

SEARCHES - - OF PERSON AND POSSESSIONS

THE LAW

"(1) '**Body cavity search**' means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(2) '**Body search**' means a personal search, a strip search or a body cavity search of a patient...

(33) '**Personal search**' means a search of the patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth...

(43) '**Strip search**' means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes examination of the patient's clothing and body and visual inspection of his or her body cavities."

DHS 94.02, Wis. Admin. Code [Emphasis added.]

"A treatment facility may **fingerprint** a patient only if the patient is unknown, has no means of identification, cannot otherwise be identified and fingerprinting is required for identification. This restriction does not apply to patients transferred to the facility under s. 51.35(3) or 51.37, Stats., or committed under ch. 971 or 975, Stats."

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

"Only **inpatients** may be subjected to a **body search**. All body searches shall be conducted as follows:

1. A **personal search** of an inpatient may be conducted by any facility staff member:
 - a. Before a patient leaves or enters the security enclosure of **maximum security** units;
 - b. Before a patient is placed in **seclusion**;
 - c. When there is **documented reason** to believe the patient **has**, on his or her person, **objects or materials** which **threaten** the **safety or security** of patients or other persons; or
 - d. If, for **security reasons**, the facility **routinely conducts personal searches** of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35(3) or 51.37, Stats.;

2. A **strip search** of an inpatient may be conducted:

- a. Only in a **clean and private place**;
- b. Except in an emergency, only by a person of the **same sex**;
- c. Only when all **less intrusive search procedures** are deemed **inadequate**; and
- d. Only under circumstances specified under **subd. 1a to c**;

3. A **body cavity search** of an inpatient may be conducted:

- a. Only in a **clean and private place**;
- b. Only by a **physician** and, whenever possible, by a physician of the same sex;
- c. Only when all **less intrusive search procedures** are deemed **inadequate**; and
- d. Only under circumstances specified under **subd. 1a to c**."

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

"The **room and personal belongings** of an **inpatient** may be **searched** only when there is **documented reason** to believe that **security rules have been violated**, except that searches may be conducted under other circumstances in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility **policies**."

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

"**Personal storage space** may be searched only if there is documented reason to believe a violation of the facility's **security regulations** has occurred and the **patient is given the opportunity to be present** during the search, **except in forensic units** where **routine searches** may be conducted in accordance with written facility policies."

DHS 94.27(3), Wis. Admin. Code [Emphasis added.]

[Note: See also the "Drug Testing" section of this digest.]

DECISIONS

1. A patient was voluntarily admitted to the behavioral health unit after considerable indecision. The patient grieved that she was not allowed to refuse a body search upon admission. Patients have the right to refuse all medication and treatment. However, an inpatient's right to refuse treatment and leave the facility immediately is weighed against safety concerns prior to release. Since the

patient could not leave the facility instantly, a search was necessary. Decisions regarding the patient's treatment must be rationally based on legitimate treatment, management or security interests. **Here, a search for weapons or contraband upon admission to an inpatient unit was rationally related to protecting the safety of the patient, other patients and staff.** (Level III decision in Case No. 16-SGE-08 on 5/26/2017)

[Document last updated: 07/17/2018. Digesting in progress for cases decided after 2013]