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37th Québec Ombudsman Annual Report

IN HOSPITALS IN PARTICULAR, THE RIGHTS OF PEOPLE WITH MENTAL HEALTH PROBLEMS MUST BE BETTER RESPECTED

Québec City, June 7, 2007—Enforcement of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* must be stricter to better protect both individuals and their families. Citizens with mental health problems have legal rights. Recognizing their rights as patients will change nothing, however, if their rights are treated differently from one establishment to another, has concluded Québec Ombudswoman Raymonde Saint-Germain after examining complaints and reports brought to her attention by people with mental health problems or by their friends and families with regard to protective custody in hospitals.

The Québec Ombudswoman has noted that some hospital staff have difficulty ensuring the provisions of the Act are applied. According to her, complying with the Act is a daily struggle in certain establishments, calling into question practices, attitudes, and the service culture.

Protective Custody

When people go—or are taken—to a hospital's ER because of their mental state, they must be seen by a doctor as quickly as possible to assess whether their state presents a grave and immediate danger. If necessary, they may be held against their will, without a court order, for up to 72 hours. However, the Québec Ombudsman has noted that patients are too often held against their will in solitary confinement. They are kept under observation without ever being formally taken into protective custody and are not allowed to leave the establishment until the doctor decides,.

The Québec Ombudswoman finds these practices disturbing and nonconductive to attaining the Act's objectives. "Aside from the ambiguity surrounding their true status, these patients are not informed that they are being taken into custody, not told why it is happening, and not informed of their right to contact family or a lawyer. This right to information is nevertheless set out in the Act," notes Ms. Saint-Germain.

Consent to Care

The Québec Ombudsman has also noted situations where people with mental health problems have been treated without their consent or that of their representatives despite the lack of emergency. Holding a person against his or her will on the basis of a medical evaluation or a court ruling does not give staff the right to take a blood sample or perform a psychiatric evaluation without consent. The Québec Ombudswoman finds this confusion disturbing, concluding, “This situation is proof of a lack of awareness surrounding patients’ rights and also demonstrates the need for major changes so that clinical practices and the way establishments and services are organized allow staff to treat people with mental health problems with respect.”

The Tobacco Act

In her annual report, the Québec Ombudswoman identifies other situations involving services and care given to people with mental health problems. One notable case involves not allowing users under observation at hospital psychiatric care units to smoke. In such circumstances nicotine deprivation can have considerable effects. Real difficulties arise when the only alternative for this group of patients being kept in custody is nicotine patches, a form of treatment that requires free and informed consent. Given that a medical prescription is required for nicotine patches, the Québec Ombudsman considers them to be a form of care. Users must therefore give their consent and be allowed to make a free choice, a right enshrined in the Québec Civil Code. The Québec Ombudsman therefore recommends that establishments offer users being held in custody other alternatives to overcome their nicotine cravings. The Ombudsman believes other means should be available so that the situation of smokers admitted to observation units can be taken into consideration. The Québec Ombudsman is currently discussing the matter with Ministère de la Santé et des Services sociaux.

“The complaints dealt with by the Québec Ombudsman with regard to mental health show that affirming rights does not always mean they will be respected. Staff and management must be vigilant on a daily basis to identify situations, causes, and ways to ensure user rights are respected. It’s a never-ending process,” concludes the Québec Ombudswoman.

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