



Government Affairs Dept.

Mental Health Association in New Jersey



President & CEO: Carolyn Beauchamp

Director of Advocacy: Barbara Johnston

PUBLIC POLICY STATEMENT

SEXUAL HARASSMENT, ABUSE OR ASSAULT OF MENTAL HEALTH CONSUMERS

STATEMENT OF THE PROBLEM

Mental health consumers who must access mental health services through the public system have often experienced significant trauma, loss, humiliation, and degradation by the time they arrive at hospitals or treatment facilities. As a result, the large majority of them feel especially vulnerable and powerless as they passively participate in their treatment plans. Many of them feel that they are "less than" the caregivers who provide their treatment and that they are in a one-down position during something as important as their own rehabilitation.

In addition, MHANJ is aware that some caregivers convey an attitude of authority, control, and superiority that further disempowers mental health consumers. While MHANJ supports all initiatives that result in consumers reclaiming their self-esteem, their self-confidence, and their self-worth, nowhere is this more important than in situations where, in the guise of treatment and care, mental health consumers are sexually harassed, abused, or assaulted.

Recently, mental health consumers have reported that caregivers have sexually harassed, abused, or assaulted them in community treatment settings. In an effort to gather information about these allegations, the Mental Health Association in New Jersey distributed an informal questionnaire to a small group of consumers, which was designed to determine the extent of the harassment, abuse, and assault; the efficacy of procedures and policies meant to protect vulnerable citizens; and the degree to which consumers in treatment settings feel that they are in a safe, protected, therapeutic environment.

Results of this questionnaire reveal that we need to look further into these allegations and suggest that unprofessional, unethical, and illegal behavior may be occurring in treatment centers, thereby counteracting therapeutic benefits of treatment and furthering the humiliation and degradation of those victims.

In response to a question about whether consumers feel safe about reporting sexual misconduct, a significant number of consumers not only said that they didn't, but also that, in their opinion, it would be useless to report sexual misconduct because administrators would not believe them or wouldn't care. This finding, in particular, is of great concern because it may mean that consumers are suffering in silence without hope that anyone will know about the abuse and come to their aid.

BACKGROUND

For many years, advocates have worried that consumers in treatment settings experience sexual harassment, abuse, or assault. Patients are usually in confused, vulnerable states and many of them are accustomed to being ignored or dismissed when they express dissatisfaction with their care. In more critical

cases, consumers fear retribution if they advocate for themselves by reporting unprofessional or illegal behavior to administrators or workers.

In response to these concerns, federal and state laws have been passed specifically to protect the rights of vulnerable citizens in hospitals and in community settings, such as mental health agencies, partial care programs, self-help centers, screening centers, and day programs.

Sexual harassment is legally a form of sexual discrimination and is prohibited by the federal Civil Rights Act, the federal Fair Housing Act, and the NJ State Law Against Discrimination. Abuse and assault are legally considered crimes, therefore, are prohibited by many different federal and state laws. Additionally, New Jersey also has a bias crime statute that increases the seriousness of the offense if a person intimidates an individual because of a handicap. A variety of New Jersey statutes confer additional rights or protections for certain vulnerable populations, including patients in psychiatric treatment settings.

Knowing that mental health consumers fear retribution, various New Jersey laws provide for the mandatory or permissive reporting of situations involving abuse, exploitation, or suspicions thereof to the Commissioner of the Department of Human Services. These policies and procedures are outlined specifically in Division of Mental Health Services (DMHS) Administrative Bulletin 3:18 and are meant to provide safe recourse to those people who are abused or exploited in the process of receiving treatment.

All contracts awarded by the New Jersey Department of Human Services include a standard clause (3:03) that states that failure to comply with the federal and state law concerning abuse, exploitation, and reporting thereof may be grounds for termination of any contract.

Federal and state laws establish specific agencies where allegations of abuse and neglect can be reported, including Adult Protective Services, the Ombudsman for the Institutionalized Elderly, and New Jersey Protection and Advocacy.

In addition, since 1971 the Joint Commission for the Accreditation of Hospitals Organizations (JHACO) has been accrediting behavioral health organizations, such as mental health, chemical dependency, mental retardation/developmental disabilities, and other psychosocial services. JHACO specifically defines and assesses compliance with standards relating to sexual abuse, defined as sexual harassment, sexual coercion, and sexual assault. Any behavioral health organization wishing to maintain its JCAHO accreditation must follow standards that call for ethical behavior in all of its practices, and respect for the following individual rights:

- Patients have a right to an environment that preserves dignity and contributes to a positive self-image.
- Patients have the right to be free from mental, physical, sexual, and verbal abuse, neglect, and exploitation.
- Patients have a right to access protective and advocacy services.

POSITION

MHANJ believes that the public has a specific responsibility to safeguard vulnerable clients while in their care, regardless of whether care is provided in the hospital or in the community. MHANJ vehemently opposes any and all violations of the rights of mental health consumers, especially those that specifically take advantage of their vulnerabilities during treatment.

Service providers who violate laws and policies concerning sexual harassment, abuse, and assault should be disciplined to the greatest extent possible and should be prevented from ever providing care to those populations in the future.

In all settings, procedures should be adopted that ensure that a patient or client who believes his or her rights have been violated can self-advocate by reporting that behavior with the expectation that it will stop,

be prevented from happening again, and will not result in retribution from staff. The responsibility for monitoring and preventing sexual harassment, abuse, and assault falls to the state of New Jersey and should engage all parties necessary—both elected and appointed officials.

MHANJ calls for state government, hospitals, agencies, and all caregivers to aggressively and proactively address the issue of sexual conduct with all staff and provide a safe and protected environment wherein mental health consumers can recover in safety and with respect from all people who claim to care about their rehabilitation.

MHANJ plans to continue to serve as a safe outlet where mental health consumers can confidentially report sexual harassment, abuse, and assault. We will continue to mount a strong, effective advocacy strategy that protects the rights of people with mental illness to access safe treatment in settings that do no further harm to them than their illnesses already have.