



CALIFORNIA DEPARTMENT OF  
**Mental Health**

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Office of Administrative Law  
300 Capitol Mall, Suite 1250  
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Re: **CTU2008-0314-01**

The Department of Mental Health submits the following response to petition from Michael St. Martin.

### **ISSUE**

On March 14, 2008, the Office of Administrative Law (OAL) received a petition from Michael St. Martin alleging that the Department of Mental Health (DMH) has issued, used, enforced, or attempted to enforce underground regulations. The alleged underground regulation is Coalinga State Hospital (CSH) Administrative Directive No. 818 (A.D. 818).

### **PROPOSED DETERMINATION**

CSH Administrative Directive No. 818 is not a regulation subject to the Administrative Procedure Act (APA).

### **BACKGROUND**

The Department of Mental Health is charged with the care of mentally ill individuals, both civil and forensic commitments, including Sexually Violent Predators. The Department of Mental Health currently operates five State Hospitals. As part of operating the state hospitals and taking care of the mentally ill, the State Hospitals need to ensure the safety of the staff and the individuals (i.e. patients) who are housed at the State Hospital.

Coalinga State Hospital is one of the five DMH state hospitals. CSH houses and provides care and mental health treatment to patients under both civil and forensic commitments, including Sexually Violent Predators. In addition to patient care, CSH face similar issues of safety and security similar to prison facilities. CSH must evaluate the safety and security not only for the patients themselves but for other patients and staff as well.

CSH is located on the premises of Pleasant Valley State Prison, a state prison under the jurisdiction of California Department of Corrections and Rehabilitation. Coalinga State Hospital houses approximately 1,500 individuals and employs approximately 1,600 staff.

DMH state hospitals draft administrative directives to 1) to provide directions and guidance to staff; 2) to provide guidance on safety and security issues; and 3) to guide the staff on how to handle health concerns for patients. The administrative directives are specific to each hospital. The hospital takes into account the facility, the patients, and care and provides guidance in handling different situations. Every state hospital is unique and as a result the administrative directives provide guidance for the unique situations that may occur at each local facility.

Title 9 of the California Code of Regulations, provides for patients' rights, including the right to privacy, dignity, respect and humane care, as well as a right to keep and use personal possessions. (9 CCR § 883, 884). A patient is allowed to keep personal possession except for items and material listed as contraband by the facility. (9 CCR § 884). Contraband is defined as "materials, articles, or goods that patients are prohibited from having in their possession because such materials, articles or goods present a risk to safety and security in the facility." (9 CCR § 881(e))

AD 818 is an administrative directive that provides a list of items that are considered Contraband by the hospital. This administrative directive provides guidance on safety and security issues of the hospital. AD 818, corresponds with Title 9 CCR section 881(e), which defines contraband, and lists what materials are Contraband as provided in regulations. AD 818 provides staff with guidance as to what items are a danger to the safety and security of the facility and community. AD 818 provides a list of items that have been deemed to be a threat to the safety and security of the hospital and provides direction to the employees as to what type of actions should be taken with the contraband. AD 818 prohibits illegal drugs, weapons, items that may be used as weapons such as knives, metal files, flammable liquids, drugs or medicated products not provided by the hospital, letter openers, etc.

## ANALYSIS

### I. ADMINISTRATIVE DIRECTIVE 818 IS NOT A REGULATION

A.D. 818 is not a regulation. Instead, the administrative directive is a guide of what items would be considered "contraband" for the specific facility - CSH, those that are a danger to the safety and security of the hospital and community.

For an agency's action to constitute a regulation, it must have two identifying characteristics established in *Tidewater Marine Western, Inc. v. Bradshaw*, (1996) 14 Cal.4<sup>th</sup> 557, 571. First the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule

