

Hypotheticals for TASC Leadership Institute on P & A Values

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HYPO #1:

Based on an inside tip, an investigative reporter for the state's biggest daily newspaper runs a prominent story describing serious neglect of individuals with mental illnesses and developmental disabilities living in a rural assisted living facility. According to the article, the state department of health has already investigated the facility and is planning to issue a report in a few days. The article states that more than a dozen individuals are still living there. The article quotes the head of another mental health advocacy group saying that she is planning to send an investigator to the facility right away. The P & A legal director reads the story over breakfast. This is the first she has heard of this facility, and the P & A has never had any clients there.

Things to consider:

What response, if any, should the P & A make to this situation, with specific reference to P & A fundamental values and priorities?

Given that the state has already investigated the situation, what role does the P & A have?

How does the involvement of another mental health advocacy agency affect what the P & A will do?

Should the P & A focus on further follow-up on the documented past neglect? Or should it focus on the current residents?

What we did in our P & A:

Given the seriousness of the reported neglect and the fact that there were still more than a dozen individuals living there, we decided that we needed to follow up with a site visit to ensure that the individuals still there were not in jeopardy.

We contacted the other advocacy organization that was planning to follow up, and coordinated our site visits so as not to unduly disrupt the residents' lives.

The focus of our follow-up was two-fold: (1) Did we see continuing evidence of the neglect that had been documented by the state investigators? (2) What complaints or advocacy needs did the current residents have that we could assist them with resolving?

HYPO #2:

The P & A has received numerous complaints from patients in a large state institution for individuals with mental illnesses who are considered dangerous. The patients are all under civil commitment, and all had court appointed counsel for the commitments. Some are complaining of lack of treatment and use of restraints. Other patients complain that they are being physically attacked by other patients, even when treatment personnel are present. In addition, the P & A has received complaints from other patients regarding their very long stays in the facility. Many of the clients are confined under indeterminate commitments, which are allowed under state law for people who are dangerous or have been found incompetent to stand trial.

Things to consider:

What actions should the P & A consider taking regarding this facility and the residents' complaints, with reference to resource allocation and competing priorities all with specific reference to the framework of P & A values and priorities?

What role does that P & A have regarding commitment and discharge issues given that the patients all had court appointed counsel for the initial commitment?

Which complaints of abuse and neglect should the P & A focus on with urgency? Is it possible to rank the numerous complaints in order of seriousness?

Can the P & A use both policy advocacy and individual case advocacy to work on some of these issues? Which ones?

What we did in our P & A:

Where the patients have discharge-related issues that may raise Olmstead claims, we contacted their court-appointed counsel to discuss what strategies they are using and offer technical assistance. We also offer to co-counsel on individual cases challenging barriers to discharge. While working on individual cases we looked for common issues that could form the basis for a class action.

We ranked the abuse and neglect complaints in order of urgency, and an advocate with attorney back-up addressed them in that order. Complaints of ongoing chaos and assaults on a unit had top priority for immediate investigation, followed by complaints of use of restraint and seclusion. Complaints of failure to provide effective treatment were also addressed but on a longer timeline.

Policy work to address the Olmstead aspects of inadequate discharge planning, including the barriers created by the indeterminate commitment category, dovetailed with the individual case advocacy. Additional policy work on limiting the use of restraints was also a priority.

HYPO #3:

A newly hired staff attorney working in the PATBI program comes to a team meeting to seek guidance on a case she is handling. Her client is a 30 year old man with a brain injury. He received his TBI in a motorcycle accident two years ago, and after completing intensive rehab, he moved into an adult foster care facility. He has been living there for a year, feels stable, and now wants to move out of the AFC into an apartment with his longtime boyfriend. His older sister, who became his legal guardian when he was injured, has never accepted the fact that her brother is gay. She wants him to stay safely in the AFC. In fact, now that her brother's romantic relationship has resumed seriously, the guardian has told the client that she is considering seeking a restraining order to keep the boyfriend away from the client. The client's treatment team is divided regarding the client's ability to live successfully in the community. His treating psychologist notes that he has made significant progress adjusting to his BI. The client's social worker is concerned that the boyfriend does not understand the client's

extensive service needs and that moving out would be setting the client up for failure and heartbreak.

Things to consider:

What guidance should the more experienced team members give their colleague, with specific reference to fundamental principles of P & A values and P & A priorities?

What role can and should the P & A play in mediating between the client and his guardian/sister on the issue of the boyfriend?

How can the P & A best support what the client wants to do?

What we did in our P & A:

The P & A represents the person with the disability, not their guardian, but the guardian's role must be respected and taken into account when advocating for the client. The P & A confirmed that the guardian did not have legal authority under the guardianship order to control the client's social life, and that there was no evidence of exploitation or abuse by the boyfriend of the client to support a restraining order. The P & A and the AFC staff together dissuaded the guardian from seeking the restraining order.

The social worker's concerns that boyfriend would leave the client in the lurch focused the P & A's advocacy regarding what support services would be needed in the apartment for success. The P & A advocated for more extensive service planning for needed supports. In addition, the P & A talked with the client candidly about his boyfriend's expectations regarding his service needs and the role the boyfriend would need to play in supporting him.

Because the guardian did have legal authority to decide where the client lived, the P & A advised the client that if the team came up with a strong service package to support him in the apartment and the guardian opposed the placement, he had the right to challenge her decision in probate court and/or to seek a new guardian. Because he was entitled to a court-appointed lawyer for those proceedings, the P & A role's would be to work with the court-appointed lawyer, not to represent him.