DIGNITY AND RESPECT

THE LAW

Each patient shall... "Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.” § 51.61(1)(x), Wis. Stats. [Emphasis added.]

[NOTE: This is section was added to the patient rights laws in 1995. See also the section on Staff-Patient Conflicts in this digest.]

DECISIONS

1. A therapist’s supervisor correctly referred a client to the facility’s Client Rights Specialist when she wanted to file a complaint about the therapist. The client felt the supervisor did not care about her concerns. However, the referral was appropriate and did not violate the client’s right to be treated with dignity and respect. (Level III decision in Case No. 00-SGE-02 on 6/17/00, upheld at Level IV.)

2. An inpatient complained about lack of interactions with staff during her six-day stay. Each patient’s needs and perceptions are unique, and staff cannot use a “one size fits all” approach. There is a thin line between respect for a patient’s privacy and choices (e.g. to not have many interactions with others and to be given personal space), and going too far in the other direction (e.g., in trying to probe for interaction with many questions). In the latter instance, the patient could have complained that she was not respected and not given reasonable space or privacy. Here, the record reflects a reasonable degree of staff attentiveness and vigilance and, in the latter part of the stay, more discussion with her about issues. It was concluded that the patient’s right to a humane psychological and physical environment was not violated in this circumstance. (Level III decision in Case No. 99-SGE-08 on 3/23/01.)

3. A patient was a recovering alcoholic who experienced a relapse after six months of sobriety. He visited a pastor while he was intoxicated. He ended up in detox that night. Upon intake, he alleged that the pastor had sexually assaulted him. He made those allegations while he was still intoxicated. The staff at the detox facility took no actions on the allegations. It is normal procedure to wait until a patient is no longer intoxicated to address such
issues. Later, when he was no longer under the influence of alcohol, he denied that any assault had occurred. It was reasonable for the staff to accept the later, sober, statements over the prior intoxicated ones. He was released the day after being admitted and did not pursue criminal charges against the priest. No rights violation was found in the manner in which the staff dealt with his allegation of assault. (Level IV decision in Case No. 00-SGE-16 on 8/14/01, upholding the Level III.)

4. A service recipient complained about her case manager yelling at her and pounding her fist on the table during a home visit. The case manager admits doing this but said it was a demonstration of how she would act if she were, in fact, the type of controlling person that the service recipient described her to be. This was an isolated incident, but the effect on the service recipient was very negative. Even though it only happened once, it was a violation of the individual’s right to be treated with dignity and respect. (Level III decision in Case No. 01-SGE-05 on 11/29/01.)

5. Her daughter’s therapist told her mother, in a rather public place, that she (the mother) was the one who needed treatment. This remark was insensitive, but the mother was not a patient at the time and the right to dignity and respect did not apply to her. (Level III decision in Case No. 01-SGE-02 on 12/10/01.)

6. On the day before her discharge, an Occupational Therapist (OT) made a comment to the patient to the effect that, “You won’t be embarrassed about walking into the dayroom naked and sitting down.” She followed it up by saying, “Just kidding”. There was no further discussion between the OT and patient regarding the comment. The patient did not tell the OT she found the comment distressing in any way, and the OT did not have any other indication that the patient had not accepted it in a humorous way. In retrospect, the OT said she never would have used this comment or any reference to the word “naked” had she been aware of the sensitive connotation that may have had with the patient. The OT wished that the patient had stated her concerns at the time so they could have discussed them in a positive and solution-oriented way. The OT felt comfortable about using humor with this patient since she had responded well to humor being used in a therapeutic setting on prior occasions. Staff are not expected to interact only in a formal or robot-like manner with patients. There is ample room for humor in the course of mental health treatment. Had the OT known that the patient would find the comment distressing or demeaning rather than humorous, it would have been a rights violation to say it. Some comments are so egregious that, as a matter of law, they are rights violations – such as cursing at a patient, or making racial or ethnic slurs. This comment does not fit that category. Under these circumstances, the comment did not rise to the level of a rights violation. (Level IV decision in Case No. 01-SGE-08 on 8/27/02, modifying the Level III finding.)
7. The Level III decision found a violation of a complainant’s wife’s rights when her therapist called her at work to say she was discontinuing the therapy. However, there was no evidence in the record that his wife told the therapist not to call her at work. This was a business call, rather than a personal call, and therefore it was not necessarily inappropriate for the therapist to call his wife at work. The finding of a rights violation was reversed. (Level IV decision in Case No. 02-SGE-07 on 3/10/04, reversing the Level III decision.)

8. A complainant accused his wife’s therapist of verbally accosting him in a public parking lot. The record shows he attempted to obtain a restraining order against the therapist in court, but was unsuccessful. Since he was unable to prove the matter in court, he failed to show that the therapist had violated his rights in those circumstances. (Level IV decision in Case No. 02-SGE-07 on 3/10/04, upholding the Level III decision.)

9. An ex-patient complained about a lack of individualized treatment at a psychiatric hospital. These concerns were meaningfully addressed when the hospital responded to his observations and concerns about the manner in which patients are assessed and treated. The hospital was planning a specific training session for staff to address indicators, features, and treatment approaches for Post Traumatic Stress Disorder and Parkinson’s Disease. The training will also address the variables that could arise with men’s issues during treatment. This staff training should lead to an improved awareness and create a better standard of care, greater dignity and respect for patients, and more individualized treatment decision-making. Given the training initiatives planned, this issue was considered resolved. (Level III Decision in Case No. 03-SGE-07 on 4/22/04.)

10. A client’s right to be treated with dignity and respect were violated at a methadone clinic when her psychiatrist made a remark about her lack of treatment progress in front of other clients in the waiting room. That remark should not have been made in front of others. (Level III decision in Case No. 04-SGE-02 on 12/20/04)

11. A client’s right to be treated with dignity and respect was violated by the lack of shared decision-making and collaborative planning during the evaluation and assessment phase of services. While the service provider does maintain the right to choose which clients they will or will not see, their assessment and evaluation of a client’s treatment needs should also recognize and respond to a client’s request for more frequent visits. They need to clearly define the purpose of the assessment and set reasonable expectations for the client. (Level III Decision in Case No. 05-SGE-003 on 6/8/06)
12. Where a client asserts that his AODA counselor used foul language, was confrontational, and was generally disrespectful to him, the burden of proof was on the client to provide sufficient evidence that a rights violation has occurred. This was a verbal exchange and no witnesses were present. While it would not be appropriate or acceptable for a counselor to use foul language or be disrespectful to a client, the allegations were self-reported and technically only constituted hearsay evidence. The client had not met his burden of showing a rights violation. (Level III decision in Case No. 09-SGE-04 on 7/06/09)

13. A patient complained about a nurse practitioner violating his confidentiality and his right to dignity and respect by in the manner in which she talked to him in a hallway. The evidence, records, and witness reports did not provide sufficient evidence to show that it was more probable than not that his right to confidentiality or his right to be treated with dignity and respect were violated. The client’s burden of proof had not been met. (Level III decision in Case Nos. 09-SGE-07 & 09-SGE-10 on 3/18/10)

14. A client felt she was not provided adequate treatment or treated with dignity and respect because she was denied services, visits, phone calls and a case manager. The evidence indicated that she was not denied these things. Her case manager and related staff went out of their way to assist her with services and housing. The case manager offered to come to her home rather than requiring her to take the long bus ride to his office. He also assisted her when she moved. Her rights were not violated. (Level III decision in Case No. 10-SGE-07 on 02/18/11)

15. The provider’s Intake Coordinator left a message that upset her. She was merely informing the client that the provider would not be able to help her. This information was found to be a violation of the client’s right to prompt and adequate treatment by the Division of Quality Assurance. However, the manner of delivery of that message to the client was not necessarily a violation of her right to be treated with dignity and respect. (Level III decision in Case No. 11-SGE-02 on 06/27/11)

16. A patient felt she was treated disrespectfully by group leaders in sessions. Statements by treatment staff to a patient regarding normal procedure for responding to homework, regarding saving matters for future sessions due to time constraints, and regarding the processing of disability claims, generally, do not amount to violations of the patient’s rights without proof of exacerbating circumstances. Provider staff must communicate directly regarding how matters are generally handled and there was no evidence that the group leaders were personally deriding this patient by discussing procedural issues in response to her questions and requests. (Level III decision in Case No. 11-SGE-01 on 6/28/11)

17. A client’s recent provider and his former provider were at professional odds with each other and the client found himself in the middle of their
quarrel. For example, the provider’s Client Advocate wrote him a letter responding to his concerns with their program. But, instead of providing him with therapeutic replies to his concerns, she used that opportunity to malign the other provider. She implied that the prior provider had “violated professional boundaries” by engaging in a “pattern of unstable and intense interpersonal relationships” between the client and staff, that they had “victimized” him, and that they were illegally billing Medical Assistance. Anyone reading that letter would conclude, as the State Grievance Examiner did in the Level III decision, that it was unprofessional and counter-therapeutic to the client. A rights violation was found. That finding was supported by the evidence provided. (Level IV decision in Case No. 10-SGE-14 on 7/18/11)

18. A client claimed that his provider’s Director badgered him about his relationship with a prior provider in the same community. Although it may have been appropriate to question the client about this under the circumstances, it was inappropriate for a Director to continue to pressure the client about it after the client asked her to stop several times. The credibility of both the client and the Director were weighed by the State Grievance Examiner in the Level III decision and it was concluded that it was more likely than not that the client’s version of the events was accurate. A rights violation was found. That finding was supported by the evidence provided. (Level IV decision in Case No. 10-SGE-14 on 7/18/11)

19. A patient claimed a staff member did not treat her with dignity and respect. However, she did do not provide the staff person’s specific statement that she alleged caused her to almost leave the premises in tears. Also, the staff person in question did not admit to making any offensive statement. The waiting room activity had been recorded on video, but the videos are not preserved for longer than three months and observed only the seats, not the assistance windows in the waiting room. In addition, complainant could not provide any contact information for the witness she mentioned. Her complaint could not be substantiated because it amounted to a “he said – she said” argument. The complainant had the burden of proof of the alleged staff wrongdoing. This called for the weighing of the two parties’ credibility. Based on the written materials she provided, it was found that complainant’s description of events was credible, but, if true, it did not rise to the level of a rights violation because it did not describe what the staff did to upset her, nor did it describe proof of that occurrence. Thus, she had not met her burden of proof and no violation of her right to respect and dignity was found. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)

20. A patient’s claim that staff were “seeming annoyed” with her does not amount to evidence of a patient rights violation. It is a subjective claim that is unsupported by any evidence that can be objectively considered. No
violation was found of her right to dignity and respect. (Level III decision in Case No. Case No. 11-SGE-07 on 06/22/12)

21. An appellant complained at Level IV that the State Grievance Examiner (SGE) had insulted him by stating in the Level III decision that he was speaking his “own truth”. The SGE was not trying to insult him. She was merely pointing out that his version of the facts was less credible than the version of the provider’s staff, but that he none-the-less firmly believed he was correct. (Level IV decision in Case No. 10-SGE-15 on 03/27/13)

22. A patient was asked to sign two separate release of information forms for personal use by provider staff. A grievant must provide more than their own statement to show that staff have treated the grievant disrespectfully. Here there was no evidence that staff spoke or behaved disrespectfully to the patient. (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)

23. A patient claimed that her right to be treated with dignity and respect was violated when a strip search was conducted without warning upon her admission to an inpatient psychiatric hospital. The grievant alleged that at an informal grievance meeting staff told her that she would not want to know what would have happened if she had refused the strip search. Actual or threatened retaliation is not allowed when a patient refuses to give or withdraws informed consent. All staff persons present at the meeting denied that the statement was made. The grievant offered only her own testimony as proof of wrongdoing. The grievant had the burden to show that it was more likely than not that staff violated her rights. Further, the grievant’s credibility was compromised because of the inconsistency arising when she initially characterized the search as a rectal cavity search and then characterized it as a visual search. Therefore, there was no violation to the patient’s right to be treated with dignity and respect as a result. However, if the patient had been able to offer more evidence that the statements were made it would have been a violation of her right to be treated with dignity and respect. (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

24. A patient was receiving services at a Community Based Residential Facility under a commitment order and an involuntary medication order. The patient alleged that the provider took the patient’s head scarf and did not return it. Her treatment record reflected that she wore a head scarf but never mentioned that the head scarf was a problem or that it was taken by staff. The grievant did not meet her burden of proof that her scarf was taken away because she produced no evidence other than her own testimony. (Level IV decision in Case No. 15-SGE-0001 on 10/17/2016)

25. A patient alleged that a provider violated her client rights when she called to complain about adverse side effects that she was experiencing after changing
her medication. The patient claimed that provider staff: spoke rudely to her over the telephone; inaccurately claimed that staff did not need to respond to her inquiry for 48 hours; hung up on her and accused her of using foul language when she was unable to speak clearly. The grievant produced evidence in the form of a letter provided by her speech therapist to the effect that the patient would not have been able to speak clearly enough to have a person understand the nature or content of her verbalizations, which weighed against the patient using profanity. Contemporaneous nursing notes show that the patient was stuttering and speaking very fast, but that the nurse was able to understand about a page worth of dialogue in which the patient swore at staff. The State Grievance Examiner decided that the detailed and contemporaneous progress notes that the nurse made at the time of the telephone call were the most persuasive evidence. This case would not have risen to a violation of the patient’s right to be treated with dignity and respect even if this portion of the complaint had not been dismissed as moot. (Stage IV decision in 14-SGE-0005 decided on 10/17/2016)

26. A patient claimed that her therapist violated her right to be treated with dignity and respect and treated her poorly in therapy. The evidence that the patient provided consisted of her own annotations to the therapist’s progress notes. However, the annotations were opinions on the accuracy of the statements made in the progress notes. They were not facts or evidence that supported the grievant’s opinions. The claim was dismissed because there was not enough evidence to show that a violation occurred. No violation of the grievant’s right to be treated with dignity and respect was found. (Level III decision in Case No. 16-SGE-03 on 11/3/2016)

27. A patient claimed that a therapist responded inappropriately when the patient developed passionate romantic feelings toward the therapist and that the therapist may have exhibited romantic feelings toward the patient. The patient claimed that the therapist should have recognized her transference and negligently mishandled it. The only evidence presented by the patient in support of her claim was her recollection of his body language and intonation. Allegations based on body language and intonation are hard to prove. The therapist denied having any romantic interest in the grievant and claimed that he was not aware of the extent of the client’s feelings about him until the sessions were discontinued. No proof was offered by the grievant that documented inappropriate behavior on the part of the therapist. It was more likely than not that the patient’s right to be treated with dignity and respect was not violated by the therapist in relation to the patient’s transference. (Level III decision in Case No. 16-SGE-04 on 4/20/2017)

28. A patient’s mother acted on her daughter’s behalf and claimed that services received through the Treatment Alternative and Diversion program run by the County violated her daughter’s patient rights. The grievant claimed that she
was wrongfully discharged and incorrectly accused of violating program requirements based on inaccurate lab results showing positive results for use of heroin, cocaine and morphine. The grievant claimed that staff violated the patient’s right to be treated with dignity and respect by threatening that if she received one more positive drug test result she would be discharged from the program. However, this information could also have been interpreted as a warning and an opportunity to process and prepare for the consequences of her actions. There is was no violation of the patient’s right to be treated with dignity and respect because the counselor’s statement could have been interpreted as a considerate warning rather than a threat and there was no other evidence submitted that staff acted in a disrespectful manner. (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)

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