

**STATE OF MICHIGAN**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**  
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

**IN THE MATTER OF:**

**Docket No. 2010-20779MHT**

██████████

**Appellant**

\_\_\_\_\_ /

**HEARING DECISION AND ORDER**

This case is before the State Office of Administrative Hearings and Rules pursuant to the provisions of MCL 330.1407, and Chapter 4 of the Administrative Procedures Act of 1969, as amended, MCL 24.271 *et seq.*

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, client resident affairs representative appeared for the ██████████. Present was her supervisor, ██████████. Representing the ██████████) was ██████████ transfer coordinator, and her witness ██████████.

**ISSUE**

Did the Department properly propose transfer of the Appellant from ██████████ ██████████ to the Center for Forensic Psychiatry?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant was transferred to the ██████████. (Exhibit A).
2. On ██████████, at an unrelated hearing, the Appellant assaulted his treating psychologist during a closed circuit hearing at the ██████████ courtroom. (Exhibit A)
3. On ██████████, the ██████████ requested an en emergency transfer when it was determined that the Appellant required treatment in a more secure location than ██████████ could provide. (See Testimony)

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4. On [REDACTED], the [REDACTED] Community Mental Health Agency approved the transfer to the [REDACTED] from [REDACTED]. (Exhibit A, p. 4)
5. The Department approved the order of transfer on [REDACTED]. (Exhibit A, p. 3)
6. On [REDACTED], the Appellant was given written notice of the proposed transfer. (Exhibit A, p. 5)
7. On [REDACTED], the Appellant requested an Administrative Hearing to appeal the transfer. (Exhibit A. p. 5).
8. During the hearing, Appellant said he did not want to be transferred to the [REDACTED].
9. The Appellant said that in his confrontation with [REDACTED] that he only hit her head against the wooden railing at the witness box. (See Testimony)

**CONCLUSIONS OF LAW**

A patient in a department hospital may be transferred to any other hospital, or to any facility of the department that is not a hospital, if the transfer would not be detrimental to the patient and if both the community mental health services program and the department approve the transfer. The patient, a patient advocate designated to make mental health treatment decisions for the patient under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, if any, and the patient's guardian or nearest relative shall be notified at least 7 days prior to any transfer, except that a transfer may be effected earlier if it is necessitated by an emergency. In addition, the patient may designate up to 2 other persons to receive the notice. If a transfer is effected due to an emergency, the required notices shall be given as soon as possible, but not later than 24 hours after the transfer. If the patient, the patient advocate, or the patient's guardian or nearest relative objects to the transfer, the department shall provide an opportunity to appeal the transfer.

MCL 330.1407

1) A resident in a center may be transferred to any other center, or to a hospital operated by the department, if the transfer would not be detrimental to the resident and the responsible community mental health services program approves the transfer.

(2) The resident and his or her nearest relative or guardian shall be notified at least 7 days prior to any transfer, except that a transfer may be effected earlier if necessitated by an emergency. In addition, the resident may designate 2 other persons to receive the notice. If the resident, his or her nearest relative, or guardian objects to the transfer, the department shall provide an opportunity to appeal the transfer.

(3) If a transfer is effected due to an emergency, the required notices shall be given as soon as possible, but not later than 24 hours after the transfer.  
MCL 330.1536

Rule 330.4011 Transfer between state hospitals.

(1) A patient may be transferred between hospitals, including the University of Michigan neuropsychiatric institute or other facilities of the department which are not hospitals, for administrative reasons or for good and sufficient clinical reasons when approved by the department. Approval by the department shall be expressed by an order of transfer, a copy of which shall be forwarded to the director of each hospital involved. Prior to approval or denial of the transfer, the department shall consult with the contractually responsible county community mental health program. A request for a transfer may be submitted by a hospital director, a patient, or other interested person.

(2) Before an approved transfer is acted upon, the director of the hospital in which the patient is currently residing shall notify in writing, not less than 7 days prior to transfer, the patient and his guardian or his nearest relative and up to 2 other persons designated by the patient, except if the transfer is necessitated by an emergency as determined by the hospital director and documented in hospital records. Under emergency circumstances, the hospital director shall effect a transfer as soon as necessary and issue the appropriate notices not more than 24 hours after transfer.

(3) The notification period of not more than 7 days prior to transfer may be reduced if the patient or his guardian or nearest relative approves the transfer in person, by telephone, or in writing, and this approval is documented. Written approval shall be obtained as soon as administratively possible.

(4) Notice of transfer by a hospital director shall inform the patient and his guardian or nearest relative of the right to object to the transfer. Upon receipt of a written objection, an appeal hearing shall be held promptly, under procedures established by the department. If an objection is made; transfer shall be delayed until a ruling of the appeal hearing indorses it, unless an emergency as determined and documented by the hospital director necessitates an immediate transfer. An emergency transfer is revocable by decision of the director of the department or by order of the appeal referee.

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(Emphasis supplied)

R330.4011

The Appellant now resides in the CFP following emergency transfer and events in court on ██████████. At a separate hearing, unrelated to this administrative hearing, the Appellant violently assaulted staff psychologist ██████████, PhD when she testified about his prison record – he thought – inaccurately. ██████████, the supervising psychologist, investigated and testified that when ██████████ said that the Appellant was alleged to have been convicted of second degree murder – the Appellant popped up, lost control and grabbed the psychologist by the hair and beat her head against the witness box rail several times before generally jostling her about.

██████████ opined that the Appellant does not understand or appreciate his mental illness – and refuses to participate with the program at ██████████. On questioning from the ALJ the Department's witness stated that the Appellant would receive the same treatment – but in a more secure environment at ██████████.

The Appellant testified that he only pulled the psychologist's head to the rail one time – he said he was sorry. He added that he does not have a mental illness. ██████████ closed his testimony with the observation that the Appellant presented as a danger in their ██████████ less programmed structure.

The Appellant said that ██████████ is racist, but that the ██████████ is even worse, but he wants to return to ██████████.

The Department established good and sufficient reasons for the Appellant's transfer to the ██████████, including why the transfer would not be detrimental to the Appellant's overall treatment.

The Appellant provided no evidence to show that the proposed transfer would be detrimental to his treatment.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department of Community Health properly proposed the transfer of the Appellant from the ██████████ to the ██████████.

### **IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.

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Dale Malewska  
Administrative Law Judge

[REDACTED]

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cc:

[REDACTED]

Date Mailed: 4/7/2010