, other patients, and staff.

Furthermore, in the interest of completeness, DSH would like to provide the necessity for the following regulatory amendments:

Section 4351, Subd. (a)

Provides that non-peace officer staff members may conduct searches as appropriate to locate and confiscate contraband. Appropriate in this subdivision is clarifying that these searches are specifically allowed in order to locate and confiscate contraband. The remaining subdivisions provide for the types of searches that may be conducted, including visual (subd. (b)); room, common area, and bathroom searches (subd. (c)); and pat-down searches, if the non-peace officer staff has a reasonable belief that a patient possesses contraband.

It is necessary that these regulations allow for all non-peace officer staff to conduct contraband searches as each facility operated by the Department is uniquely situated and requires different staff classifications to conduct these searches. Subd. (c) provides for each facility to designate or limit the staff classifications conducting non-peace officer staff searches for contraband, in order to address the unique needs of each facility.

**Modifications made to the originally proposed text are indicated as follows:**

Section 4351, Subd. (b)

Non-peace officer was added for consistency.

Section 4351, Subd. (c)

Non-peace officer was added for consistency.

Section 4351, Subd. (d)

Non-peace officer was added for consistency.