

RULES AND SANCTIONS

LAW

Each patient shall... "Have a right to a **humane psychological... environment...**"
§ 51.61(1)(m), Wis. Stats. [Emphasis added.]

"Patients have the right to be free from having **arbitrary decisions** made about them. To be **non-arbitrary**, a decision about a client must be **rationally based** upon a **legitimate treatment, management or security** interest."

DHS 94.24(3)(h), Wis. Admin. Code [Emphasis added.]

"Each patient shall be given an **opportunity to refute any accusations** prior to initiation of disciplinary action."

DHS 94.24(2)(g), Wis. Admin. Code [Emphasis added.]

"No patient may be **disciplined** for a violation of a treatment facility rule unless the patient has had **prior notice of the rule.**"

DHS 94.24(2)(h), Wis. Admin. Code [Emphasis added.]

[NOTE: If a **penalty is imposed** upon a patient as the result of a **violation** of a **rule**, in order **to deter** that patient or others from exhibiting violating the rules, then **this is a "sanction"** and must meet the standards for imposing sanctions. If a **restriction** is imposed for **security, treatment or management reasons**, rather than for a rule violation, then it is a **risk-reduction measure** and standards for such measures apply. See the Risk-Reduction section of this digest.

Any **consequence** imposed on a patient for a **rule violation** must meet the following standards approved by the Client Rights Office to be valid:

Standard # 1: The patient must have **adequate notice of the rule** and of the **penalty** for violation of that rule. Notice **should be in writing** and, regardless of how communicated, must be **clear, specific and objective**. The **penalty** may **vary** based upon **written criteria** for **aggravating** and **mitigating** circumstances.

Standard # 2: A rule must be **enforced** and the consequences **applied equally** to patients in similar circumstances. **Differences** in **circumstances** that are relevant to differences in penalty for the same offense can be left to **staff discretion**. However, such discretion must be guided by the written criteria for **aggravating and mitigating circumstances**.

Standard # 3: The **judgment** that a rule has been violated or that aggravating or mitigating circumstances exist must be based on the **best available evidence**. A certain amount of **checking up on facts** must be done, the patient should be heard, and the facts must be documented and made available to the patient. Subjective judgments should be limited to deciding issues of **credibility and intent**.

Standard # 4: The patient **must be able to have chosen** whether or not to commit the rule violation. That is, he or she **must be responsible**. (For instance, if a patient is hallucinating and hits a peer, imposing a penalty is not appropriate. **Risk-reduction** measures may certainly be taken, however, to prevent the patient from hitting anyone else during the period of hallucination.)

Standard # 5: The burden is on the staff to show that it is **more probable than not** that the patient committed the rule violation.

Standard # 6: The penalty **must not be excessive**, either absolutely or in relation to the offense.

Documenting Consequences: Staff must document: 1) that the patient had **proper notice** of the rule and the possible consequences of violating it; 2) Any **aggravating or mitigating circumstances**; 3) The **facts** relied upon as objectively as possible; 4) The patient's **degree of responsibility**; and, 5) The **conclusions** reached, based on the **facts** and **circumstances**.]

[Note: See also the "Due Process" section of this digest.]

DECISIONS

[None at this time.]

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