

ACCESS TO LEGAL SYSTEM AND COURTS

THE LAW

"Except in the case of a person who is committed for alcoholism..." each patient shall... "have the right **to petition the court for review of the commitment order** or for withdrawal of the order or release from commitment as provided in s. 51.20(16)."

§ 51.61(1)(d), Wis. Stats. [Emphasis added.]

"(a) Any patient whose rights are protected under this section who suffers **damage** as a result of the **unlawful denial** or **violation** of any of these **rights** may **bring an action** against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover **any damages** as may be **proved**, together with **exemplary damages** of not less than **\$100 for each violation** and such **costs** and reasonable actual **attorney fees** as may be incurred.

(b) Any patient whose rights are protected under this section, may bring an action against any person, including the state or any political subdivision thereof, which **willfully, knowingly** and **unlawfully denies** or **violates** any of his or her **rights** protected under this section. The patient may recover such **damages** as may be **proved** together with **exemplary damages** of **not less than \$500 nor more than \$1,000** for each violation, together with **costs** and reasonable actual **attorney fees**. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an **action to enjoin** the violation of his or her rights under this section and may in the same action **seek damages** as provided in this section. The individual may also recover **costs** and reasonable actual **attorney fees** if he or she prevails.

(d) **Use of the grievance procedure** established under sub. (5) is **not a prerequisite** to bringing an action under this subsection."

§ 51.61(7), Wis. Stats. [Emphasis added.]

"Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section **by unreasonably precluding the patient from doing any of the following** may be **fined not more than \$1,000** or **imprisoned for not more than 6 months or both**:

(a) **Using the grievance procedure** specified in sub. (5).

(b) **Communicating**, subject to sub. (1) (p), **with a court, government official or staff member of the protection and advocacy agency** that is designated under s. 51.62 or with legal counsel."

§ 51.61(7m), Wis. Stats. [Emphasis added.]

“Nothing in this section [on the State Grievance Examiner’s original jurisdiction to investigate **allegations related to the adequacy of the provider’s grievance process**] shall be read as prohibiting or limiting in any way the beginning of an action under s. 51.61 (7) or (7m), Stats., or any other civil or criminal prosecution by or on behalf of a client.”

DHS 94.51(6), 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. The **treatment professionals and the courts** are the **final decision-making authorities** on mental health commitments. A county department of community programming (DCP) does not have the primary decision making capacity about a commitment. The role of the DCP is to file the petition. However the court retains jurisdiction over the petition. The DCP is simply the responsible entity for monitoring and coordinating the commitment once it is adjudicated. (Level III Grievance Decision in Case No. 04-SGE-07, affirmed at Level IV on 8/15/05)
2. A patient who had been **discharged from a Methadone clinic** requested our department to assign an attorney to her assist her. The department does not assign attorneys to individuals. If she wanted to sue the clinic, she would have to hire a private attorney. (Level III decision in Case No. 06-SGE-13 on 11/30/06)

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