



Dear Mr.

Director of the Psychiatric Clinic of *São*

José

Azinhaga da Torre do Fato, 8

1600-774 Lisbon

Your Ref.

Your Communication

Our Ref.

Visit no. 5-2017

RECOMMENDATION NO. 12/2017/NPM

I

1

Under the provision enclosed in the article 19, paragraph b), of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I recommend the following measures:

- a) The consolidation of guidelines for restrictive measures in accordance with the guidelines of the General-Directorate of Health in this area¹, including the definition of the list of therapeutic solutions to be considered as chemical containment measures;
- b) A prompt review of the clinical and legal situation of patients whose consent to administering the current therapy raises doubts, while ensuring full respect for the inviolability of their physical integrity and of their fundamental right to freedom and self-determination;

¹ See the guideline of the General-Directorate of Health no. 21/2011 of June 6, 2011.



- c) The promotion, in the interdiction processes with participation of the Psychiatric Clinic of *São José*, of the persons' heterogeneity designated to represent or assist the representative of the will of the interdicted, in terms that favor the desirable openness to the community.

II

This present position of mine comes as a result of my visit, as a National Preventive Mechanism (NPM)², to the Psychiatric Clinic of *São José*, which took place on March 2.

According to the scope of intervention of the NPM³ and with the object of the visit previously defined, the intent was to verify the habitability conditions during hospitalization, with special attention to the practices in use, regarding the use of restrictive measures, as well as ways of preventing ill-treatment.

For this purpose, while visiting two hospitalization units (Units 2 and 6), among the seven that make up the health clinic, the institution's manager and clinical director, the doctors and the nurses were heard. The registration methods of the restriction measures and the exchange of impressions with patients were further analyzed. At the end of the visit the mother-superior of the religious community that owned the institution was contacted.

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III

Regarding the habitability conditions, there were no reasons worthy of repair, showing good state of cleanliness, luminosity and organization of spaces. The place

² In Portugal, the quality of NPM was attributed to the Ombudsman, through the Resolution of the Council of Ministers no. 32/2013 of May 20.

³ The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the purpose of which is to establish a system of regular visits by independent international and national bodies to places where persons are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, was ratified by Portugal in 2012, through Decree no. 167/2012 of the President of the Republic of December 13.



visited was also well equipped with objects able to guarantee the visual and intellectual stimuli of the ones interned, in a way that favorably distanced this hospital from a traditional hospital environment. Also worthy of mention is the policy of «opening up» to the exterior, evidenced by the authorization of possession of mobile phones, internet access and the general rule of free movement for the patients.

Regarding the use of restraining measures, although it was initially reported that it would be merely residual, it was perceived the familiarity of health professionals with practice, especially the references to mechanical restriction. Although sometimes associated with the promotion of well-being and protection of the patient against the danger of falling (an example was pointed out, a device that secured the patient to the wheelchair, preventing it from bending over itself and permitting the person to remain seated), it has been found that the restriction is used, in a particular way, in the management of disruptive behaviors that cause danger to the self, others or the surrounding environment.

For this purpose, the Unit 2, envisioned for the reception of acute patients, is equipped with a room of isolation, although it has been stated that it is rarely used in this context, serving to comply with measures of mechanical restraint or as individual accommodation every time it is required.

The isolation room is equipped with a video surveillance system, transmitting the collected images to the nursing room. Its functioning has been confirmed. Although it does not have conditions that allow the patient to maintain visual or auditory contact with health professionals, it was stated that, when used by patients, the door is not closed.

According to the information contained in the records consulted the night before the visit, a mechanical restraint was used in a patient, and lasted throughout the night period. The record included the reason for the use of the restriction, those responsible for the implementation of the restriction, duration and medical validation,



along with other information. It has been indicated that authorization by an assistant or service psychiatrist is always required before or immediately after application of the measure. Additionally, the nursing professionals who were interviewed showed that they were aware of the need to ensure a direct observation, along with checking the position of the patient, every hour. This monitoring of proximity would not, as it was perceived, include verification of vital signs or a reassessment, at pre-programmed intervals, of the need to maintain the measure. The recording of restriction measures is carried out in a computerized field.

Notwithstanding that no evidence of abuse has been detected, it is reasonable to reinforce the principle of absolute exceptionality with which restrictive measures should be addressed in cases of agitation and/or violence, with particular importance in that the patients involved are fundamentally on voluntary treatment. The fact that it has a high potential for violation of patients' rights suggests the relevance of the strengthening of the guidelines on the use of coercive means in hospitalized patients, in accordance with the guidelines of the General-Directorate of Health on this matter, in particular by setting up an internal procedure specifically dedicated to the subject (if it is not possible to identify it in the context of the quality policy followed). In particular, it is useful to include in the instrument adopted or adapted the formalization of the list of therapeutic solutions that should be considered chemical restraint measures and, therefore, subject to the standard of performance to those associated.

IV

Regarding the rights of hospitalized patients, the reported legal situation of the three patients whose consent for admission and administration of therapy, as initially indicated by the institution's responsables, is a matter of serious concern, will not be unequivocal. According to the information obtained, the initial reception of these three persons took place during their minority, following a judicial decision issued



under the legal regime for the promotion and protection of children and young people at risk, extending to the present for compassionate reasons, based on a psychiatric and socio-family assessment that suggest special vulnerability in the outside environment.

In summary, if the data is confirmed, the afore mentioned patients who are of age, and the final term of the educational guardianship measure that has enabled them to be interned against the expressed will has long been exceeded, so that the maintenance of the reception will require the express and fully informed adherence of each to the proposed therapeutic plan. Outside the context of an internment or voluntary treatment, only the verification of the legal presuppositions of compulsory hospitalization, stipulated in Law no. 36/98, of July 24⁴, or other judicially determined situations of limitation of the capacity to consent, may legitimize the Constitution and the law a continued treatment.

In these terms, without prejudice to the recognition of the goodness of the purpose that underlies the conduct in question, it is strongly recommended to promptly take the appropriate steps to re-examine the legal status and clinical situation of these young adults interned by a judicial order that has already expired, in view of the assertion that their fundamental rights to freedom and self-determination are absolutely disregarded and, regarding the medical intervention, to the inviolability of their physical integrity, as reflected in the ineluctable right of citizens to refuse proposed diagnostic or therapeutic interventions, except in exceptional situations constitutionally foreseen.

V

On the other hand, although in the same perspective of the dignity and will of persons with psychiatric disorders, I believe that it is advisable to have greater

⁴ In the wording given by its amendment, operated by Law no. 101/99, of July 26



heterogeneity and balance among those who, in cases of interdiction, are designated to replace the will of the interdict, namely in the therapeutic choices, thus guaranteeing independence and transparency. In this regard, welcoming the initiatives of the Psychiatric Clinic of *São José* revealed, under which it is raised the interdiction of users who seem to meet the legal requirements required are more unaccompanied, I suggest that a composition of the family council which also includes external members to the institution, both more relevant and necessary to balancing the representation that is assumed by an integrated tutor in the institution.

VI

Finally, I verified that in the context of the expected quality policy, the Psychiatric Clinic of *São José* delegates its developed activity to an international external accreditation. However, in the opposite direction and totally unrelated to the responsibility of the management of the visited institution, it was found that to date the institution, that includes patients referred by the National Health Service, has not been visited by any public entity with monitoring powers. Therefore, any initiatives that actively seek presence and contact with this type of institutions of the National Health Service will be important, committing and encouraging the integration of national mental health policy.

I am certain of your efforts regarding the above mentioned improvements, which I cannot fail to emphasize that are not related to the quality of the clinical care provided.

The Portuguese Ombudsman
National Preventive Mechanism

José de Faria Costa