

## RETALIATION FOR USE OF GRIEVANCE PROCEDURE PROHIBITED

### THE LAW

Each patient shall... “Have the right to **present grievances** under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or **community mental health program without justifiable fear of reprisal** and to **communicate**, subject to par. (p) [the right to make phone calls], **with public officials** or with any other person **without justifiable fear of reprisal.**”  
§ 51.61(1)(u), Wis. Stats. [Emphasis added.]

“(1) A **patient** or a **person acting on behalf of a patient** may file a grievance under s. DHS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider **without fear of reprisal** and may **communicate**, subject to s. 51.61(1)(p), Stats., [right to make phone calls] with any **public official** or any other person **without fear of reprisal.**

(2) **No person may** intentionally **retaliate or discriminate** against any patient, person acting on behalf of a patient or employee for **contacting** or **providing information** to any **official** or to an **employee** of any **state protection and advocacy agency**, or for **initiating, participating** in or **testifying** in a **grievance procedure** or **in any action** for any remedy authorized by law.

(3) **No person** may **deprive** a patient of the **ability to seek redress** for **alleged violations** of his or her rights by unreasonably **precluding** the patient from **using the grievance procedure** established under s. DHS 94.29 or from **communicating**, subject to any valid telephone or visitor restriction under s. DHS 94.05, with a **court, government official, grievance investigator** or staff member of a **protection and advocacy agency** or with **legal counsel.**”

DHS 94.28, Wis. Admin. Code [Emphasis added.]

“No person who, in good faith, **files a report** with the appropriate **examining board** concerning the **violation of rights** under this section by persons **licensed** under ch. 441 [**nurses**], 446 [**chiropractors**], 450 [**pharmacists**], 455 [**psychologists**] or 456 [**nursing home administrators**], or who **participates in an investigation** of an allegation by the appropriate examining board, **is liable for civil damages** for the filing or participation.”  
§ 51.61(10), Wis. Stats. [Emphasis added.]

---

### DECISIONS

1. Where a **methadone clinic discouraged a patient from bringing an advocate with him to a team meeting**, the clinic **violated** his right to bring a grievance

without fear of retaliation or discrimination. (Level III decision in Case No. 99-SGE-02 on 5/17/00. Appeal to Level IV by the patient was dismissed since the Level III decision was in his favor.)

2. A patient who had **complained about her therapist** and physician expressed **concerns about the confidentiality of her involvement in the grievance procedure** and any follow through that had occurred with her provider. She alleged that the **entire staff of the service provider knew about her complaints**. The director of the service provider noted that the **record keeping system for grievances was entirely separate** and that **only staff with a “need to know”** are given access to or information about the filing of grievances. **Only a select group** of management and treatment staff **were aware of this patient’s grievances** and information about them was not available to others. It was found that the **confidentiality of this grievance was honored** and no rights violation occurred. (Level III decision in Case No. 00-SGE-03 on 9/12/01.)
3. A father claimed that his **son’s discharge from treatment** at a medical center was in **retaliation for his filing a complaint** about his own mother’s care there. It was determined that **other factors led to the son’s discharge** and that the father had been told that it was going to occur soon. This **occurred several months prior** to the complainant filing a grievance about his mother’s care. **No retaliation** for filing a complaint was found. (Level III decision in Case No. 02-SGE-06 on 1/27/03.)
4. There is **no limit to the number of grievances a patient may file**. But where an inpatient filed **many, many complaints** while in a treatment facility, without any attempts to resolve his issues first, he **should not be surprised** when **both the staff and his peers became very frustrated with him**. The county **transitioned him to a smaller home** with fewer residents where he would have less opportunity for confrontation with others. This was **not done in retaliation** for his use of the grievance process. (Level III decision in Case No. 02-SGE-05 on 3/19/03)
5. There is **insufficient evidence** to conclude that a **facility’s Chief Legal Counsel discouraged someone from filing a complaint**. The facts indicate he merely **informed the individual** that he did **not believe he had a malpractice claim that would be upheld in court**. The fact that the individual was able to bring this complaint and appeal it up through the grievance process to Level IV indicates that his right to complain was not violated. (Level IV decision in Case No. 02-SGE-07 on 3/10/04.)
6. A psychiatrist determined that the **therapeutic rapport** between himself and one of his clients had been **irrevocably damaged**. That presented a valid treatment reason for **discontinuing his services** to that client. There was **no indication** that a psychiatrist’s services to a particular client were **terminated in retaliation** for his **use of the grievance procedure**. (Level IV decision in Case Nos. 05-SGE-06 and 05-SGE-08 on 12/15/06)

7. A former client of an outpatient methadone clinic **claims he was deterred** from filing complaints for **fear of retaliation**. He felt that **his sister was discharged from the same program for complaining**. The discharge of his sister could not be addressed since the reasons for her discharge from the program were confidential and she did not file a grievance about it. There was **no other evidence** presented **that clients were deterred from filing complaints**. (Level III decision in Case No. 10-SGE-13 on 3/03/11)
8. A provider's written statement to the client was **found to be a reprisal for contacting the department**. This action **constituted a violation of the client's right to be free from retaliation** for contacting state agencies or officials. It was noted that the provider made exemplary effort in implementing and adhering to client rights. The corrective action plan subsequently submitted by them was outstanding, as were their responses to the client's grievances. However, the corrective action plan did not address this particular issue and it should have. (Level III decision in Case No. 11-SGE-06 on 12/02/11)

[Document last updated: 02/15/12]